

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 3RD DAY OF NOVEMBER 2008 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:

Jody Smith	Mayor
Tim Trotter	Mayor Pro Tem
Joel Lindsey	Deputy Mayor Pro Tem
Al Filidoro	Councilmember Place 2
Jean Levenick	Councilmember Place 4

with the following member of Council absent:

Jeff Tasker	Councilmember Place 5
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constituting a quorum with the following members of the Town Staff participating:

Harlan Jefferson	Town Manager
Paula Paschal	Town Secretary
Terry Welch	Town Attorney
Chuck Springer	Assistant Town Manager/Chief Financial Officer
Kenny Brooker	Police Chief
Eric Metzger	Fire Chief
Kent Collins	Assistant Town Manager
Bart Stevenson	Executive Director of Community Services
Doug Powell	Executive Director of Development Services

A. CALL MEETING TO ORDER

Mayor Smith called the meeting to order at 6:04 p.m.

B. CALL BRIEFING SESSION TO ORDER

Mayor Smith called the briefing session to order at 6:04 p.m.

C. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports

Mayor Pro Tem Trotter noted that the SMARTGrowth Commission requested that the Town Council discuss and consider requiring utilities to be placed underground. They did understand the cost issues. Additionally, Chair Nick Hollingshad asked that the SMARTGrowth Commission meetings be televised.

Councilmember Filidoro stated the Transportation Commission would meet on November 11, and a public hearing on the Master Transportation Plan would be conducted.

2. Discuss Consent and Regular Items - None

3. Discuss Future Agenda Items

Councilmember Filidoro stated he would like the Council to have a work session to review the late night hours for the sale of alcohol in restaurants.

C. ADJOURN BRIEFING SESSION

D. CALL REGULAR MEETING TO ORDER

Mayor Smith called the regular meeting to order at 6:07 p.m.

E. INVOCATION

Rabbi Geoffrey Dennis gave the Invocation.

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

Mayor Smith led the pledges.

G. PUBLIC PARTICIPTION - None

H. PRESENTATIONS

- **Announce Winners of Bridlewood Elementary School International Walk to School Week Contest**

Melissa Lawrence, Bridlewood Elementary, announced the winners of the International Walk to School Week Contest: Bronze Medal – Marshall Trayler (27.16 miles), Silver Medal, Rafael Arroyave (27.5 miles), Gold Medal (Madison and Morgan Mzyk (29 miles each).

I. ANNOUNCEMENTS

- **Announce recent and current civic and social events**

Councilmember Filidoro announced that he attended the Out of Darkness Walk on November 1.

Mayor Smith reminded everyone of election day on November 4. She noted the Town's Veterans Day celebration would be held on November 9 at Flower Mound High School.

J. CONSENT ITEMS

Mayor Pro Tem Trotter made a motion to approve by consent, Items 1, 2, 3, 4, and 5. Deputy Mayor Pro Tem Lindsey seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation for each, for the record.

1. Consider approval of minutes from a work session of the Town Council held on October 16, 2008.

RECOMMENDATION: Approve minutes from a work session of the Town Council held on October 16, 2008.

2. Consider approval of minutes from a regular meeting of the Town Council held on October 20, 2008.

RECOMMENDATION: Approve minutes from a regular meeting of the Town Council held on October 20, 2008.

3. Consider approval of a resolution of the Town of Flower Mound, Texas, denying Oncor Electric Delivery Company's requested increases to its electric transmission and distribution rates and charges within the Town.

RECOMMENDATION: Approve Resolution No. 25-08 of the Town of Flower Mound, Texas, denying Oncor Electric Delivery Company's requested increases to its electric transmission and distribution rates and charges within the Town. The caption of the resolution reads as follows:

RESOLUTION NO. 25-08

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS FINDING THAT ONCOR ELECTRIC COMPANY'S REQUESTED INCREASES TO ITS ELECTRIC TRANSMISSION AND DISTRIBUTION RATES AND CHARGES WITHIN THE TOWN SHOULD BE DENIED; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

4. Consider approval of a resolution of the Town of Flower Mound, Texas, authorizing the Cities Aggregation Power Project, Inc. to negotiate an electric supply agreement for deliveries of electricity effective January 1, 2009.

RECOMMENDATION: Approve Resolution No. 26-08 of the Town of Flower Mound, Texas, authorizing the Cities Aggregation Power Project, Inc. to negotiate an electric supply agreement for deliveries of electricity effective January 1, 2009. The caption of the resolution reads as follows:

RESOLUTION NO. 26-08

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY AND NECESSARY, RELATED SERVICES EFFECTIVE JANUARY 1, 2009; AUTHORIZING CAPP TO ACT AS AN AGENT ON BEHALF OF THE TOWN TO ENTER INTO A CONTRACT FOR ELECTRICITY; APPROVING CAPP

CONTRACTING WITH FPL ENERGY AND DIRECT ENERGY AND AUTHORIZING THE CHAIRMAN OF CAPP TO EXECUTE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2009; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE TOWN'S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS BEGINNING JANUARY 1, 2009 THROUGH DECEMBER 31, 2013.

5. Consider approval of a Sound Wall Upgrade Agreement with the Lakeview Estates Homeowners Association Inc., in association with the receipt of \$62,077.50 for aesthetic upgrades to the FM 2499 Section 2 Sound Wall, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Sound Wall Upgrade Agreement with the Lakeview Estates Homeowners Association Inc., in association with the receipt of \$62,077.50 for aesthetic upgrades to the FM 2499 Section 2 Sound Wall, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

AYES: Filidoro, Trotter, Lindsey, Levenick
NAYS: None
ABSENT: Tasker

K. REGULAR ITEMS

Mayor Smith opened Items 6, 7, and 8 together.

6. ***MPA 13-07 Whisper Creek***
Public Hearing to consider a request to amend the Master Plan 2001 (MPA 13-07 - Whisper Creek) by amending Section 1.0 Land Use Plan, to change the land use designation from Estate Density, Low Density, and Medium Density to Low Density, and to adopt an ordinance providing for said amendment. The property is generally located east of Long Prairie Road and north of Spinks Road. (The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its September 22, 2008, meeting. This item was postponed at the October 20, 2008, Town Council meeting.)
7. ***Z 08-07 Whisper Creek***
Public Hearing to consider a request for rezoning (Z 08-07 - Whisper Creek) from Agricultural District (A) to Single-Family District-15 (SF-15) and to adopt an ordinance providing for said amendment. The property is generally located east of Long Prairie Road and north of Spinks Road. (The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its September 22, 2008, meeting. This item was postponed at the October 20, 2008, Town Council meeting.)
8. ***DP 08-07 Whisper Creek***
Consider a request for a Development Plan (DP 08-07 - Whisper Creek) to develop a residential subdivision, subject to the terms and conditions in the attached

Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located east of Long Prairie Road and north of Spinks Road. (The Planning and Zoning Commission recommended approval by a vote of 3 to 1 at its September 22, 2008, meeting. This item was postponed at the October 20, 2008, Town Council meeting.)

Staff Presentation

Doug Powell, Executive Director of Development Services, noted that transmission lines ran across the southern end of the property. The proposed development was currently a mixture of several densities (medium density, low density and estate land uses) and the applicant was requesting all low density residential uses. He noted there was floodplain on the property. As part of the zoning amendment request, an environmental assessment had been done, and the findings were that there was floodplain, riparian area, steep slopes, and prairie habitat. The applicant had addressed the related issues. Mr. Powell stated the proposed zoning was Single Family15 with the floodplain identified. Regarding the development plan, part of the property would be donated to the Town in the form of a park. The entry feature and the area to the west of the extension of Lake Forest would be maintained by the homeowners' association (HOA). They proposed to replant some of the prairie grass. There would also be an extension of the Town's trail system to the west of the Lake Forest extension. Mr. Powell commented the right-of-way for the Lake Forest extension would be dedicated to the Town. He noted there was a great deal of discussion regarding the connection to Foxborough Trail. The applicant proposed to have a paved stone or concrete feature in Lot 25X, which could sustain the weight of a fire truck. The plan was to have a gate and Knox box so that emergency access would be allowed. General traffic would not be allowed.

Questions from the Governing Body and Answers

Mayor Pro Tem Trotter asked if there was any mechanism to allow Police access through the gate.

Assistant Town Manager Kent Collins stated the gate would be controlled by an Opticom reader and device. All fire apparatus had them. He noted that Police vehicles did not have the strobe emitters. The gate was designed for fire and ambulance activation.

Mayor Pro Tem Trotter asked what option was available for the Police Department.

Mr. Collins stated the Police Department option would be in their response route. In the original plan, Whisper Creek was to be an extension of Foxborough Trail. The current plan was to treat the two roadways as two cul-de-sacs.

Police Chief Kenny Brooker said the police officers would take the safest route. The gate did not appear to be a deterrent, and the department had no plans for putting the Opticom device in the police vehicles. The protocol was that the Police Department did not want to compete with the Fire Department for changing the lights.

Mayor Pro Tem Trotter referred to the Master Plan amendment and noted that the requested change to allow low density, theoretically had the potential of increasing density. He understood that Mr. Hodge was basically keeping this project density-neutral. He understood that if the Town Council approved the requests, by the amount of land coming into the Town, even if this project was not developed, it protected the Town to keep the density neutral status.

Town Attorney Terry Welch stated if, for some reason, this project did not go forward, the Council had the option to change it unilaterally.

Councilmember Filidoro asked where the access points would be to the land dedicated to the Town.

Mr. Powell stated the land could be accessed from all the roadways. There was sufficient area on either side of the creek for access. He did note that the large area to the northeast would need to have access. The Parks, Arts, and Library Services (PALS) Board suggested that the Town provide a bridge. He noted that the trail would come in from the northeast, and there were ongoing discussions between the Town and property owner(s) to connect the trail. Mr. Powell stated the trail would have to cross someone's property since there was no easement.

Councilmember Filidoro asked if there was a curb across from the barricade.

Mr. Powell stated the street was flared and there were some drainage issues at the end of the cul-de-sac. These issues would be resolved with the new development.

Councilmember Filidoro asked if there were other gates in the Town where the Opticom device was installed.

Town Manager Harlan Jefferson stated there were other gates in Bridlewood and Three Bridges. He noted that the police officers could get out of their vehicles and manually open the gate.

Mayor Pro Tem Trotter asked if there was some technology for a breakaway gate for the Police Department.

Mr. Jefferson stated the Police Department would work on better ways to increase their response time to this area.

Councilmember Levenick asked if Foxborough Trail was intended to be a through street on the Master Thoroughfare Plan.

Mr. Powell stated it was a local street, and local streets were not contained in the Plan.

Councilmember Levenick asked if it wasn't intended to be a through street, wouldn't it have been made a cul-de-sac to begin with

Mr. Powell believed that the original intent was to extend Foxborough Trail to the west.

Councilmember Levenick stated there would be a great deal of parkland dedicated to the Town. She referred to access for the general public to the park area next to Doubletree, noting that the extension had not been completed. She stated the cul-de-sac could become a parking lot for people wanting to go to the park.

Mr. Powell stated a linear park ran along an area in the Town and he believed the park would be part of the linear trail. It would really only be developed for passive purposes.

Councilmember Levenick asked about the trail connection.

Mr. Powell responded that once the creeks were bridged, the necessary connections would be made.

Applicant's Presentation

Von Beougher, G&A Consultants, 111 Hillside Drive, Lewisville

Mr. Beougher stated there had been many challenges and opportunities with the property. He felt a low density request was a good fit with the surrounding neighborhoods. He noted that when the Master Plan was adopted, there were no schools in the immediate area, and estate density would not have been appropriate. In August 2007, he had submitted a different plan that did not have a connection across the street to Foxborough Hollow. At one time Lake Forest was going to go through to Spinks. There was a desire on the part of the public not to have Foxborough Hollow cut through. A second rendition was submitted after the Town amended the floodplain regulations. The applicant made a submission on January 22, 2008, thereby gaining about five lots. After continued review with staff, the Fire Marshal requested the emergency access. He stated this met the needs of the Town and the developer. The applicant also met with the homeowners' associations for Bryn Mawr and Foxborough Hollow, and they did not want the cut-through traffic. The idea of the Opticom device was the option for the gate. The gate design was a compromise with the adjacent HOAs. Regarding the trails, the developer wanted east/west and north/south linkage through the property. Mr. Beougher stated they could not build anything under the transmission lines. He stated he had received verbal approval from the LISD to have the trail border middle school land. Regarding park land, the extension of the linear park would be a passive park.

Mayor Pro Tem Trotter commented that the northeast section of property being donated to the Town went above and beyond what was required. He stated the Town would be getting connectivity to the park, and even if it was a passive park, people would need to have places to park.

Mr. Beougher stated they had discussed putting a couple of spaces along the road, however they were not proposing to put in any spaces at this time. He noted there was a large parking lot at the school nearby.

Councilmember Levenick asked if there had been any discussion about extending Basswood.

Mr. Beougher responded no, as when they had done the site plan for the middle school, the Thoroughfare Plan was being amended. When Lake Forest was curved around, the piece of Basswood in question was removed from the plan.

Councilmember Levenick commented there were no houses facing Basswood.

Mr. Beougher responded that an extension would go through the middle of the detention area for the school.

Councilmember Levenick asked about fencing of the yards that backed up to the park and creek.

Mr. Beougher stated the developer would install tubular fencing along the perimeter of the lots.

Mayor Smith asked if the green-shaded area could be accepted as open space.

Mr. Welch stated the northeast segment could be parkland or open space, however the development plan would have to be amended (on its face).

Public Comments

Ann Hathaway, 1912 Foxborough Trail, Flower Mound

Ms. Hathaway stated she had existing drainage issues around her property. She noted there were many questions about the Opticom device at the September 22, 2008 Planning & Zoning Commission meeting. Many were opposed to any type of gate. She was against Foxborough Trail being extended into the new subdivision.

Bill McGee, Doubletree, Flower Mound

Mr. McGee expressed concern that people might use the cul-de-sac as a parking lot. There were many drop-offs on the land dedicated as parkland. Mr. McGee stated Ken Hodge had been very helpful, and the gate was key to the development.

Ron Hilliard, Sherri Lane, Flower Mound

Mr. Hilliard encouraged the Council to accept the proposal.

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone supported the Master Plan amendment and the zoning request. He appreciated all the questions asked about the development plan. He noted the piece of property to the north had no access, and there would be no way to get a Parks Department pickup truck back there. He suggested that it be considered open space or a conservation development. He was in favor of giving the HOA responsibility for the property so that it was not a Town liability. He was in favor of Foxborough Trail going through.

Todd Schreiber, 925 Canongate Drive, Flower Mound

Mr. Schreiber supported the development, however he did not support putting a gate across a public roadway. Neither of the other developments were gated communities.

Joe Salenski, 1913 Foxborough Trail, Flower Mound

Ms. Salenski stated he was the vice president of the Foxborough Hollow HOA. As a homeowner, he wanted the gate.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie stated anytime someone bought property that backed up to open space, they took chances. She stated she would like to see the portion of the property left in a natural state. She was in favor of the request but not the gate.

John Gunn, Flower Mound

Mr. Gunn was concerned that the street would go through. He did not want to see teenagers driving through his neighborhood. The gate was a welcome alternative.

Steve Carlton, 1401 Roundrock Way, Flower Mound

Mr. Carlton stated the Council had a chance to make the area safe, and he encouraged the approval of the gate.

Bret Rock, 1805 Foxborough Trail, Flower Mound

Mr. Rock was in favor of the gate as there was a great deal of traffic due to Bluebonnet Elementary. He was concerned for the safety of the children in the neighborhood.

Logan Kotloroff, 1801 Foxborough Trail, Flower Mound

Mr. Kotloroff stated he looked for two years to find his home in Flower Mound. He was against through-traffic.

Anapuma Prakash, 1413 Roundrock, Flower Mound

Mr. Prakash expressed opposition to the through traffic.

Rob Hartsong, Flower Mound

Mr. Hartsong liked the development, and he understood about running the risk of buying property near a cul-de-sac or open space. He was in favor of the gate.

Marcia Wilson, 1400 Roundrock Way, Flower Mound

Ms. Wilson stated the gate was needed for the safety of the children.

Rudy Herrera, Foxborough Trail, Flower Mound

Mr. Herrera was in favor of the gate for the security of the children.

Dana Tabor, 101 Foxborough Trail, Flower Mound

Ms. Tabor was in favor of the gate for the safety of the children.

Ken Hodge, 1013 Long Prairie, Flower Mound

Mr. Hodge commented that typically good engineering would take the street through. He felt there would be much cut-through traffic from the schools. He stated he had worked with the homeowners on this, and did not start out with a gate. Mr. Hodge noted that the Fire Marshal stated the gate would protect the health, safety and welfare of the citizens.

Close Public Hearing

Council Deliberation

Mr. Jefferson commented on the gate and stated it was the Fire Department's practice of determining emergency access or alternative routes.

Deputy Mayor Pro Tem Lindsey stated this was a beautiful development. He liked developing the northeast corner as open space. He stated he was hoping to hear very clear reasons on why the gate was needed. He was concerned that the police officers would have to get out of their cars to open the gate. Deputy Mayor Pro Tem Lindsey stated that recently the Town's traffic consultant identified numerous connectivity problems in Flower Mound. He felt that clearly the end of Foxborough Trail was not always meant to be a cul-de-sac as it was only a stub. He was not in favor of the development plan as it stood.

Councilmember Levenick stated public access on public roads was very important. Foxborough Trail was intended to go through at some point. She did not agree with the gate. She stated it would be unfair to others who had asked for a gate and were denied. She was in favor of designated open space and not parkland.

Mayor Pro Tem Trotter stated this was a request to increase the potential density of the property, however it appeared it would be density neutral. This was a win-win for the Town and the citizens regarding parks. The parkland on the northwest corner was so special, and he understood the concerns about access. Mayor Pro Tem Trotter felt this property was a unique parcel of land. There was much parkland in Flower Mound that was set up as passive parks. He felt people could use the parking lot to the south for busses to access a nature trail on the property. He appreciated the participation from the neighbors, and commended Mr. Hodge for going to the neighbors first. Mayor Pro Tem Trotter stated Flower Mound was very limited in north/south and east/west connectivity. The state of Texas did not move quickly in improving the roads. Flower Mound needed additional accessibility for the betterment of the Town as a whole. He was in favor of the open thoroughfare.

Councilmember Filidoro stated in the early 1990's, the Planning & Zoning Commission tried to stop developments that had only one access point. If there was an emergency people could not get out of the subdivision. He did not want to set a precedent of putting up gates. The street was stubbed with no curb. There had always been the potential for the street to go through.

Mayor Pro Tem Trotter moved to approve a request to amend the Master Plan 2001 MPA 13-07 – Whisper Creek – by amending Section 1.0 Land Use Plan, to change the land use designation from Estate Density, Low Density, and Medium Density to Low Density, and adopt Ordinance No. 66-08 providing for said amendment. Deputy Mayor Pro Tem Lindsey seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 66-08

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 1.0 LAND USE PLAN OF MASTER PLAN 2001 BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED MASTER PLAN 2001, BY CHANGING THE LAND USE DESIGNATION ON APPROXIMATELY 29.051 ACRES OF LAND IN THE W. H. GIBSON SURVEY, ABSTRACT NO. 464, FROM “ESTATE DENSITY, LOW DENSITY, AND MEDIUM DENSITY RESIDENTIAL” USES TO “LOW DENSITY RESIDENTIAL” USES; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, OR RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Levenick, Lindsey, Trotter, Filidoro
NAYS: None
ABSENT: Tasker

Council Deliberation

Councilmember Filidoro moved to approve a request for rezoning Z 08-07 – Whisper Creek – from Agricultural District (A) to Single-Family District-15 (SF-15), and to adopt Ordinance No. 67-08 providing for said amendment. Levenick seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 67-08

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 29.051 ACRES OF LAND IN THE W. H. GIBSON SURVEY, ABSTRACT NO. 464, FROM AGRICULTURAL DISTRICT (A) USES TO SINGLE-FAMILY DISTRICT-15 (SF-15) USES, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN 2001 AND CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED “ZONING”; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Filidoro, Trotter, Lindsey, Levenick
NAYS: None
ABSENT: Tasker

Council Deliberation

Mayor Pro Tem Trotter moved to approve Development Plan DP 08-07 – Whisper Creek – and accept park development fees in the amount of \$44,416.00, park land dedication of 1.0752 acres to satisfy the requirements of the Park Land Dedication Ordinance, and accept an additional 9.673 acres for park purposes, subject to the terms and conditions in the attached development agreement, excluding the paragraphs numbered 14, 15, and 16 of the proposed development agreement. Further the proposed Whisper Creek Drive shall connect into Foxborough Trail and there shall be no gate between Whisper Creek Drive and Foxborough Trail, with Whisper Creek Drive to be renamed Foxborough Trail, and authorize the Mayor to execute same on behalf of the Town. Deputy Mayor Pro Tem Lindsey seconded the motion.

VOTE ON THE MOTION

AYES: Levenick, Lindsey, Trotter, Filidoro
NAYS: None
ABSENT: Tasker

9. ***SUP 375-08 Kol Ami - Early Childhood Education Program***
Public Hearing to consider a request for a Specific Use Permit (SUP 375-08 – Kol Ami) to permit a day care center and to consider adopting an ordinance providing for said Specific Use Permit. The property is located at 1887 Timber Creek Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 13, 2008, meeting.)

Staff Presentation

Doug Powell, Executive Director of Development Services, stated the land use was Institutional and the zoning was Planned Development 1. He stated there would be 7-10 students and would be operated only three days a week.

Public Comments

Paul Stone, 709 Lake Bluff Drive, Flower Mound
Mr. Stone spoke in support of the request.

Close Public Hearing

Council Deliberation

Councilmember Levenick moved to approve Specific Use Permit SUP 375-08 – Kol Ami to permit a day care center and adopt Ordinance No. 68-08 providing for said Specific Use Permit subject to the following conditions:

a. The attached site plan and elevations, labeled Exhibit “A,” an exhibit to the Specific Use Permit, shall be developed as approved, except that certain minor changes outlined in Section 82-37 of the Town’s Land Development Regulations may be approved as set forth in that section.

b. If a certificate of occupancy application has not been submitted to the Town’s Building Inspections Division for consideration within six months of approval of the ordinance, the Specific Use Permit described herein will be a matter that will be automatically placed upon a subsequent Planning and Zoning Commission agenda for consideration as a Town-initiated zoning change under normal zoning amendment procedures.

Councilmember Filidoro seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 68-08

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON LOT 1 BLOCK A, OF THE KOL AMI ADDITION, FROM PLANNED DEVELOPMENT DISTRICT 1 (PD-1) WITH MULTIFAMILY DISTRICT (MF) USES TO PLANNED DEVELOPMENT DISTRICT 1 (PD-1) WITH MULTIFAMILY DISTRICT (MF) USES, SUBJECT TO SPECIFIC USE PERMIT NO. 375 (SUP 375) TO ALLOW FOR A DAY CARE CENTER, IN ACCORDANCE WITH THE TOWN’S MASTER PLAN 2001 AND IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Filidoro, Trotter, Lindsey, Levenick
NAYS: None
ABSENT: Tasker

10. *LDR 04-08 Compatibility Setback Waiver*
Public Hearing to consider an amendment to the Land Development Regulations (LDR 4-08 - Compatibility Setback Waiver) by amending Section 82-303, Compatibility setback, of the Code of Ordinances to add a waiver provision or modification provision, and to adopt an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 13, 2008, meeting.)

section details for green developments, and to adopt an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 13, 2008, meeting.)

Staff Presentation

Assistant Town Engineer Edith Marvin stated this was a Town-initiated item for an alternate street section for a privately-gated subdivision. She gave the following presentation.

Note: The presentation is on file in the Town Secretary's Office.

Questions from the Governing Body and Answers

Mayor Pro Tem Trotter commented that developers would most likely want to use this product.

Ms. Marvin stated the proposed product was not recommended for highways - mainly residential street sections. Additionally, it would allow for more points for LEED certification. The design was like concrete without many of the fines. It was denser than regular concrete. The sub-base could be varied, particularly for detention. There was no rebar in the mix, however there were joints to allow for a small amount of movement.

Deputy Mayor Pro Tem Lindsey asked about maintenance.

Ms. Marvin stated it could be vacuumed or pressure washed.

Deputy Mayor Pro Tem Lindsey asked if there would be a cost to the Town for maintenance.

Ms. Marvin responded that the Town would not maintain the streets.

Deputy Mayor Pro Tem Lindsey stated there was a great deal of attention to "going green," and he had seen many businesses say they were "going green" in an effort to cut costs. He asked if this new street standard was changing the Town's standards or lowering the standards.

Ms. Marvin stated it would offer an equal standard for a development that wanted to attain credits toward LEED certification. She stated this product had been tested and it was found to be a similar product with benefits that a regular street section did not have. She added she had done much research on green residential streets.

Councilmember Levenick asked about driveways.

Ms. Marvin stated the Town was not going to require them to be made of the same material. There would be a joint connection that met all of the standards.

Councilmember Filidoro clarified that the product would cover the entire road, not just strips.

Ms. Marvin stated that was correct. There would be 26 feet of solid pervious pavement on top of a gravel base. The bar ditch size will depend on the drainage flow but there would be 17 feet of easement for the bar ditch. She stated the street would have to comply with a minimum of 3600 PSI. She added that at times the product tested out much stronger.

Public Comments

Von Beougher, G&A Consultants, 111 Hillside, Lewisville

Mr. Beougher stated he had done research and this would be a very comparable product to a regular street. This was a great idea that gave a developer some flexibility. He was in support.

Close Public Hearing

Council Deliberation

Councilmember Filidoro moved to approve a request to amend the Land Development Regulations (LDR 05-08 - Green Residential Street) by amending Section 90-311, entitled "Street Design Standards" and Section 32-3, entitled "Engineering Design Criteria and Construction Standards-Amendments" as well as amending Part B, Section 1 of the Town of Flower Mound Engineering Design Criteria and Construction Standards to establish standards and requirements for a new street design and related road section details for green developments, and to adopt Ordinance No. 70-08 providing for said amendment. Mayor Pro Tem Trotter seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 70-08

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 SUBPART B, CHAPTER 90 OF THE CODE OF ORDINANCES, ENTITLED "SUBDIVISIONS" THROUGH THE AMENDMENT OF ARTICLE VI ENTITLED "STANDARDS" THROUGH THE AMENDMENT OF DIVISION 3 "STREETS" BY AMENDING SECTION 90-311, ENTITLED "STREET DESIGN STANDARDS" BY AMENDING SUBPARAGRAPH A BY INCLUDING "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREETS IN THE EMBEDDED TABLE, BY INSERTING A NEW SUBPARAGRAPH C REGARDING "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREETS AND BY RE-LETTERING EXISTING SUBPARAGRAPH C AS SUBPARAGRAPH D, AND BY AMENDING THE TOWN'S "ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS" THROUGH SUBPART A, CHAPTER 32 OF THE CODE OF ORDINANCES, BY AND THROUGH SECTION 32-3, ENTITLED "ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS--AMENDMENTS," BY THE AMENDMENT OF PART B ENTITLED "TECHNICAL STANDARDS" THROUGH THE AMENDMENT OF SECTION I "STREET IMPROVEMENTS" BY AMENDING SUBSECTION A "STREET CLASSIFICATION"

BY AMENDING PARAGRAPH 1 ENTITLED "DEFINITIONS" TO CORRECT A TYPOGRAPHICAL ERROR IN THE LETTERING OF CERTAIN SUBPARAGRAPHS COMMENCING WITH THE SUBPARAGRAPH ENTITLED "SUBURBAN MINOR ARTERIAL" AS SUBPARAGRAPHS D THROUGH K, RESPECTIVELY, AND ADDING A NEW PARAGRAPH L ENTITLED "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL," THROUGH THE AMENDMENT OF PARAGRAPH 2 ENTITLED "STANDARD DESIGN CRITERIA" BY INCLUDING "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREETS IN THE EMBEDDED TABLE, THROUGH THE AMENDMENT OF SUBSECTION C "GEOMETRIC DESIGN" BY AMENDING PARAGRAPH 1 ENTITLED "ROADWAY DESIGN PARAMETERS" BY INCLUDING "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREETS IN THE EMBEDDED TABLE, THROUGH THE AMENDMENT OF SUBSECTION F "PAVEMENT DESIGN" BY AMENDING SUBPARAGRAPH 4 TO CHANGE THE PHRASE "LOCAL DEVELOPMENT STREETS" TO "LOCAL CONSERVATION OR RURAL DEVELOPMENT STREETS," BY INSERTING A NEW SUBPARAGRAPH 5 REGARDING "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREETS AND BY RE-NUMBERING EXISTING SUBPARAGRAPHS 5, 6 AND 7 AS SUBPARAGRAPHS 6, 7 AND 8, RESPECTIVELY, THROUGH THE AMENDMENT OF THE "STREETS CONSTRUCTION STANDARDS DETAILS" TO INCLUDE A "GATED (PRIVATE) SMALL SCALE GREEN RESIDENTIAL" STREET SECTION; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Filidoro, Trotter, Lindsey, Levenick
NAYS: None
ABSENT: Tasker

12. Public Hearing to consider approval of an ordinance amending Chapter 18, entitled "Businesses," of the Town's Code of Ordinances by adding Article IX, entitled "Regulation of Smoking in Public Places."

Staff Presentation

Matt Woods, Director of Environmental Resources, gave the following presentation.

Note: The presentation is on file in the Town Secretary's Office.

Questions from the Governing Body and Answers

Mayor Pro Tem Trotter stated many national hotel/motel chains had gone smoke-free. He asked why the proposed ordinance would have a designated area in a hotel and not a restaurant. He also asked about the potential condos.

Mr. Woods stated that staying at a hotel was an extension of someone's residence. A condo would be treated as a residence and smoking would not be prohibited.

Deputy Mayor Pro Tem Lindsey asked if the \$500 penalty was for the operator or the smoker.

Mr. Woods stated it could be for both, since the owner/manager was responsible for the establishment.

Deputy Mayor Pro Tem Lindsey asked if there was anything else in ordinances from area cities that was not included in the proposed ordinance for Flower Mound.

Town Attorney Terry Welch stated it was much the same as other municipal ordinances. He noted that either a Code Enforcement Officer or a Police Officer would respond to complaints, adding that the \$500 fine was the maximum amount for a Class C Misdemeanor.

Councilmember Levenick asked if an owner of a business was considered the owner of private property. She asked why the Town needed to legally define what a person could or could not permit on their private property if this was already an accepted private property owner's right.

Mr. Woods responded that the provisions of the ordinance established that it would not be legal to smoke in that public place or building.

Councilmember Levenick felt if someone owned a restaurant it was their private entity, not a public entity.

Mr. Welch clarified that a restaurant was owned by a private person. However under the Penal Code even though it was private property, it was a public place, as the public was allowed to go there. He stated there was a distinction about what was a public place as opposed to private property.

Councilmember Levenick stated the public was invited to private places, and the public made choices as to whether or not they wanted to go into those private places. She stated a park, government buildings, Town Hall, and the Library were all considered publicly-owned property.

Public Comments

Amy Brown, 921 Rosemary Drive, Flower Mound

Ms. Brown was glad to see the Town finally doing this. She noted Anamia's ended smoking at their restaurant this spring.

Sylvia Inboden, 2017 Brookville Lane, Flower Mound

Ms. Inboden stated there was too much government intervention, however she chose to go to restaurants that were smoke-free. She was afraid people would soon want to fight to have no alcohol consumption or sales in Flower Mound. She stated the Council

could not legislate what people eat, drink and smoke, and that most restaurants have already chosen to be non-smoking.

Douglas Dunsavage, American Heart Association

Mr. Dunsavage commended the Council for considering the ordinance, and added that the American Heart Association supported this. This was a public health issue. He noted that the government regulated many things to benefit the health of communities. He stated the Association was mostly concerned with indoor air because of the dangers of second-hand smoke.

Al Abboud, 1507 New Castle, Southlake

Mr. Abboud stated he owned Z Grill and Tap and Sonoma Grill. He stated he did not understand how his restaurants were not his personal property. He asked if separate units that did not co-mingle air, qualified for any type of exemption. He stated the economy was fragile and restaurants had been hurt. He did not want to see a drop in his business.

Mayor Pro Tem Trotter commented that he knew many restaurant owners – some were for the ordinance and some were against. He asked Mr. Abboud if he could see non-smokers becoming loyal.

Mr. Abboud responded that the smoking area in both of his restaurants was very small.

Ted Beaman, 1604 Meadow Vista, Flower Mound

Mr. Beaman was opposed to the ordinance, even though he was not a smoker. He noted the Town had surveyed 124 establishments, and 98 were already smoke-free. He felt this was a fundamental issue regarding freedom of choice, as the citizens had a responsibility to make personal decisions. He felt the restaurants were private enterprises and he requested that Council not approve the ordinance.

Kay Kim, American Cancer Society

Ms. Kim stated this was a public health issue. There was no constitutional right to smoke. She felt it was an issue of workplace safety and workplace health. She encouraged the Council to approve the ordinance.

Councilmember Filidoro asked about Smoke-Free Texas.

Ms. Kim stated the Smoke-Free Texas legislation would do for the state what the Council was looking at doing for the Town. She added that there were 23 states that had state-wide smoke-free laws.

Todd Schreiber, 925 Canongate Drive, Flower Mound

Mr. Schreiber strongly supported the ordinance, noting similar ordinances had been successfully implemented in other cities.

Jason Lowden, Denton

Mr. Lowden stated he was one of the owners of Point After North. He submitted two articles to the Council regarding second-hand smoke. He stated people made decisions to frequent certain establishments, and the majority of his customers were smokers. He asked why the Council would push patrons to Lewisville and Highland Village. He stated city government should not make that decision.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie stated she was highly allergic to second-hand smoke. She asked the Council to approve the ordinance.

Angela Newel, 2924 Windsor Drive, Flower Mound

Ms. Newel stated she was an employee of a place that allowed smoking, and she was afraid of losing her job. She felt it was up to the public to decide where smoking should be allowed.

Joe Trevino, Flower Mound

Mr. Trevino felt people had a choice to enter an establishment where they know smoking is permitted. He stated if the Council wanted to impose a ban, they should have a ban on the sale of cigarettes. He stated he would like to see an economic impact study that showed gross revenue losses.

Bev Fell, 3513 Arbor Creek, Flower Mound

Ms. Fell stated the most important issue was to protect the people working in the restaurants, especially the teenagers.

Terry Seals, Point After North

Mr. Seals stated there were 124 food establishments in Flower Mound, and 98 already prohibited smoking. He supported that. He stated his livelihood was Point After North, and 80% of his customers smoked. He stated he did not want to be told how to run his business.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie asked if there was a way to provide for exceptions for bars.

Close Public Hearing

Council Deliberation

Mayor Pro Tem Trotter stated the research had been done, and a number of establishments already did not allow smoking. He felt the Town needed to decide yes or no on a standard smoking ordinance. He suggested having more review on the topic.

Councilmember Levenick stated this was an issue of personal freedom and property rights. Government should not tell someone how to run their business. She noted that 80% of the restaurants were non-smoking already. She stated people were fighting in Iraq for freedoms, and people could choose where they wanted to go in the Town.

The Council took a break between 9:14 p.m. and 9:24 p.m.

Mayor Pro Tem Trotter stated that although valid concerns had been expressed, if conditions were put on the ordinance, it would weaken the ordinance. He referred to the reports that were submitted to the Council during the public hearing regarding second-hand smoke. One study was done five years ago and one was done ten years ago. It had been proven that second-hand smoke can lead to cancer. He noted that big government did not want to set up state or federal laws. They wanted to leave that up to the local governments based on what was good for the municipality. He noted after passing the drive-off ordinance at gas stations, the owners were thankful. Mayor Pro Tem Trotter stated people made a choice if they did not want to be around smoke. Passing the ordinance would be clinically protecting someone from second-hand smoke. He commented that a great number of citizens had requested this ordinance, adding he would not be opposed to having another public hearing.

Councilmember Filidoro stated he had consistently been in favor of a smoking ban and was also in favor of citizens' rights. He felt people did not have a right to pass along the second-hand smoke to others. Other communities have passed a similar ordinance, and he was in favor of the proposed ordinance.

Deputy Mayor Pro Tem Lindsey stated all the arguments made against the ordinance were very eloquent. Although the Council was constantly faced with issues where government gets involved, he was in favor of the ordinance.

Mayor Pro Tem Trotter moved to approve Ordinance No. 71-08 amending Chapter 18, entitled "Businesses," of the Town's Code of Ordinances by adding Article IX, entitled "Regulation of Smoking in Public Places." Deputy Mayor Pro Tem Lindsey seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 71-08

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 18, ENTITLED "BUSINESSES," THROUGH THE CREATION OF A NEW ARTICLE IX, ENTITLED "REGULATION OF SMOKING IN PUBLIC PLACES," AND THE ADOPTION OF SPECIFIC SECTIONS THEREUNDER INTENDED TO REGULATE SMOKING; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Lindsey, Trotter, Filidoro
NAYS: Levenick
ABSENT: Tasker

L. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- Discuss cancellation of November 20, 2008 Work Session.

The consensus of the Council was to cancel the November 20 work session. Mayor Smith noted that Allied Waste would be scheduled for the January work session

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:39 p.m. on November 3, 2008 pursuant to Texas Government Code Sections 551.071, 551.072, 551.074, and 551.087 to discuss matters relating to consultation with Town Attorney, personnel, real property, and economic development negotiations and reconvened into an open meeting at 11:19 p.m. on November 3, 2008 to take action on the items as follows:

- a. Discuss and consider annual review of Town Secretary

No action taken.

- b. Discuss and consider annual review of Town Manager.

No action taken.

- c. Discuss and consider economic development incentives.

No action taken.

- d. Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.

Deputy Mayor Pro Tem Lindsey moved to approve the purchase of easements, in association with the FM 1171 to US 377 Water Line Phase I Project and the US 377/UPRR Water Line Phase I Project, from Old WR Ranch I LP, not to exceed the new settlement limits, plus closing costs. Mayor Pro Tem Trotter seconded the motion.

VOTE ON THE MOTION

AYES: Filidoro, Trotter, Lindsey, Levenick

NAYS: None

ABSENT: Tasker

O. ADJOURN REGULAR MEETING

Mayor Smith adjourned the meeting at 11:20 p.m. on Monday, November 3, 2008, and all were in favor.

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY