

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 3rd DAY OF AUGUST 2009 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
Jean Levenick	Mayor Pro Tem
Steve Dixon	Deputy Mayor Pro Tem
Al Filidoro	Councilmember Place 2
Mike Wallace	Councilmember Place 3
Tom Hayden	Councilmember Place 5

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
Doug Powell	Executive Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Smith called the briefing session to order at 6:06 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports.

Mayor Pro Tem Levenick stated the Planning & Zoning Commission discussed the Water Master Plan and the proposed water tower on the west side of Town.

Councilmember Filidoro stated the Parks, Arts, and Library Services Board discussed concession contracts with the Flower Mound Youth Sports Association and with the Greater Lewisville Area Soccer Association. Prior to the meeting, the Board toured the proposed Orchard Flower Village site. The Board recommended to the Council to receive fees in lieu of parkland. After two amendments to the motion, the Board voted for half of the money to go toward trails and the other half to a senior citizens center. The Fido Fest contracts were approved.

2. Discuss Consent and Regular Items - no discussion

3. Discuss Future Agenda Items.

Mayor Pro Tem Levenick requested that the Council hold a work session to discuss underground utilities. Town Manager Harlan Jefferson stated that topic was scheduled for the September work session.

Councilmember Filidoro asked for a future update from staff regarding Code Enforcement.

Town Manager Harlan Jefferson informed the Council about the seismic testing request from Williams Production. Mayor Smith and Mayor Pro Tem Levenick recused themselves as they lived in the requested area. Mr. Jefferson stated the Town received a request to do testing in the Town's rights-of-way and on the pavement of Town streets. Staff had denied the request for reasons of reduced life of roadways, no studies had been done on this type of testing, and the Town roads were not designed for such tests. He informed the Council that a possible development agreement may be a future agenda item. He described the seismic testing process, and noted that Burlison, Joshua, Double Oak, and Springtown allowed such testing. Lewisville had denied a similar request. Staff was looking for direction from the Council regarding a future agenda item.

Councilmember Hayden asked that staff prepare a Council Communication requesting direction.

Mr. Jefferson stated it would be ideal to answer to all the questions in the Communication.

Councilmember Filidoro asked why Williams had to ask for permission to do the testing.

Mr. Jefferson stated the Town owned the rights-of-way (ROW) and Williams could not come on that property to execute that type of testing. He noted that the Town has franchise agreements with utility companies who pay franchise fees to use the ROW. He stated testing was normally done on open land, but the land in the subject vicinity was already developed.

Councilmember Hayden stated he had many questions and would submit them in writing.

Mr. Jefferson noted that Williams had an alternate proposal for transporting water, and the drilling ordinance would have to be amended (sometime after the Red Oak Lawsuit is resolved).

Deputy Mayor Pro Tem Dixon asked when the Council Communication would be ready.

Mr. Jefferson stated the Council could have a two-week window to submit questions, so the Council Communication would be ready in about three weeks. Staff was in the process of contacting other cities to survey what operations they do allow.

Deputy Mayor Pro Tem Dixon stated he would like to have the Communication as soon as possible, and Councilmember Wallace suggested that the Council only take one week to submit questions.

Councilmember Filidoro stated he wanted to see scientific data. He asked if there was any information about interference with air traffic. He added that he wanted the two week timeframe to submit questions.

Mr. Jefferson stated he was aware of a newspaper article regarding challenges in testing around airports.

Deputy Mayor Pro Tem Dixon stated he would like to visit the areas in Double Oak where testing would be taking place. He asked that staff schedule visits for the Council.

Councilmember Hayden mentioned that some emails from residents indicated that they would be disadvantaged if Williams was not allowed to drill on their properties because the seismic testing was denied.

Mr. Jefferson stated a well application had been submitted for the Smith property, and they had not prevented them from moving forward. He stated the Town did not know about seismic testing prior to the middle of July. Staff had done all they were required to do under the drilling ordinance.

