

THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 8th DAY OF SEPTEMBER 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 special 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

with the following member of Council absent:

Tom Hayden	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
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 6:05 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports.

Mayor Pro Tem Levenick stated the Environmental Conservation Commission held a work session about trees, the tree ordinance, and possibly updating the website with videos about mulching and pruning. The green building subcommittee also met.

Mayor Smith stated the Planning & Zoning Commission held a lively discussion on temporary buildings.

2. Discuss Consent and Regular Items - no discussion

3. Discuss Future Agenda Items.

Town Manager Harlan Jefferson stated Deputy Mayor Pro Tem Dixon had asked staff for a report on legal fees and expenses. He noted that staff could put this topic on a future work session for discussion.

Mayor Smith suggested that Brown & Hofmeister might want to make a presentation.

4. Discuss Council Communications.

Mr. Jefferson stated that comments on the draft public arts policy were due today.

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

Mayor Smith adjourned the briefing session and called the special meeting to order at 6:10 p.m.

E. INVOCATION

Chaplain Lynda Schupp gave the Invocation.

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

Boy Scouts in attendance led the Pledges.

H. PRESENTATIONS

- **Certificates of Achievement - Eagle Scouts J. Thomas Zamecnik, Ethan Brown, and Patrick Belshe**

Mayor Smith presented Certificates of Achievement to the aforementioned Eagle Scouts.

- **Presentation regarding FMTV Award**

Staff played a video clip of some of the Town's award winning videos.

G. PUBLIC PARTICIPTION

Mark Stewart, 3932 Ridgecrest, Flower Mound

Mr. Stewart stated about a year ago many people signed leases with Williams. He stated that the seismic testing was the imagery before drilling. About a month ago Williams brought the seismic devices but they were removed a few days later. Mr. Stewart stated the Town denied Williams the right to seismically test in his neighborhood on the streets. Williams was allowed to test in open land. He noted that the Town had property in west Flower Mound and also signed a lease. In the lease it stated that Williams had the right to conduct passive test methods. Mr. Stewart stated he exchanged emails with Town Manager Harlan Jefferson about the testing and the wastewater piping system. Southlake and other municipalities had gone through this process, and he asked if staff had contacted other municipalities. He stated the Town has denied Williams the right to do the seismic testing due to possible damage to the infrastructure, and he did not believe the new seismic trucks caused damage. Mr. Stewart stated that it appeared the Town had language in the ordinance to allow the inner-connectivity of the piping system and one location for the wastewater. He commented that Williams planned to locate trucks on the Smith Property.

Mary Lynne Mahoney, 6500 Meadowcrest, Flower Mound

Ms. Mahoney thanked the staff for the booster pump in west Flower Mound. She stated she expected inconvenience with gas drilling. If Williams put a pipe next to the pumping station, it would keep trucks off the roads. She understood that Williams would put up a bond if there was any damage done. She asked how many members of the Town Council went to the testing demonstrations in Bartonville.

Pat Graves, 2104 Kings Forest, Flower Mound

Ms. Graves announced the 6th Annual Battle for the Diamond softball game on

September 19 at Gerault Park beginning at 6 p.m. The players would come from the Police and Fire Departments.

Leo Gonya, 2217 Shumard Lane, Flower Mound

Mr. Gonya stated the Seniors In Motion (SIM) members were pleased with the new additional handicapped parking spaces and a walkway to get to the Community Activity Center Golden Lounge. He read an excerpt from a recent news article by Mayor Smith. He asked the Council to consider approving the Orchard Flower Village development which is proposed to include age-restricted housing (one partner must be at least 55 years old).

Jim Holmes, 6408 Hillcrest Road, Flower Mound

Mr. Holmes encouraged the Town to reconsider approval of the request by Williams. He stated he was sitting inside his house while Williams did a seismic test and he could barely feel it (50 feet away). He stated the trucks would not destroy the roads. The newer wastewater system should be allowed, as they would reduce the amount of truck traffic.

Matthew Cloutier, 6504 Meadowcrest, Flower Mound

Mr. Cloutier agreed with his neighbors about allowing Williams to do the seismic testing and the wastewater transportation system.

Anthony Donner, 6005 Eastglen Drive, Flower Mound

Mr. Donner spoke about the church traffic on Eastglen Drive to the Trietsch parking lot. He felt access to parking lots on non-residential streets should not be allowed. The adjacent property owners wanted the access closed. He asked the Council to refer to Section 82-133 of the Code of Ordinances and address this before approving the agenda item.

Frank Gavitt, 6501 Meadowcrest Lane, Flower Mound

Mr. Gavitt stated Williams planned to build about 100 wells in west Flower Mound. With 300 tanks on 8 pad sites, the tanker trucks would have to use Town roads to take away the wastewater. Williams planned to use a wastewater system that would only need one large tank, however staff had prohibited the proposed wastewater system. He urged the Council to permit the system, as well as the seismic testing.

Marsha Gavitt, 6501 Meadowcrest Lane, Flower Mound

Ms. Gavitt stated the current ordinance did not prohibit the seismic testing and the proposed wastewater system.

Greg Santschi, 6405 Meadowcrest Lane, Flower Mound

Mr. Santschi stated the Town needed to move forward with letting Williams do the seismic testing and the wastewater system. He felt more trucks on the roads would damage the roads. He encouraged the Council to take advantage of the technology that was available.

Marilyn Rhodes, Williams Companies, Tulsa, Oklahoma

Ms. Rhodes stated the Council knew what the issues were. Williams was interested in 4500 acres on the west side of Town. She stated in her conversations with staff, no one ever mentioned that zoning was an issue on the Smith property. Williams was not applying for a salt water disposal line. She stated a company could not drill a well unless the people wanted it to be done. Ms. Rhodes stated Flower Mound had impressive leadership, and she stated that the requests made by Williams were covered in the **Town's** ordinance. She stated Williams had a deadline of January 22, 2010.

I. ANNOUNCEMENTS

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

Mayor Smith stated she had not been able to join her neighbors on Ridgecrest in their comments about the requests by Williams. She stated she did have a gas lease on the property she owned on Ridgecrest, therefore she could not speak publicly on anything specific about Williams. She stated she did not attend the seismic testing. She encouraged the Council to listen to their constituents regarding the wastewater pipeline. She stated she would like to hold a work session regarding the wastewater pipeline in either September or October. She also suggested moving the discussion of windmill installations to November with environmental issues.

Town Manager Harlan Jefferson stated they could also schedule the annual review of the gas well ordinance.

Mayor Pro Tem Levenick asked that the pipeline issues be moved to the October work session.

Councilmember Filidoro asked where the Town stood based on discussions in the last closed session on both drilling issues.

Mr. Jefferson stated he had not heard from Ms. Rhodes regarding the requests that Council made at the last meeting.

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 he normally did not respond to questions that were asked in Public Participation, however he did respond to emails. He announced that the public meeting for the Morriss/Gerault design plan would be held at the Library on September 22. The Transportation Commission would be invited to the meeting. He stated the Town had launched the mobile site for the Town's website that could be accessed on PDAs. On October 14 staff will conduct a Town communication workshop.

K. CONSENT ITEMS

Councilmember Filidoro made a motion to approve by consent, Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. Deputy Mayor Pro Tem Dixon 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 August 13, 2009.**

RECOMMENDATION: Approve minutes from a work session of the Town Council held on August 13, 2009.

2. **Consider approval of minutes from a regular meeting of the Town Council held on August 17, 2009.**

RECOMMENDATION: Approve minutes from a regular meeting of the Town Council held on August 17, 2009.

3. Consider approval of minutes from a work session of the Town Council held on August 20, 2009.

RECOMMENDATION: Approve minutes from a work session of the Town Council held on August 20, 2009.

4. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule" by deleting and replacing Sections 14-1(g), 18-252, 30-92 and 34-423(b)(1) relative to the charges for drainage inspection, solicitation permits, ambulance service, and amended oil and gas well permits.

RECOMMENDATION: Approve Ordinance No. 32-09 amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule" by deleting and replacing Sections 14-1(g), 18-252, 30-92 and 34-423(b)(1) relative to the charges for drainage inspection, solicitation permits, ambulance service, and amended oil and gas well permits. The caption of the ordinance reads as follows:

ORDINANCE NO. 32-09

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND BY AMENDING APPENDIX A "FEE SCHEDULE" BY DELETING AND REPLACING SECTIONS 14-1(G), 18-252, 30-92 AND 34-423(B)(1) RELATIVE TO THE CHARGES FOR DRAINAGE INSPECTION, SOLICITATION PERMITS, AMBULANCE SERVICE AND AMENDED OIL AND GAS WELL PERMITS, RESPECTIVELY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

5. Consider approval of an ordinance amending Chapter 70 of the Flower Mound Code of Ordinances entitled "Utilities" through the amendment of Article XI entitled "Municipal Stormwater Utility System" by replacing current Section 70-777 entitled "Schedule of charges" with a new Section 70-777 that is also entitled "Schedule of charges" to increase said fees and amending Appendix A "Fee Schedule" of the Code of Ordinances by adding Section 70-777, Stormwater Utility fee.

RECOMMENDATION: Approve Ordinance No. 33-09 amending Chapter 70 of the Flower Mound Code of Ordinances entitled "Utilities" through the amendment of Article XI entitled "Municipal Stormwater Utility System" by replacing current Section 70-777 entitled "Schedule of charges" with a new Section 70-777 that is also entitled "Schedule of charges" to increase said fees and amending Appendix A "Fee Schedule" of the Code of Ordinances by adding Section 70-777, Stormwater Utility fee. The caption of the ordinance reads as follows:

ORDINANCE NO. 33-09

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 70, ENTITLED "UTILITIES," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND THROUGH THE AMENDMENT OF ARTICLE XI ENTITLED "MUNICIPAL STORMWATER UTILITY SYSTEM" BY REPLACING CURRENT SECTION 70-777 ENTITLED "SCHEDULE OF CHARGES" WITH A NEW SECTION 70-777 THAT IS ALSO ENTITLED "SCHEDULE OF CHARGES" TO INCREASE SAID FEES AND RELOCATE SAID FEE SCHEDULE BY AMENDING APPENDIX A "FEE SCHEDULE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND RELATIVE TO THE FEES PREVIOUSLY SET OUT IN SECTION 70-777; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

6. Consider approval of an ordinance adopting tariffs that reflect rate adjustments consistent with the settlement agreement between the Coalition of Cities Served by CoServ and CoServ Gas Ltd.

RECOMMENDATION: Approve Ordinance No. 34-07 adopting tariffs that reflect rate adjustments consistent with the settlement agreement between the Coalition of Cities Served by CoServ and CoServ Gas Ltd. The caption of the ordinance reads as follows:

ORDINANCE NO. 34-09

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DENTON COUNTY, TEXAS, FINDING THAT THE CURRENT RATES OF COSERV GAS LTD. ARE UNREASONABLE; APPROVING COSERV GAS LTD.'S REVISED AND UNCONTESTED TARIFFS; SETTING THE EFFECTIVE DATE FOR COSERV GAS LTD.'S NEW TARIFFS AS OCTOBER 1, 2009; FINDING RATE CASE EXPENSES REASONABLE; FINDING THAT ANY RELIEF REQUESTED BY COSERV GAS LTD. NOT SPECIFICALLY GRANTED HEREIN IS DENIED; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR NOTICE OF THIS ORDINANCE TO COSERV GAS LTD.; AND PROVIDING AN EFFECTIVE DATE.

7. Consider approval of Addendum No. 1 to the contract with Teague, Nall and Perkins, Inc., to provide additional engineering design services for the Flower Mound Road Reconstruction Phase 1 project, in the amount of \$28,000.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Addendum No. 1 to the contract with Teague, Nall and Perkins, Inc., to provide additional engineering design services for the Flower Mound Road Reconstruction Phase 1 project, in the amount of \$28,000.00, and authorize the Mayor to execute same on behalf of the Town.

8. Consider approval of a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the construction of Fire Station No. 5 Wastewater Extension, in the amount of \$15,120.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the construction of Fire Station No. 5 Wastewater Extension, in the amount of \$15,120.00, and authorize the Mayor to execute same on behalf of the Town.

9. Consider approval of the award of Bid No. 117-09-B, to Jim Bowman Construction Company L.P., for the construction of Timber Creek Road 12-inch Water Line, in the amount of \$59,905.60, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve the award of Bid No. 117-09-B, to Jim Bowman Construction Company L.P., for the construction of Timber Creek Road 12-inch Water Line, in the amount of \$59,905.60, and authorize the Mayor to execute same on behalf of the Town.

10. Consider approval of an advance funding agreement with the Texas Department of Transportation for voluntary local government contributions associated with additional FM 1171 turn lane improvements to the FM 1171 and FM 2499 intersection, in the amount of \$80,841.93, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an advance funding agreement with the Texas Department of Transportation for voluntary local government contributions associated with additional FM 1171 turn lane improvements to the FM 1171 and FM 2499 intersection, in the amount of \$80,841.93, and authorize the Mayor to execute same on behalf of the Town.

11. Consider approval of a Professional Services Agreement with Dunaway Associates, L.P., to provide parks, recreation, and open space master planning services, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Professional Services Agreement with Dunaway Associates, L.P., to provide parks, recreation, and open space master planning services, and authorize the Mayor to execute same on behalf of the Town.

12. Consider approval of an Amendment to Development Agreement by and between the Town of Flower Mound and Rembert Enterprises, Inc., and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an Amendment to Development Agreement by and between the Town of Flower Mound and Rembert Enterprises, Inc., and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

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

L. REGULAR ITEMS

13. Consider a request for a Site Plan (SP 04-09 - Trietsch Memorial United Methodist Church) to develop a Family Life Center with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances. The property is located at 6101 Morriss Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its August 10, 2009, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the main church building faced Morriss Road. The property was master planned for office uses and medium density residential. The zoning was Agricultural. The request was for a new building (Family Life Center) and soccer fields on the south side, along with a detention pond. The new building would have connectivity to the church building. The applicant had requested a new driveway onto Dixon Lane that was planned to be 205 feet west of an existing driveway cut, and this did not meet Town standards. Mr. Powell stated that staff supported the proposed driveway. He referred to Mr. Donner's concern during Public Participation regarding Section 82-133 of the Town's Code of Ordinances. He stated the church was actually situated within a residential use, and a church could be located within a neighborhood. He noted that the applicant believed the driveway was put in when the first building of the church property was approved. Mr. Powell stated staff was in receipt of one letter of opposition.

Applicant's Presentation

Gary Kirchoff, HH Architects

Mr. Kirchoff reviewed slides of the property, noting that the Veterans Memorial would be enhanced. He stated at one time there was access to Eastglen, however it was taken out of service at the request of the neighboring homeowners' association (HOA). He noted that the new building would be a two-story facility.

Questions from the Governing Body and Answers

Mayor Pro Tem Levenick stated that reference had been made about a letter regarding the transfer of property with the HOA. One condition (#5) stated that Eastglen was to become an emergency entrance only.

Lyle Benson, Executive Pastor of Trietsch, stated that the president of the HOA did not have that condition in the agreement. There were only four conditions on that document. Condition #5 had been deleted by the HOA.

Mayor Smith summarized that the access to Eastglen was more of a safety issue.

Pastor Benson stated he could put a sign on the entrance that said "no through traffic." He stated people did not come in through that entrance except for on Sundays or during major events.

Mr. Powell noted that the closing document did not have any special conditions regarding Lot 20X.

Mayor Smith asked that it be clarified that when Lot 20X was sold, there were no binding conditions for access to Eastglen.

Councilmember Filidoro stated he was a member of this church, and he had asked the Town Attorney if he could participate in the discussions. Since he did not derive any financial benefits from the church, he was informed that he had the right to participate in the discussion.

Mayor Pro Tem Levenick asked Pastor Benson if he could gate the Eastglen entrance except for on Sundays.

Pastor Benson responded that he already had an agreement with the HOA, and he preferred not gating the entrance.

Council Deliberation

Councilmember Wallace moved to approve Site Plan SP 04-09 - Trietsch Memorial United Methodist Church to develop a Family Life Center with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances. The motion was seconded by Deputy Mayor Pro Tem Dixon.

Mayor Pro Tem Levenick commented that Mr. Powell was going back to look at the documents, however she could not support the motion that had been made.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Wallace

NAYS: Levenick

ABSENT: Hayden

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

No discussion.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:35 p.m. on September 8, 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 7:45 p.m. on September 8, 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.

No action taken.

P. ADJOURN SPECIAL MEETING

Mayor Smith adjourned the special meeting at 7:46 p.m. on September 8, 2009, and all

were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY

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