

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 15TH DAY OF OCTOBER, 2012, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Tom Hayden	Mayor
Kendra Stephenson	Mayor Pro Tem
Mark Wise	Deputy Mayor Pro Tem
Bryan Webb	Councilmember Place 2
Steve Dixon	Councilmember Place 4
Jean Levenick	Councilmember Place 5

constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Terrence Welch	Town Attorney
Chuck Springer	Interim Town Manager/Assistant Town Manager/CFO
Kent Collins	Assistant Town Manager
Doug Powell	Executive Director, Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Hayden called the briefing session to order at 6:00 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee/Liaison Reports

No reports.

2. Discuss Consent and Regular Items

Councilmember Dixon requested Item 11 be pulled from Consent.

Councilmember Webb requested Item 16 be pulled from Consent.

3. Request Future Agenda Items

Councilmember Dixon requested a future item come forward at the next meeting related to a banner program to recognize active military members.

Mr. Springer indicated that topic is currently scheduled for the November 15th Council meeting, however, it could be moved forward should the Council wish to do so.

Councilmember Dixon indicated it would be his preference to bring it forward earlier given Veteran's Day is November 11th and that opportunity would be missed.

Mayor Hayden summarized the item would be picked up as soon as possible.

C./D. ADJOURN BRIEFING SESSION AND CALL REGULAR MEETING TO ORDER

Mayor Hayden adjourned the briefing session and called the regular meeting to order at 6:06 p.m.

E. INVOCATION

Councilmember Dixon gave the invocation.

F. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Mayor Hayden led the pledges.

G. PRESENTATIONS

1. Proclamation for Flower Mound Arts Month, November 2012.

Mayor Hayden presented Sweetie Bowman, Chair of the Public Arts Committee and Sue Compton, Director of Library Services, with a Proclamation for Flower Mound Arts Month.

2. Proclamation for National Martial Arts Day.

Mayor Hayden presented Dr. Mack with a Proclamation for National Martial Arts Day. A breaking demonstration was conducted by "Lil Dragons": Dago (age 5) and his sister Sophia (age 4).

3. Presentation and update from Atmos regarding easement clearing.

Charles Yarbrough, Atmos Energy, 5420 LBJ Freeway, Ste 1557, Dallas, TX
Mr. Yarbrough provided background information about Atmos, as well as historical information related to their pipelines. He indicated the clearing within existing Atmos pipeline easements is needed due to safety, access, patrolling/leakage surveys, and root damage to pipelines.

Sherry Kelley, Vice President of Operations, Atmos Energy
Ms. Kelley provided a presentation outlining the "Line W" Operating Profile. She offered the following information:

- the area proposed for clearing spans from Clay County (near Wichita Falls to Dallas County (near Irving)
- 12.3 miles of the 24" steel transmission pipelines were installed in Flower Mound in 1960
- It is a critical line that carries natural gas to their storage areas for Metroplex customers

- the radius of a 50 feet clearing coincides with the width of the pipeline and their need to meet OSHA safety standards
- access to the pipeline in an emergency situation is critical
- Atmos currently surveys and patrols their lines with the use of aerial patrolling and leakage surveys to achieve compliance with the safety regulations. Aerial surveys are conducted twice a week and having a good line of site of the pipeline provides surveillance in the entire right-of-way to identify encroachments or excavations
- surveys include walking as well as aerial leakage surveys
- the cost of walking the pipeline ranges from \$101 to \$176 per mile, and the cost for aerial surveying is \$109 per mile and it takes less time for the aerial survey given a greater distance can be covered and they can gain a better line of sight of the right of way if no obstructions
- types of damage that can occur to the pipeline as a result of tree roots was identified

Mr. Yarborough responded to questions from Council, as well as from their public interactions as follows:

Question:

Mayor Hayden asked if he had a map of the Atmos pipeline so the residents can see exactly where the pipeline goes.

Answer:

Mr. Yarborough responded he did not, however, could get one.

Council Comments:

Mayor Hayden indicated he has one; however, he wanted the residents to know that it starts at Lakeside DFW and goes through the Sanctuary, and right through the middle of Wellington, up to Tour 18 across the golf course.

Question:

Why wasn't this done earlier?

Answer:

In reality it probably should have been. Some areas in Flower Mound were cleared a couple years ago, however, that was relatively small compared to the entire expanse of the pipeline. He noted continuing to fail to clear would be putting off taking care of a safety issue and putting the citizens at risk.

Question:

Why weren't city officials notified as indicated in a flyer and other communication that has been circulated?

Answer:

He indicated the intent was to contact city officials first and the material got a little ahead of them.

They intended to have one-on-one meetings with Councilmembers and not during a regular Council meeting.

Council Comments:

Mayor Hayden and Mayor Pro Tem Stephenson disagreed, stated that city officials were not contacted and only recently received notification of this clearing through Senator Jane Nelson. In addition, residents brought it to the attention of Council through a FAQ flyer distributed in the Sanctuary neighborhood on Oct. 3rd and on a website for McKamy Middle School (for more than a week now).

Question:

Mayor Hayden expressed concern related to the timing as Council was just informed they would start the process in a week or two.

Answer:

They would start in a couple weeks and he expressed disappointment that some of the materials got more widely distributed.

Question:

How were the trees allowed to be planted initially?

Answer:

It's clear in the easements and plats that were approved by the Town. When the development occurred over the years the easement was in existence and they have the right to clear it. Despite that, when private property owners or homeowner associations do their landscaping projects they often don't look at those documents and will plant trees in conflict.

Question:

Do they have the authority to remove the trees? Does federal law require them to do so?

Answer:

Yes, they have the right to clear the right-of-way and the Town's Tree Ordinance allows them to clear for utility purposes.

There is no state or federal law that says "you must cut trees", that's true, but the law does require them to patrol and do leakage surveys. I get cited regularly when the Commission finds an area that is not clear where they cannot do effective patrolling. They cite us and say get it fixed or else.

Question:

What can affected residents expect and when will the project start?

Answer:

We have already started replacing signage along the right-of-way to increase awareness of the pipeline. Prior to any work on an effected property the individual property owner will be contacted, visited with, and provided a copy of

the FAQs, and other opportunities will allow for an exchange with their right-of-way representatives, and they will coordinate with Town staff as they move forward with the work. We expected to start on or about Nov. 1st, however, if we have to put it off some we will do that. We anticipate targeting three areas initially before the holidays (Tour 18, industrial warehouse area on east side, and the Sanctuary). He indicated having contacted an arborist and was informed the clearing will help the Sanctuary from a health perspective to clear out some underbrush. We are open to discussions about the date, however, want to get started as soon as possible, but didn't mean to catch anyone unaware or deal with anyone unfairly.

Question:

What would happen to the tree waste generated?

Answer:

For the landscaped areas the refuge will be removed and offered to the Town should it be desired as mulch, unless the individual property owner wants the wood for firewood, and in that case we would cut it up into firewood and stack for them. For the forested and pasture areas we would just mulch the debris and distribute it on the right-of-way, unless otherwise requested by the property owner and in that case it would be hauled off or given to the Town.

Question:

How they would handle a situation when a tree is trimmed and it dies, will they replace?

Answer:

We intend to employ a certified arborist, which Town staff recommended we do for situations where advice is needed such as when the trunk is outside of the right-of-way, however, it overhangs into the right-of-way and what can be done in order to minimize damage to the tree. If such a situation occurs, we will deal with it on a case by case basis with the individual property owner.

Council Comments:

Councilmember Webb asked for clarification as to if that means they will or will not replace the tree?

Response:

We will not necessarily replace the tree, but if it can be determined that our trimming caused the death of the tree we will compensate the landowner either through replacement at another location, or money damages.

Mr. Yarbrough provided names of Atmos representatives that could be contacted for further questions.

Mayor Hayden invited Senator Jane Nelson to come forward to offer her remarks on the matter.

Texas State Senator Jane Nelson, 8601 Lighthouse Dr, Flower Mound, TX
Senator Nelson offered the following remarks:

Last week I was notified that Atmos Energy intends to clear the right of way along Atmos Pipeline W – which runs directly through Flower Mound. I was told that trees, shrubs and structures other than homes are to be removed from the 50-foot easement -25 feet each way. Like you, I could not imagine that Atmos planned to come in and clear cut a swath through the beautiful trees that Flower Mound cherishes.

As your Senator, and as a resident, I started making calls. First I was told this is being done because the federal government was requiring it. That is when I put in a call to our Congressman Michael Burgess. Atmos cites federal rule 49 CFR Sections 192.705 and 102.706 – a rule directing pipeline operators to patrol their infrastructure to identify leaks and other safety issues. The rule has been in place for some time. I absolutely agree with the need to identify safety issues and would expect our community will be protected. I chair the Senate's Health and Human Services Committee and care deeply about the welfare of our citizens. After all, my children and grandchildren live here! Safety is my number one concern and I'm sure it is the Council's as well. However, let me be clear, it is not a federal requirement.

However, I have learned that the patrols required under Rule 49 CFR can be carried out by walking, driving, flying or other means. Atmos has stated they intend to comply with this rule by using aerial surveillance and video imaging. The company states that a clear right of way is needed in order for the aerial surveillance to be effective.

I am extremely concerned for our neighbors and the state. Last year Texas lost over 300 million trees due to the drought, and now we're going to come in and cut down perfectly healthy trees.

In addition to my communication with Congressman Burgess, I have spoken with Mayor Hayden several times, as well as State Railroad Commission attorneys. The Railroad Commission is the oversight government entity that oversees what's going on here with these pipelines. I learned from a state government perspective, utilities have always had extensive authority over the right of way. The Natural Resources Code provides a uniform 50-foot easement for common carrier pipelines – which is in line with the OSHA guidelines for excavation.

I confirmed that there is NO requirement in state or federal law to clear this right of way. Nor is there a requirement in law that is directing Atmos to take this specific action. But at the same time, the Commission tells me they do not have any authority to prevent this from happening.

I have expressed to Atmos my strong dissatisfaction in the lack of discussion or even adequate notice that has been provided. As I started calling people in our community I found out our HOA's didn't know about it, but our golf course people had known about it for two weeks.

As you have heard, the company wants to begin the project soon, and after listening to the presentation tonight, I have a few questions that I hope the Council will pursue:

1. Given that no state or federal law is requiring Atmos to clear this land in order to conduct safety inspections, what alternatives can be considered to prevent the destruction of our Cross Timbers?

We do cherish our trees in Flower Mound! It was said tonight that this is necessary. I would maintain it is not necessary to cut down these trees. It is necessary to protect the safety of our citizens, but there are other ways to do that.

2. Fifty feet is a significant amount of land. Just because Atmos can clear the right of way doesn't necessarily mean the need to do so. Can't the objective be accomplished without such a drastic clear-cutting of trees?
3. I understand that Atmos wants to carry out these inspections aerially using laser technology. However, I am told (by the Railroad Commission today) that the same technology can be used via land inspections. Why can't these inspections be carried out by foot?
4. You mentioned the cost of walking the inspections being \$101 to \$176, and the cost of aerial inspections was \$109 a mile. So I would wonder if this is simply a cost containment strategy of Atmos and I would argue that we value our trees a lot more than the money that they would be saving.

In closing, I would just say to Atmos that even if you think you have the authority to do this, I would ask that you work with the Town of Flower Mound and citizens to ensure that public safety is attained in a way that prevents the unnecessary destruction of trees.

We value our natural landscape here. Our town was named after it! Every tree that can be saved – should be saved. I will work with Atmos or the Council in any way I can to see that we do that.

I would also really suggest to you that you have a flawed communication process. We do things differently here in Flower Mound where we believe in open communication. I think if the public in Flower Mound knew about this you would see this room filled and going down the street based on the phone calls that I have received just in my community (and they didn't know this presentation was going on tonight). We need to give the public plenty of time for input and we need to talk about alternative ways. I have five attorneys just in my community that have suggested many ways in which to accomplish the goal without chopping down our beautiful trees.

I appreciate you giving me the opportunity to testify.

Mayor Hayden asked Mr. Yarborough to respond to some of the questions asked by Senator Nelson, and later of Council members as follows:

Question:

Could you do this by walking (hand held equipment as opposed to aerial)?

Answer:

Hand waking with a laser device is not quite as effective as aerial patrolling because it's harder to get the full unobstructed scope. You can walk lines, but to do so would require us to hire many more employees than we have now and we would not be getting the same frequency of survey as we get with aerial patrolling. Now let me make a distinction between patrolling and leak survey. Patrolling in this type of area I believe is required to be done at least a couple times year, and we do it much more frequently because of our concern of detecting problems ahead of time. I admit we failed here in getting the communication from the people that do the patrols to the people that make decisions to get stuff done. It's been addressed and attempts have been made to fix that internally in the company. Leak surveying is only required to be done once a year, which is the methane detection stuff. Again, we have the ability to do it more frequently with aerial patrolling. The Commission requires that the right of way, even if you're walking, be clear enough for whoever is walking the line to be able to access the center line of the pipeline. I can tell you with the little bit of walking I have done on our right of way, there are many areas where we would be cutting trees no matter what, even if we were walking the line. The other problem we face with this is that if we do it in Flower Mound we are going to be faced with doing it everywhere in the state, which further increases the money involved, which is paid by our customers – your citizens.

Mayor Hayden questioned the effectiveness of their aerial surveying as he noted there is a resident by the name of Mr. Charlie Cummings that has a pipeline that goes across his property and it is exposed above ground. He pointed out Atmos found out about it after he made a call to Atmos. For that reason walking might be more effective than seeing it from the air.

Question:

It doesn't seem like the cost is that much different, especially when you're only talking about 13 miles in Flower Mound.

Answer:

If we were to provide the same amount of coverage by walking as we do flying, you would be multiplying that per mile walk number, effectively you are getting 104 patrols a year in Flower Mound through the aerial option. It will be much more effective once we clear the trees. But to do that with walking you are going to multiply probably that \$176 per mile number, because that is the number that applies when you have a lot of obstacles to move around when you are doing the foot patrol. The \$101 number is when you can walk and there is nothing in your way and you can cover a lot more distance in those situations.

Question:

Are you going to knock down someone's fence if it's on their easement?

Answer:

No, we're not knocking down fences. We will work around the fences.

Council Comments:

Mayor Hayden indicated that was different from what he heard on Thursday in that you were going to have to sign something.

Answer:

We are going to ask them to sign what is called an encroachment agreement because technically the fence should not be there under the easement. We don't have to knock it down. We will want to document that the fences are there as well as for some of the storage sheds that are within the easement. We would probably allow those to remain and enter into an encroachment agreement, which basically says we're aware of this and we advised you that we are willing to accept this in its current state, but you can't put any more structures on the pipe – we will not accept further action on your part to encumber our easement.

Question:

What if the resident doesn't sign the encroachment letter?

Answer:

They will monitor it.

Mayor Hayden expressed concern that this matter should have been taken care of from day one and not 15 – 20 years later when it disadvantages the Town. Further, that the attitude of Atmos is based on "because they can" and not because they are concerned about the residents of Flower Mound.

Mayor Pro Tem Stephenson asked Mr. Welch – when we have plats for these easements, can a plat give any more rights to the easement holder than the actual easement contract or document when it was purchased?

Mr. Welch responded yes and no. Some of these easements predated the Town so there is some language in the old easements. In other cases, depending on the easement, it may be by plat itself and not a separate easement document.

Mayor Pro Tem Stephenson pointed out that one thing everyone should understand is the rights of Atmos are outlined in these individual easement contracts. The requirements are not granted by federal or state law. I was given an easement document that you gave to my HOA which I'm not exactly sure it's the right one because I had pulled the easement documents before and I don't believe this is the exact document. Anyway, in this document it says that Atmos is responsible to pay any damages, which may arise to growing crops or fences from the construction, maintenance, and operation of oil and pipe. So you are going around to homeowners and telling them if you have a fence in your

easement that you need them to sign an encroachment document, when this document says you can have a fence, and oh, by the way, if you knock it down, you have to pay the damages. I think you need to inform all of the people that you are going to affect that they have the right to go back to the original easement document and they need to contact their personal attorney to see what their rights are, because you don't have the right to ask them to sign an encroachment document underneath this easement document. There is nothing in the whole easement document that gives you a right to clear anything. It says you have to have ingress and egress, and that's it.

Answer:

No, it says I have the right for ingress and egress to maintain, repair, replace the pipeline, and to maintain the pipeline in accordance with safety regulations I have to have a clear right of way.

Mayor Pro Tem Stephenson noted different courts look at that differently, so I do think one of the things you should be telling people is number one – if you're going to give someone the easement documents, I think that you need to probably make sure you are giving the correct one to the correct landowner, and then you should let them know they have more rights than what you are telling them, and that they should feel comfortable contacting their attorney to look at these easement documents specifically because I looked at a lot of cases in the State of Texas and other states. It's not as simple as you're making it out to be. Even if it is as simple as you're telling us, in 2005, after Atmos purchased the pipeline, you approached the Town of Flower Mound, and at the time the developer of the Sanctuary, to go in and do this 50 foot swath. At that point in time the Town of Flower Mound said no because this is a new conservation easement that is very important to our Town. So there was an agreement made that you would just come in and do pruning. I would recommend my homeowner's association check with the attorney we use because that is an agreement on your part that you are not going to clear this easement. You wanted to do it in 2005, and you worked with the Sanctuary not to, and just to prune the trees back so you had the ability to visually inspect. I don't understand how you can say that is not an agreement you entered into with the Town and the Sanctuary that you weren't going to clear cut this. That area that you want to clear cut is used by schools, every scout troop in our area, and you are going to destroy it. I do want the pipeline to be safe (it's getting to be 50 years old and needs some maintenance). I do want you to be reasonable and respectful to the Town. It's not easy for you to tell us you can't do it here because you would have to do it everywhere. Yes, I can imagine every municipality in the state wants to keep their trees in tack. It's not palatable to have a company come in and say "if I do it for you, I would have to do it for everybody, so I'm not going to do it at all." The other thing is I'm troubled that you have allowed us in Flower Mound to lay walking trails (concrete on top of the pipeline) and somehow that's acceptable, but having a tree 20 feet from the pipeline is not acceptable because it will take you so long to get rid of that tree. That to me doesn't seem to be logical so I would urge you to work with us. I have read many documents that puts together points that should be covered in these easement agreements that

states once the pipeline is in you need 20 to 30 feet. So the difference between 20 to 30 and 50 is huge. I think that we can all be reasonable to make this work for everybody. It's hard to imagine Flower Mound with a 50 foot wide bald spot from the Northwest corner to the Southeast corner. It seems to me like what you are trying to do is take your company costs and reduce them on the backs of our property owners. You are going to be reducing our property values by removing all of these trees. They are what make Flower Mound a desirable location. You say you want to do this from the air – I haven't seen a laser application where the width of the laser can't be adjusted, so you want 50 feet but I'm pretty sure that some good engineers could adjust that down to 10 or 20 feet.

Response:

If we got the wrong easement documentation I'll have our folks check on that and get you the right one. I will even agree to modify the FAQs to put in there that you should contact your personal attorney if you so desire to examine our rights under the easement that is applicable to your property. I have no problem in saying we will try to work with you, but we're here tonight to present what our plan was. I didn't come to present necessarily a plan that I thought would be acceptable to everyone in the city because there are some people that will say "no trees – go – no matter what", and there will be others that say "it's not a big deal - all you are taking out is small trees" I have walked and driven this line and some of the trees are very small and is not going to be a major imposition on a neighborhood because the trees are so young. Other areas there will be some large trees impacted. As to the agreement, let me investigate that (about the Sanctuary). I am not aware of that agreement and need to look into that. If there is a written agreement in which we are bound to in some way, we will honor it. If it was an oral arrangement, the accommodation might have been appropriate at that time. We are open to working with you on timing, perhaps some on width, walking in all honesty is probably not in the mix for us because of the impacts across our entire operation. We didn't come here to steamroll through and say "it's this way or the highway". We are trying to work with you. I have spoken to the Railroad Commission and they were aware of the situation and understood the need to clear the land, especially due to the density in the Sanctuary.

Mayor Pro Tem Stephenson stated I do understand your concern, and don't want you to think we don't, but I do think there is an opportunity to work together to make sure we preserve the trees, and come together on some reasonable accommodations. She recommended they take out language that refers to it's their right to do this.

Answer:

The right to clear comes through the word maintain because this is a piece of maintaining the pipeline.

Question:

Deputy Mayor Pro Tem Wise pointed out the pipeline is 1/3 of an inch thick and has been there 52 years so is there concern about the integrity of that pipe, and how long should it last. He also questioned if the maintenance activity involves replacement of pipe.

Answer:

At this point no because there are other pipeline safety requirements that deal with the integrity of pipes from the inside out as opposed to this project which is more focused on the external threats to the pipeline and detecting a problem early in the form of leakage. About four years ago there was an internal inspection of the pipe where an electronic device was run through the pipe, which collected electronic readings. Those reading identified if there was a corrosion issue and if replacement is needed. I can tell you that the stretch of that pipe in Flower Mound passed with flying colors and there is nothing there that poses any kind of immediate threat or a near term threat as far as a failure from corrosion (and that's both external and internal corrosion). That will be done again soon as it's required every 7 years.

Question:

Deputy Mayor Pro Tem Wise asked how many leaks have been detected in the last year or two.

Answer:

I don't believe there have been any leaks on this line in the last few years, but I'll check on that.

Question:

Councilmember Dixon indicated having walked the path through Wellington and Lake Forest Estates and took some photos. He provided a presentation that included several photos depicting areas that will be impacted and/or need attention (i.e. between Clear Point and Native Oak; north of McKamy by the practice fields, conservation area of the Sanctuary, and Lake Forest). He referenced areas that need some pruning and a lot of these areas in which an apparatus could go through. He pointed out areas where vegetation was both on the pipeline as well as near it. He pointed out locations within Lake Forest that have either sheds or fences on the right of way. He indicated having heard that those would be left alone because it would have a dramatic impact on their quality of life. There are many areas in the Town where there is good access where the line can be maintained, however, there are some area with trees, and indicated where he walked there were two areas where you would have to take down a small grove to get from point "a" to point "b." One of the areas was a situation with a pond on one side and a steep embankment on the other, and the grove of trees on the other. I understand that are some areas that clearly you need to maintain your easement to get different emergency vehicles and apparatus in there to be able to take care of a problem if there is an issue. But what I don't understand is a situation where you have to go in there and take out everything in certain areas. There are other areas in Town that is densely forested out in the middle of nowhere where you have to go on people's property and the situation is that they can't build on it so they probably wouldn't have too much angst on losing 40 of their 5,000 trees. My layman's point on this is that we should be able to work together, we should be able to decide where things need to be taken down and where things clearly should be left up. The disappointing thing about all of this is that I was hearing about it through the grapevine before

we got official notice. No one in the position that represents others likes to be surprised. My request to you is don't do anything until we fully inform the residents of Flower Mound about what is going on and that we look at all available alternatives to try and maintain as many trees as we can in your easement. You talked about putting some language in there where they can go back and understand what the easement agreements do say – that's more than fair. I would hope that any of the FAQs on the web site fully informs them as to the belief that they do or do not need to be signing something. They do need to take their own due diligence, but I don't want it to be skewed in a way where they don't think they have a choice.

Question:

Mayor Pro Tem Stephenson asked could you find out when was the last time Atmos has done the depth of coverage study that is required by the Department of Transportation in Flower Mound, and what the results were, given the above ground issue with Mr. Charlie Cummings property.

Answer:

We are addressing Mr. Cummings situation, probably with what is called a mat to put over the pipeline to eliminate the exposure. On the creek, I don't believe we have any exposure in that area (along Hillcrest). As to depth of coverage study, I don't believe there is a requirement on us to do a depth study periodically. There is a requirement when you install a pipeline that it be at least three feet deep when you install it. There is no ongoing obligation on the company to maintain that depth because we don't control the surface fully. We have the right to use our easement for what is reasonable and necessary for our pipeline. The homeowners have the right to use the surface to the extent reasonable necessary and it does not interfere with our rights. That's where it gets into judgment call issues such as storage sheds.

Mayor Pro Tem Stephenson commented you understand as a lay person that makes no sense to me as you can chop down my tree but you can't put dirt in my yard.

Mayor Pro Tem Stephenson asked Mr. Welch to check as she thought there was a requirement that you maintain a depth of coverage. But as a lay person just understand it doesn't make sense that you are not required to keep your pipeline buried but you can come into my yard anytime and take down a tree. It doesn't make sense from a practical standpoint.

Councilmember Webb indicated most of his comments have been covered, other than do you have most of your exposure coming from the inside out.

Answer:

Most of it tends to be from the outside. Excavation damage is the most significant threat in Texas, followed by external corrosion.

Councilmember Webb commented that with regard to aerial versus walking, if we are talking about having someone walking the route, it strikes me that you could probably get the same thing done quicker with the use of a four-wheel gator as it could inspect a lot of area in a short amount of time and probably find some middle ground and perhaps cut costs.

Answer:

We have several gators, and they are rigged up, however, there are several areas along this right of way that we would not be able to survey.

Councilmember Webb stated as those become better known, perhaps it becomes part of working it out. You also mentioned, and started to mix them together a bit, however, I think they are distinct. You are required to inspect your pipeline once a year and then you patrol it more frequently.

Answer:

Yes, the difference is the once a year is a leakage survey where you are looking for methane emissions. The patrolling is checking to see what's going on around the pipe (i.e. excavations, encroachments).

Question:

Councilmember Webb asked if the patrolling was required at the same frequency.

Answer:

A little more frequently, and we do it more frequently by choice for safety concerns.

Councilmember Webb commented when we started talking about the cost differential between the two we started combining them and there was some discussion, well yes, but it's actually 4 – 5 times that if you're going to walk it 4 – 5 times a year. And my point is that the answer might be a mix of both, including the 4-wheel apparatus. It comes back to being willing to sit down and work out a solution that works for this community and when you do that you might find there are solutions that would work for other communities as well to allow Atmos to be a better partner to all of the communities you serve.

Answer:

We are not opposed to sitting down and talking and looking at some alternatives.

Councilmember Levenick stated most of her comments have been stated. One of my questions is in talking about the cost of walking versus aerial patrolling and obviously you're not going to be walking 12.3 miles, so obviously there are areas that are clear already and you don't need to walk those areas so hopefully it can be worked out where certain sections need to be walked versus those that need to be patrolled by air so maybe we can work out something. For example, the Sanctuary was our first conservation neighborhood that we did and I can't even imagine going in there and cutting anything out as the whole purpose was to keep it the way it was. So hopefully something could be worked out to figure out

which areas need to be walked. The other thing is if you're doing these aerial patrols two times a week and you have an exposed high pressure transmission line, I think you need to get someone else to do your patrolling because how do they not see that. You just said that safety is your number one issue, and the fact that two times a week the aerial patrols haven't caught it is surprising. I don't know how much I'm even believing in your aerial patrols by that point. My other point is you are saying there are storage sheds and fences and that type of thing out there. I understand you don't want to take someone's storage shed down, but what's the difference between a storage shed and the canopy of a tree.

Answer:

We will not allow a storage shed to sit directly on top of the pipe. If there is one of those we will be working with the landowner to move that shed. If it's off to the side it's not as big of an issue, however, if there is a problem in that the shed is in an area where we need to work, that shed would either be pushed further away or torn down.

Question:

Councilmember Levenick asked for an explanation as to how the exposed transmission line hasn't been caught, that you have to have a resident call and let you know.

Answer:

The company has been aware of it, however, it didn't get elevated as it should have to the attention of management to get it addressed and we have taken some steps to resolve the matter. With 6,000 miles of pipeline we try to prioritize those that present the greatest risk to the public at that time and get them taken care of as allowable.

Several Councilmembers expressed concern related to some communication problems within the organization and not being informed directly by Atmos about the clearing.

Mr. Yarborough admitted they have some communication issues and should have been more effective in working with the Town to get the word out to Council and the residents.

Mr. Yarborough pointed out there are areas along the hike and bike trails that have patches of pavers and that is done by their request to allow them to better access the lines as well as minimal costs and impact on the trail to put it back. He also pointed out that in some cases those have been taken out and replaced with concrete, assuming people thought it was a trip hazard. He indicated that is the type of accommodations they do – putting hike and bike trails along easements so we can live well.

Mayor Hayden summarized from the conversation we had last Thursday and then today, it seems that this is just my impression – we're not going to do what is best for Flower Mound – we're going to do what's easiest for Atmos. So I want

to ask you can we work together to do what is best for Atmos as well as what's best for Flower Mound and try to come to some resolution, or does the Town need to explore legal options.

Answer:

It is my desire to work together. We want to get this on the right track as soon as possible, understanding that working together and doing what's best will require us to give some, and you to give some. As long as we both understand that, yes, we can work together. I *can't* work with you if it's a "you've got to do it our way" kind of approach.

Mayor Hayden stated there is a balance. So our understanding was you were going to start doing this relatively soon and our conservationist Jane Nelson is going to chain herself to trees, so I want to understand – can we come to some sort of happy median where we're not clear cutting every tree throughout the pipeline and try to figure out what it is that we can do, otherwise we will need to discuss taking legal actions that would preclude you from starting in a week or so.

Answer:

No, you don't need to do that because it would force me to take legal action against your legal action and I don't want to go down that path. That is non-productive by both of us.

Ms. Kelley noted together we will work for a compromise.

Mayor Hayden indicated that's all he wanted to hear.

Councilmember Dixon asked if you can agree to hold off on the clearing work until the residents can be fully informed.

Answer:

I will commit to fully informing the residents, we will not move forward (unless some miracle happens before Nov. 1), we will wait until we have meetings and at least attempt to get to a resolution. If we can't get to a resolution I'm not sure what we do, but at this point I believe that we can get to a resolution and I will work hard in that direction, and in a reasonable and timely manner. He indicated it was their intent to hit the three limited areas pretty quickly as they had the most growth, and then wait until the first of the year for the remainder so as not to disrupt holiday celebrations. He noted they can wait until the first of the year before they start anything if we need to.

Councilmember Dixon indicated that would be his preference because getting this information out to the citizenry is not going to be between now and November 1st.

Mr. Yarborough agreed and stated November 1st is off the table as of right now and they are acceptable to not starting until after the first of the year.

Councilmember Dixon clarified they are agreeing to not starting until after the first of the year and in the meantime everyone will work diligently to find the best solution.

Mayor Pro Tem Stephenson asked Mr. Springer who would be the best contact from Town staff.

Mr. Springer responded he would be the point of contact, would want to have one Council member involved, and followed by a briefing for Council at a later meeting.

Mayor Hayden requested Mr. Welch be involved as well to make sure the legal side of things is addressed.

H. PUBLIC PARTICIPATION

Eric Jellison, 2705 Lake Ville, Flower Mound, TX

Mr. Jellison clarified a document he recently distributed to Council related to an economic development initiative was created by him as there is the slight possibility there could be a valid initiative somewhere down the road if the Town ever pursued the promotion of the EB-5 program.

Gary Reeder, 2220 Timber Creek Trail, Flower Mound, TX

Mr. Reeder expressed concern related to recent flooding he experienced on his 10 acre property. When asked by Mayor Haden what would he like the Town to do, he responded he would like the Town to fix the problem in order to bring his property value where it should be, or be reimbursed for the expenses he has encountered, or to buy his property at fair market value (10 acres).

Paul Rogers, 2608 Carterton Way, Flower Mound, TX

Mr. Rogers questioned if a verbal agreement was sufficient from Atmos regarding the clearing situation given the lack of communication and further questioned if there should be something in writing needed to not start the clearing until the first of the year.

Virginia Simonson, 3104 Native Oak Dr, Flower Mound, TX

Ms. Simonson asked Council be a line of defense in the Atmos clearing situation. In addition, she requested Atmos identify the specific trees proposed for mitigation. She also announced an upcoming Veteran's Coalition meeting.

David Wright, 9112 Choctaw Trail, Flower Mound, TX

Mr. Wright expressed concern about obtaining a building permit to be able to build a detached garage on his property and how it was communicated to him that his property would need to be replatted prior to going to the variance committee.

Jean Poppik, True Medicine, 3100 Peters Colony (Continuum Hospital)

Mr. Poppik expressed concern regarding an inability to place signage on the commercial building they occupy.

I. ANNOUNCEMENTS

Councilmember Webb had the following announcements:

- Fort Wildflower is opening on Saturday, October 20th at 10:00 a.m.
- Attended a concert presented by the Lewisville Lake Symphony last Friday

Mayor Hayden also announced the Fort Wildflower playground opening this Saturday and extended thanks to those involved with the construction.

J. TOWN MANAGER'S REPORT

1. Update and status report related to capital improvement projects, and Adopt-A-Spot program.

Mr. Springer provided the following updates:

- Freese and Nichols was contacted to initiate a proposal for the Town Hall study expansion, as well as for an expanded senior center, with an update anticipated for early December.
- Landscaping in the median and right of way is currently underway on FM 1171 as part of the Green Ribbon funding.
- Wichita Trail construction is currently going through utility relocations, which should be taken care of in the next week or two. Due to that delay they are beginning subgrade stabilization outside of the span area this week.
- The topic of arch span culverts came up during the design of Chinn Chapel in which the Town was provided an example of one of the arch span culverts and the question came up in terms of the Chinn Chapel design ---if the Town changed that to a box culvert what would the cost difference be. He noted in talking to the engineers that are doing Chinn Chapel they recommended, in order to get a true cost comparison, because not only the structure and engineering is different between the two types of structures, for a fee of about \$5,000 they could engineer it with box culverts as well as this arch span and the Town could do a bid so that we have the two alternatives from the bid and get a cost comparison from the two. He recalled the Town Council went through a process about a year or two ago where they looked at the design standards of the Town where we look at having the arch span versus the box culvert and they left the design standards the same, and that is why Chinn Chapel is being designed in this way. He noted this can also be seen on West Windsor (even though it doesn't have the stone on it). He indicated if it's the Council's desire to see that cost comparison staff can do that cost on the engineering side for approximately \$5,000.

Councilmember Dixon commented having discussions with several professional engineers on the subject and each one of them has consistently said that the savings would be well above the \$5,000. One of the things discussed in the Development Review Committee meetings is arched culverts (which is basically called con/span). He clarified that in the photo you see the arched headwall that

is clad. Many of the developers who have done business in Flower Mound have consistently come back and said our costs are dramatically higher. One developer indicated the cost was \$300,000 higher to do arched con/span versus box culverts. So if we authorize the \$5,000 to get the difference between the bid on Chinn Chapel to be box culverts, with this additional engineering with arched headwalls and clad stone, it is a small price to pay because what is being shown tonight Flower Mound paid for, so if we are able to save \$300,000 on this one project, a \$5,000 expense to have the engineering, and we can bid for both ways, is a small price to pay in the long one. He indicated his preference would be to spend the \$5,000, do the engineering, get the bids both ways on con/span versus box culverts.

There was consensus by Council to authorize the expense of \$5,000 for this purpose.

Mr. Springer summarized this will be added to the engineering on Chinn Chapel and will come back later with two bid alternatives.

Councilmember Dixon asked it was possible to implement this alternative for Wichita Trail to gain the savings there as well.

Mr. Springer responded they are about to build the one on Wichita Trail and that the alternatives discussed tonight were not part of it.

Mr. Springer pointed out that in order to accept the bid for box culverts, staff would have to come back to Council for an amendment of design standards to allow box culverts because the current design standards are for arch culverts.

Mayor Hayden asked if an amendment would be needed or if an exception could be granted.

Mr. Welch responded he is not aware there is an exception process within the design standards.

Mayor Hayden commented to Councilmember Dixon that the Development Process Committee should take a look at that.

Councilmember Dixon responded this was a discussion with the Committee. He asked Mr. Welch to take a look at this to determine if it's an interpretation or if it is clearly spelled out in the ordinance that con/span is required.

Mr. Springer proposed providing Council with an update via a Council Communication on the Adopt-A-Spot program given the time.

There was consensus by Council to receive a Council Communication on the topic in lieu of a presentation.

Mayor Pro Tem Stephenson indicated having gone through some of the neighborhoods and thinks there might be a need to inform HOAs that they are

responsible for the sidewalks in the common areas. Both the new ordinance passed in the last six months to keep debris off the sidewalks and the general repair of them because a lot of the times when I have seen issues they are in the common areas and not in front of the homeowner's house.

2. Discuss Council Communications (CC): CC 31-12 - Business Spotlight Initiative

Mayor Hayden pointed out he initiated this initiative. After having going to a business retention meeting at Direct Source they mentioned they were going to hire 20 people in Flower Mound and would like to hire locally, however, they didn't know how to get their message out. In addition, there is another business in Parker Square (Heritage Solutions). What I would like to do is bring a business to a Council meeting and have them talk for five minutes, and Council members could let him know if they have a business that they would like to have come. He indicated we can see how it goes for a few months and then review it.

Councilmember Dixon commented that he likes the idea; however, thought it would be wise to have some type of criteria and once the criteria is developed turn it over to the Town Secretary's office and they can coordinate getting them on the schedule.

Mayor Hayden responded "why can't the Mayor just invite a business?" He added "one of the things that got me thinking about this is one of our larger employers in the Town said that we don't feel like we're part of the community and we might consider relocating when our lease is up. This is something I wanted to do to try and build a sense of community."

Councilmember Levenick questioned why "you just can't have an open invitation where people just come up and speak to Council during public participation."

Mayor Hayden responded "they can if they want to. I just wanted to give them more than three minutes."

Councilmember Levenick pointed out that the Mayor is allowed to give them more than three minutes.

Mayor Hayden responded, "yes, and I do occasionally", and indicated "we won't call it a business spotlight and I'll just start encouraging businesses to come."

Councilmember Levenick agreed, and indicated it could be reviewed for a few months and to see how it goes.

Ms. Scott asked for clarification as to who would be the point of contact when the Town Secretary's office receives the calls about getting on the Town Council agenda.

Mayor Hayden indicated he would be the point of contact.

K. CONSENT ITEMS

Councilmember Dixon moved to approve by consent Items 1 – 10; 12 - 15 Deputy Mayor Pro Tem Wise seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

1. **Consider approval of the minutes from a special meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on September 4, 2012.**

RECOMMENDATION: Move to approve the minutes from a special meeting of the Town Council held on September 4, 2012.

2. **Consider approval of the minutes from a special and regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on September 17, 2012.**

RECOMMENDATION: Move to approve the minutes from a special and regular meeting of the Town Council held on September 17, 2012.

3. **Consider approval of the minutes from a work session of the Town Council held on September 20, 2012.**

RECOMMENDATION: Move to approve the minutes from a work session of the Town Council held on September 20, 2012.

4. **Consider approval of the minutes from a special meeting of the Town Council held on September 22, 2012, at 10:00 a.m.**

RECOMMENDATION: Move to approve the minutes from a special meeting of the Town Council held on September 22, 2012, at 10:00 a.m.

5. **Consider approval of the minutes from a special meeting of the Town Council held on September 22, 2012, at 3:00 p.m.**

RECOMMENDATION: Move to approve the minutes from a special meeting of the Town Council held on September 22, 2012, at 3:00 p.m.

6. **Consider approval of Change Order No. 5 for a contract decrease of \$5,713.80, final acceptance of The Heritage Park of Flower Mound Phase I project, authorization for final payment to 2L Construction LLC., in the amount of \$123,984.24; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve Change Order No. 5 for a contract decrease of \$5,713.80, final acceptance of The Heritage Park of Flower Mound Phase I project, authorization for final payment to 2L Construction LLC., in the amount of \$123,984.24; and authorize the Mayor to execute same on behalf of the Town.

- 7. Consider approval of a Professional Services Agreement with Freese and Nichols, Inc., for design and bidding phase services for the Operations and Maintenance Facility project, in the amount of \$66,220.00; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve the Professional Services Agreement with Freese and Nichols, Inc., for design and bidding phase services for the Operations and Maintenance Facility project, in the amount of \$66,220.00; and authorize the Mayor to execute same on behalf of the Town.

- 8. Consider approval of Texas Commission on Environmental Quality Sanitary Sewer Overflow Initiative Plan Agreement; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve the Texas Commission on Environmental Quality Sanitary Sewer Overflow Initiative Plan Agreement; and authorize the Mayor to execute same on behalf of the Town.

- 9. Consider approval of an ordinance vacating and abandoning the northern 3 feet of the existing 15-foot-wide utility and landscape easement located along the southern boundary line and the eastern 3 feet of the 15-foot-wide utility easement located along the western boundary line of Lot 1, Block 3 of the Lake Forest on the Creek Addition, which lot is more commonly known as 2621 Springwater Drive. The Lake Forest on the Creek Addition is generally located east of Long Prairie Road and north of Forest Vista Drive.**

RECOMMENDATION: Move to approve an ordinance vacating and abandoning the northern 3 feet of the existing 15-foot-wide utility and landscape easement located along the southern boundary line and the eastern 3 feet of the 15-foot-wide utility easement located along the western boundary line of Lot 1, Block 3 of the Lake Forest on the Creek Addition, which lot is more commonly known as 2621 Springwater Drive. The Lake Forest on the Creek Addition is generally located east of Long Prairie Road and north of Forest Vista Drive.

ORDINANCE NO. 54-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE NORTHERN 3 FEET OF THE EXISTING 15-FOOT-WIDE UTILITY & LANDSCAPE EASEMENT LOCATED ALONG THE SOUTHERN BOUNDARY LINE AND THE EASTERN 3 FEET OF THE EXISTING 15-FOOT-WIDE UTILITY EASEMENT LOCATED ALONG THE WESTERN BOUNDARY LINE OF LOT 1, BLOCK 3, THE LAKE FOREST ON THE CREEK, AN

ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS, WHICH LOT IS MORE COMMONLY KNOWN AS 2621 SPRINGWATER DRIVE; DETERMINING THAT THERE IS NO CURRENT NOR PROJECTED FUTURE NEED FOR THAT PORTION OF SAID EASEMENT AS DEPICTED IN EXHIBIT "A"; REQUIRING A HOLD HARMLESS AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

10. **Consider approval of Bid No. 66-12-B, for the construction of the Skillern Road Water Line, to P.C. Contractors, LLC, in the amount of \$87,382.00; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve the award of Bid No. 66-12-B, for the construction of the Skillern Road Water Line project, to P.C. Contractors, LLC, in the amount of \$87,382.00; and authorize the Mayor to execute same on behalf of the Town.

11. *Item 11 pulled from Consent by Councilmember Dixon*

12. **Consider approval of contract amendment with The Retail Coach for Phase II of their proposal; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve a contract amendment with The Retail Coach for Phase II of their proposal; and authorize the Mayor to execute same on behalf of the Town.

13. **Consider acceptance of grant funds and execution of an agreement with CoServ Charitable Foundation, to purchase one thermal imaging camera and two multi-gas monitors; and authorization for the Mayor to execute said agreement on behalf of the Town.**

RECOMMENDATION: Move to authorize the acceptance of grant funds, and execution of an agreement with CoServ Charitable Foundation, to purchase one thermal imaging camera and two multi-gas monitors; and authorize the Mayor to execute said agreement on behalf of the Town.

14. **Consider approval of a Services Contract with Huguley Memorial Medical Center Assessment Center, to perform annual employee examinations for Fire and Emergency Services personnel, in the estimated amount of \$36,600; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve a Services Contract with Huguley Memorial Medical Center Assessment Center, to perform annual employee examinations for Fire and Emergency Services personnel, in the estimated amount of \$36,600; and authorize the Mayor to execute same on behalf of the Town.

15. **Consider acceptance of grant funds and execution of an agreement with the U.S. Department of Transportation; and authorization for the Mayor to execute said agreement on behalf of the Town.**

RECOMMENDATION: Move to authorize the acceptance of grant funds and execution of an agreement with U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration; and authorize the Mayor to execute said agreement on behalf of the Town.

Item 16 pulled from Consent by Councilmember Webb.

VOTE ON MOTION

AYES: Wise, Dixon, Stephenson, Webb, Levenick.

NAYS: None.

L. REGULAR ITEMS

Item 11 pulled from Consent by Councilmember Dixon.

- 11. Consider approval of a resolution declaring expectation to reimburse expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations.**

Mr. Springer indicated this item is a federal tax law issue where in order to begin the projects that were approved on the CIP that will be funded by issuance of debt later in the summer, federal tax law requires a reimbursement resolution to be passed. It gives the Town the ability to start those projects and later issue debt to reimburse ourselves for those. Most of the time it's just initial and engineering work so there is not that much in the way of funds spent. It helps the Town delay debt and it's a more efficient process and lowers the Town's cost.

He pointed out that projects to be funded by the debt, are listed on Exhibit A within the Resolution and it's those items approved with the CIP that the Town plans to issue debt for, and mainly water and waste water projects and the general fund portion for the operations and maintenance facility.

Mr. Collins provided a presentation identifying the locations for the water projects: Hwy. 377 UPRR line, 1171 to Hwy. 377 water line, Bruton Orand tank rehab, and the O & M facility. For the waste water: waste water treatment plant phase III, lower timber interceptor project, Oak Street lift station, Forest main project, and other small projects.

Councilmember Dixon moved to approve a resolution declaring expectation to reimburse expenditures with proceeds of future debt and authorize the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations. Deputy Mayor Pro Tem Wise seconded the motion.

RESOLUTION NO. 17-12

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT, AND AUTHORIZING THE PREPARATION OF THE

DOCUMENTS ASSOCIATED WITH THE ISSUANCE, SALE AND DELIVERY OF THE DEBT OBLIGATIONS:

VOTE ON MOTION

AYES: Levenick, Webb, Stephenson, Dixon, Wise.

NAYS: None.

Item 16 pulled from Consent by Councilmember Webb.

16. **Consider approval of a resolution amending Resolution No. 02-08 by designating and appointing authorized agents; and declaring an effective date.**

Councilmember Dixon moved to approve a resolution amending Resolution No. 02-08 by designating and appointing authorized agents; and declaring an effective date. Deputy Mayor Pro Tem Wise seconded the motion.

Mr. Springer summarized the item is a change in the Town's banking agreement with J. P. Morgan Chase for the signatory to remove Harlan Jefferson as an authorized agent and adding the Town Secretary as a third authorized agent.

Councilmember Webb pointed out he pulled the item because the caption was vague and wanted the public to understand that it's just about maintaining three signatures.

Councilmember Webb moved to approve a resolution amending Resolution No. 02-08 by designating and appointing authorized agents and declaring an effective date. Deputy Mayor Pro Tem Wise seconded the motion.

RESOLUTION NO. 18-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND AMENDING RESOLUTION NO. 02-08 BY DESIGNATING AND APPOINTING AUTHORIZED AGENTS; AND DECLARING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Wise, Dixon, Webb, Levenick.

ABSTAIN/RECUSED: Stephenson.

NAYS: None.

17. **Public Hearing to consider a request to amend the Land Development Regulations (LDR 07-12) by amending subparagraph (2) of Section 86-106, entitled "Political Signs," of the Code of Ordinances to limit the number of political signs permitted to be placed at an officially designated polling place on election day, and to consider adopting an ordinance providing for said amendment. (*The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its October 8, 2012, meeting.*)**

Staff Presentation

Mr. Powell provided a presentation identifying or pointing out:

- the issue (photo demonstration of multiple elections signs posted)
- background information relating to the topic coming up at the July Strategic Planning Session in that the goal was to limit sign clutter at the polling places
- current language related to political signs (Sec. 86-106)
- proposed amendment language, which would allow 2 signs per public access point
- questions and answers associated with P & Z questions
- no correspondence has been received related to this item

Councilmember Webb stated that "in relation to political committees supporting a proposed amendment, not all have a supporting committee – some will have an organized opposition committee." He indicated there should be an expectation for this ordinance to apply to both support and opposition as well.

Mr. Powell pointed out it would be interrupted as applicable to both.

Mr. Welch indicated the ordinance could be amended to reflect language for both supporting and against.

Councilmember Webb commented sometimes we will see political action committees (PAC) formed for a candidate's benefit and questioned would that PAC be allowed two additional signs.

Mr. Welch responded to questions from Council related to:

- candidates versus groups that get two signs per access point
- how a polling place is defined
- provisions associated with when signs can be posted under the existing ordinance
- various scenarios as to what would be considered a sign
- the enforcement and citation process related to political signs

Mayor Hayden opened the Public Hearing at 9:00 p.m.

No one spoke in favor or against the item.

Mayor Hayden closed the Public Hearing at 9:00 p.m.

Councilmember Dixon moved to approve a request to amend the Land Development Regulations (LDR 07-12) by amending subparagraph (2) of Section 86-106, entitled "Political Signs," of the Code of Ordinances to limit the number of political signs permitted to be placed at an officially designated polling place on Election Day, and adopt an ordinance providing for said amendment. Mayor Pro Tem Stephenson seconded the motion.

ORDINANCE NO.55-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 86, ENTITLED "SIGNS," THROUGH THE AMENDMENT OF ARTICLE II ENTITLED "REGULATIONS," THROUGH THE AMENDMENT OF DIVISION 3 ENTITLED "OTHER MISCELLANEOUS SIGNS" AND PARAGRAPH (2) OF SECTION 86-106, ENTITLED "POLITICAL SIGNS," BY ADDING A NEW SUBPARAGRAPH (E) LIMITING THE NUMBER OF POLITICAL SIGNS PERMITTED TO BE PLACED AT POLLING PLACES; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Levenick, Webb, Stephenson, Dixon, Wise.

NAYS: None.

- 18. Consider approval of the first reading of an ordinance granting a non-exclusive gas franchise to Atmos Energy Corporation; and authorization for the Mayor to execute same on behalf of the Town.**

Mr. Springer provided a presentation providing or noting:

- information related to what the franchise is granting (grants Atmos to use the Town's public right of ways for the implementation of their system)
- background information related to the franchise
- effective date of January 1, 2013
- projected annual receipts
- franchise comparison information
- requires a first and second reading by Charter

His presentation is as follows:

Franchise History

1965—25-year franchise granted to Lone Star Gas Company; 2% franchise fee

1990—20-year franchise granted to Lone Star Gas Company; 2% franchise fee

1999—Approximately when company became TXU Gas

2003—Several municipal customers renegotiated 4% franchise fee for remainder of 20-year term

2004—Atmos Energy Corporation acquired TXU Gas effective October 1

2008—5% franchise fee (Favored Nations Clause) for remainder of 20-year term (to expire in 2010)

2010—Negotiations began; operate under old terms until new franchise is approved

Proposed Franchise

- Main points of discussion for new franchise
 - Permitting
 - Relocation—Construction
 - Definition of "gross revenues"

- Proposed Franchise
 - Effective January 1, 2013
 - 20-year term
 - 5% franchise fee
 - Projected annual receipts of \$676,000

Franchise Comparison

Table of Franchise Agreements
October 2012

FRANCHISE	EXPIRATION	FEE
Atmos Gas	December 17, 2010	5% gross revenues
CoServ Gas	January 1, 2015	4% gross revenues
CoServ Electric	January 1, 2015	4% gross revenues*
Oncor	March 31, 2016	0.003183/kWh factor (PUC-approved)
Waste Management	September 30, 2016	5% gross revenues
AT&T Grande Cable Time Warner Verizon	} State Issued Certificates of Franchise Authority (SICFA)	5% gross revenues plus 1% gross revenues for Public, Educational, and Governmental Channels (effective 12/20/11)

*5% upon approval of new franchise agreement

Mayor Pro Tem Stephenson moved to approve the first reading of an ordinance granting a non-exclusive gas franchise to Atmos Energy Corporation; and authorize the Mayor to execute same on behalf of the Town. Deputy Mayor Pro Tem Wise seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Webb, Levenick.

NAYS: None.

19. Consider approval of the first reading of an ordinance granting a non-exclusive electric franchise to Denton County Electric Cooperative, Inc., d/b/a CoServ Electric; and authorization for the Mayor to execute same on behalf of the Town.

Mr. Springer provided a presentation providing or noting:

- history of the franchise
- proposed franchise, including points of discussion
- franchise comparison information

His presentation is as follows:

Franchise History

1965—50-year franchise granted to Denton County Electric Cooperative, Inc.; 2% franchise fee

2001—Approximately when the company began d/b/a CoServ Electric

2005—Renegotiated 4% franchise fee for remainder of 50-year term

2011—CoServ provided model franchise for Town's consideration in December and negotiations began

He noted there is a CoServ representative in the audience should there be any questions.

Deputy Mayor Pro Tem Wise moved to approve the first reading of an ordinance granting a non-exclusive electric franchise to Denton County Electric Cooperative, Inc., d/b/a CoServ Electric; and authorize the Mayor to execute same on behalf of the Town. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: Levenick, Webb, Stephenson, Dixon, Wise.

NAYS: None.

20. **Consider approval of the purchase of 97 desktop computers, 27 standard laptop computers, 13 ruggedized laptop computers, 1 CAD desktop computer, 1 Ultrabook laptop and 10 LED monitors from Centre Technologies, through a Texas Department of Information Resources (DIR) contract, in the amount of \$148,975.88.**

Mr. Springer indicated this item is part of the Town's standard replacement schedule where computers are replaced on a three year cycle. The computers come with a three year warranty so repairs are not being made on the computers and the schedule keeps the computers up to date with technology. He outlined the types of computers being replaced, the bidding process, and he mentioned the ruggedized computers are used for police and ambulance and fire vehicles due to the heat environment in the summer and this allows them to run efficiently throughout the year.

Mayor Hayden asked what part of the budget this purchase comes from.

Mr. Springer responded it comes from the information technology division and they are budgeted every year. He pointed out the cost has been able to remain the same over the years as the per computer cost continues to come down.

Deputy Mayor Pro Tem Wise asked what does the Town do with the old ones.

Mr. Springer responded employees are eligible to obtain them through a drawing process, and any remaining computers get distributed to community support organizations.

Deputy Mayor Pro Tem Wise moved to approve the purchase of 97 desktop computers, 27 standard laptop computers, 13 ruggedized laptop computers, 1 CAD desktop computer, 1 Ultrabook laptop and 10 LED Monitors from Centre Technologies, through a Texas Department of Information Resources contract, in the amount of \$148,975.88. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Webb, Levenick.

NAYS: None.

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Mayor Hayden announced there is a Town Council Work Session on Thursday and noted Deputy Mayor Pro Tem Wise would be unavailable to attend.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:17 p.m. on October 15, 2012, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.087, 551.072, 551.074, and 551.071 to discuss matters relating to consultation with Town Attorney, pending litigation, real property, personnel, and economic development negotiations and reconvened into an open meeting at 12:52 a.m. on October 16, 2012, to take action on the items as follows:

- a. Discuss and consider economic development incentives.

No action taken.

- b. Discuss and consider purchase, exchange, lease or value of real property for municipal purposes and all matters incident and related thereto.

No action taken.

- c. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Oil and Gas Board of Appeals, Community Development

Corporation, Environmental Conservation Commission, Parks, Arts and Library Services Board, Public Arts Committee, Planning & Zoning Commission, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

For the Board of Adjustment and Oil and Gas Board of Appeals, Deputy Mayor Pro Tem Wise moved to appoint Kent Johnson to Place 3, with a term beginning October 15, 2012 and ending September 30, 2013. Councilmember Dixon seconded the motion.

VOTE ON THE MOTION

AYES: Levenick, Webb, Stephenson, Dixon, Wise.

NAYS: None.

- d. **Discuss and consider legal issues associated with the Town Manager's employment agreement and all matters incident and related thereto.**

No action taken.

- e. **Deliberate the employment and recruitment process associated with the Town Manager, and all matters incident and related thereto.**

Councilmember Levenick moved that the Interim Town Manager be compensated in accordance with the direction addressed in closed session from September 24, 2012, for the duration of his services as Interim Town Manager. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Webb, Levenick.

NAYS: None.

- f. **Discuss and consider job duties and responsibilities of Interim Town Manager and all matters incident and related thereto**

No action taken.

- g. **Consultation with Town Attorney regarding possible litigation involving a utility provider and all matters incident and related thereto.**

No action taken.

- h. **Discuss and consider duties and responsibilities of Town Attorney and all matters incident and related thereto.**

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 12:55 a.m. Tuesday, October 16, 2012, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

Thomas E Hayden
THOMAS E. HAYDEN, MAYOR

ATTEST:

Theresa Scott
THERESA SCOTT, TOWN SECRETARY