Councilmember Hayden asked why Lewisville denied the request, and Mr. Jefferson stated he was not sure at this time but would follow up on the matter.

Councilmember Filidoro asked if the issue would be better served with an ordinance, or on a case-by-case basis.

Town Attorney Terry Welch anticipated addressing those questions in a Council Communication.

Deputy Mayor Pro Tem Dixon encouraged citizens to let the Council know how they felt about the matter.

Mr. Jefferson stated if the Town Council decided to go forward, the Town would need an agreement with Williams that would address concerns about the reduction in the life of the roadways, the inconvenience to citizens, and indemnification. Additionally, the Council would have to decide how to handle future requests.

Mr. Jefferson stated staff would wait two weeks for questions from the Council.

Mayor Smith and Mayor Pro Tem Levenick returned to the Council Chambers.

4. Discuss Council Communications.

Mr. Jefferson commented that the Council had received a Communication regarding perimeter fence standards, including the requirement for a four-foot chain link fence around schools. That item was scheduled for the August work session.

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

Mayor Smith adjourned the briefing session and called the regular meeting to order at 6:33 p.m.

E. INVOCATION

Chaplain Don Cone gave the Invocation.

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

Eagle Scout Thomas Brink led the Pledges.

H. PRESENTATIONS

- Certificate of Achievement - Eagle Scout Thomas Brink

Mayor Smith presented a Certificate of Achievement to Thomas Brink for achieving the rank of Eagle Scout.

G. PUBLIC PARTICIPATION

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern announced that the Flower Mound HOA Coalition was awarded with an Adopt a Library Program from Community Association Institute. Helpful books for HOAs would be donated to the Flower Mound Library on Wednesday, August 19 at 4:30 pm. She added that the coalition would partner with CAI for training for HOA volunteers.

Marilyn Rhodes, Williams Production, Tulsa, Oklahoma

Ms. Rhodes asked if the current drilling ordinance prevented their proposal from going forward or not. She believed the opportunity existed for the Town to accept their application, and the final decision was needed immediately. They had requested to allow three pipelines in the same right-of-way. She stated that the noise at a central facility would be minimized and the trucking on neighborhood streets would be lessened.

Mary Kay Walker, 3229 Oak Meadow, Flower Mound

Ms. Walker stated she was pleased to hear of the recent PALS Board decision to allocate funds to a senior center. She thanked the Council for their future consideration of the decision.

Tony Silvestri, Regional Vice President of Williams Production

Mr. Silvestri stated the trucking of water was safe, but pipelining it was safer. He hoped to be able to conduct seismic testing in Flower Mound, stating that they needed the information to create a subsurface map of the area. Williams wanted to do precision horizontal drilling. They might be able to drill 100 wells with the information. If the assumptions were correct and the wells were productive, it could produce many millions of dollars to the owners (royalties), along with taxes.

Laurie Long, 2708 Lake Flower Drive, Flower Mound

Ms. Long invited the Council to attend the performances of The Wizard of Oz at Studio B over the next weekend.

I. ANNOUNCEMENTS

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

Deputy Mayor Pro Tem Dixon attended the Lewisville Lake Bridge Dedication last week.

Mayor Smith announced that Flower Mound resident James Callahan had recently saved several children in a run-away van in Watauga. Additionally, several teenagers saved several horses on FM 1171.

J. TOWN MANAGER'S REPORT

- **Update and status report related to operational issues, capital improvement projects, budget projections, grants, legislation and regulatory activities.**

Town Manager Harlan Jefferson stated the intersection of Dixon and FM 2499 was

scheduled to open today. The goal was to try to get the west side of Dixon open before school starts. The contractor had also scheduled to work on the intersection at Waketon on the east side and planned to have that intersection open by the start of school. The groundbreaking for Fire Station #5 was scheduled for August 17. Mr. Jefferson stated the Town was in line with the dedicated sales tax election campaign program. The most recent dash board was on the webpage, and citizens could track the Town's progress.

L. CONSENT ITEMS

Deputy Mayor Pro Tem Dixon made a motion to approve by consent, Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11. Councilmember Wallace 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 a resolution declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorizing the preparation of the documents associated with the issuance, sale and delivery of the debt obligations**

RECOMMENDATION: Approve Resolution No. 21-09 declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorizing the preparation of the documents associated with the issuance, sale and delivery of the debt obligations. The caption of the resolution reads as follows:

RESOLUTION NO. 21-09

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE CERTIFICATES OF OBLIGATION, AND AUTHORIZING THE PREPARATION OF THE DOCUMENTS ASSOCIATED WITH THE ISSUANCE, SALE AND DELIVERY OF THE DEBT OBLIGATIONS.

- 2. Consider approval of a resolution authorizing the adoption of the Program Year 2009 Action Plan for Housing and Community Development, which is required under Flower Mound's Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.**

RECOMMENDATION: Approve Resolution No. 22-09 authorizing the adoption of the Program Year 2009 Action Plan for Housing and Community Development, which is required under Flower Mound's Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development. The caption of the resolution reads as follows:

RESOLUTION NO. 22-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF THE PROGRAM YEAR 2009 ACTION PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT UNDER THE TOWN'S COMMUNITY DEVELOPMENT BLOCK GRANT.

- 3. Consider approval of the purchase of one truck mounted sewer cleaner for Utility Services from Texas Underground, Inc. and Rush Truck Centers of Texas, L.P., through the Houston-Galveston Area Council of Governments (HGAC) cooperative**

purchasing program, in the total amount of \$118,188.31.

RECOMMENDATION: Approve the purchase of one truck mounted sewer cleaner for Utility Services from Texas Underground, Inc. and Rush Truck Centers of Texas, L.P., through the Houston-Galveston Area Council of Governments (HGAC) cooperative purchasing program, in the total amount of \$118,188.31.

- 4. Consider approval of the award of Bid No. 113-09-B Medium Duty Conventional Tractor to MHC Kenworth, in the amount of \$77,358.**

RECOMMENDATION: Approve the award of Bid No. 113-09-B Medium Duty Conventional Tractor to MHC Kenworth, in the amount of \$77,358.

- 5. Consider approval of the award of Competitive Sealed Proposal No. 105-09-B for the construction of Fire Station No. 5 to EMJ Corporation, in the amount of \$2,937,670.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Competitive Sealed Proposal No. 105-09-B for the construction of Fire Station No. 5 to EMJ Corporation, in the amount of \$2,937,670.00, and authorize the Mayor to execute same on behalf of the Town.

- 6. Consider approval of Change Order No. 2 for the construction of the Fleet Maintenance Facility, amending the contract with Piazza Construction, Ltd., for an increase in the amount of \$50,482.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 2 for the construction of the Fleet Maintenance Facility, amending the contract with Piazza Construction, Ltd., for an increase in the amount of \$50,482.00, and authorize the Mayor to execute same on behalf of the Town.

- 7. Consider approval of Change Order No. 1 for the construction of Spinks Road, Phase IV, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$19,760.40, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 1 for the construction of Spinks Road, Phase IV, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$19,760.40, and authorize the Mayor to execute same on behalf of the Town.

- 8. Consider approval of Change Order No. 1 and final acceptance for the construction of the 2008 Street Reconstruction - Churchill Drive project to provide for a decrease in the amount of \$33,005.50; acceptance of the project; authorization for final payment to the contractor's surety, SureTec Insurance Company, in the amount of \$28,174.34; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 1 and final acceptance for the construction of the 2008 Street Reconstruction - Churchill Drive project to provide for a decrease in the amount of \$33,005.50; acceptance of the project; authorization for final payment to the contractor's surety, SureTec Insurance Company, in the amount of \$28,174.34; and authorize the Mayor to execute same on behalf of the Town.

9. Consider approval of a Professional Services Agreement with Teague Nall and Perkins to provide landscape architecture and design services for the Green Ribbon Design project, for FM 1171 and FM 2499 in the amount of \$74,816.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Professional Services Agreement with Teague Nall and Perkins to provide landscape architecture and design services for the Green Ribbon Design project, for FM 1171 and FM 2499 in the amount of \$74,816.00, and authorize the Mayor to execute same on behalf of the Town.

10. Consider approval of an Interlocal Cooperative Agreement with Denton County for the construction of Garden Ridge Boulevard, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an Interlocal Cooperative Agreement with Denton County for the construction of Garden Ridge Boulevard, and authorize the Mayor to execute same on behalf of the Town.

11. Consider approval of a resolution in support of removing the rest stop located in Flower Mound on IH-35W.

RECOMMENDATION: Approve Resolution No. 23-09 in support of removing the rest stop located in Flower Mound on IH-35W. The caption of the resolution reads as follows:

RESOLUTION NO. 23-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, IN SUPPORT OF THE REMOVAL OF THE REST STOP LOCATED IN THE TOWN'S CORPORATE LIMITS ON UNITED STATES INTERSTATE HIGHWAY 35W; MAKING FINDINGS RELATIVE THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro
NAYS: None

L. REGULAR ITEMS

12. Consider approval of an Interlocal Cooperative Agreement with Denton County for improvements to Morriss/Gerault, and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Town Manager Harlan Jefferson stated this item was the funding agreement with Denton County for the Morriss/Gerault project.

Questions from the Governing Body and Answers

Councilmember Hayden stated that during the design process, the residents along Morriss Road wanted regular updates.

Council Deliberation

Councilmember Wallace moved to approve an Interlocal Cooperative Agreement with Denton County for improvements to Morriss/Gerault, and authorize the Mayor to execute same on behalf of the Town. Mayor Pro Tem Levenick seconded the motion.

VOTE ON THE MOTION

AYES: Wallace, Levenick, Dixon, Filidoro, Hayden

NAYS: None

- 13. RP 05-09 Roanoke Hills Addition Public Hearing**
Public Hearing to consider a request for a Replat (RP 05-09 - Roanoke Hills Addition) to create a residential lot and an exception to Section 90-302, Concrete streets, as authorized by Section 90-301, Exception to street standards. The property is located at 3936 Mohawk Drive. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 13, 2009, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell showed slides of the subject property, noting that the applicant had requested an exception to the Town standards for streets.

Questions from the Governing Body and Answers

Deputy Mayor Pro Tem Dixon stated that for many years the Council had seen these exception requests and they were always granted. He noted that it took staff time to go through the process and delayed citizens from improving their property. He asked if it would be possible to allow the Planning & Zoning Commission to approve these requests.

Town Attorney Terry Welch responded that state law required a public hearing at the Planning & Zoning Commission and Council levels for replats, particularly with exceptions.

Public Comments **None**

Close Public Hearing

Council Deliberation

Mayor Pro Tem Levenick moved to approve Replat RP 05-09 - Roanoke Hills Addition to create a residential lot with an exception to Section 90-302, Concrete Streets, as authorized by Section 90-301, Exception to street standards, of the Code of Ordinances. The motion was seconded by Councilmember Filidoro.

VOTE ON THE MOTION

AYES: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- August 13 - budget work session, August 17 - regular meeting, August 20 - work session, August 27 - budget public hearing

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:10 pm on August 3, 2009 pursuant to Texas Government Code Sections 551.071, 551.072, 551.074 and 551.087 to discuss matters relating to consultation with Town Attorney, real property, personnel, and economic development negotiations and reconvened into an open meeting at 10:11 p.m. on August 3, 2009 to take action on the items as follows:

- a. Discuss and consider economic development incentives.

No action taken.

- b. Discuss and consider acquisition and/or lease 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, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission and Transportation Commission.

Mayor Pro Tem Levenick moved to appoint Kendra Stephenson to the Alternate Place 7 position on the Board of Adjustment/Oil and Gas Board, with a term to expire on September 30, 2009. Councilmember Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Dixon, Filidoro, Hayden, Wallace, Levenick

NAYS: None

P. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 10:12 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY