

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 5TH DAY OF OCTOBER, 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
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 6:09 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports

Mayor Smith stated the Planning & Zoning Commission recommended approval of the hydrology study and heard a request by the Montessori School on FM 407.

2. Discuss Consent and Regular Items.

Mayor Pro Tem Levenick asked that Item 12 from the Consent Agenda be pulled for discussion.

3. Discuss Future Agenda Items - no discussion

4. Discuss Council Communications - no discussion

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 6:12 p.m.

E. INVOCATION

Pastor Richard Plunk gave the Invocation.

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

The Flag Ceremony was conducted by Cub Scout Pack 392, Den 1, and the scouts also led the Pledges.

H. PRESENTATIONS

Mayor Smith and the members of the Town Council presented a proclamation for Breast Cancer Awareness Month (October 2009) to Stacy Gibson, Public Policy Division, North Texas Affiliate of the Susan G. Komen organization.

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 announced that the Town was hosting a workshop on October 14 at the Library regarding communication tools for residents to use. He stated the Town received \$14.2 million in Regional Toll Revenue Funding for the construction of Flower Mound Road and Morriss/Gerault Road. He noted the Town also received \$7.5 million in June. The Police Department Open House will be held tomorrow from 5 p.m.-7 p.m. at the Police Department and National Night Out activities will follow. The Fire Department Open House will be held on October 12 from 10 a.m.-2 p.m.

- **Council discussion with Town Manager to provide staff with direction for the October 15, 2009 Work Session items that are listed as follows:**
 - i. **Discuss the development of a town-wide policy for permitting seismic testing on all Town-owned streets within our corporate limits.**
 - ii. **Discuss possible revisions to the oil and natural gas well drilling and operations ordinance and the oil and gas pipeline standards ordinance.**
 - iii. **Discuss the regulation of tank farms associated with gas well produced water pipeline systems.**

Mr. Jefferson gave the following presentation.

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

Deputy Mayor Pro Tem Dixon asked how long Denton or Southlake had been allowing seismic testing on their streets.

Mr. Jefferson stated he did not know, however he added that Denton had created standards for seismic testing.

Deputy Mayor Pro Tem Dixon stated he would like to see details for those two municipalities at the work session on October 15. He asked Mr. Jefferson to note if they had experienced any damage or other effects from the testing. He asked for a full report from each city.

Mayor Smith commented that Southlake had modeled their oil and gas ordinance after the Town's.

Councilmember Filidoro asked staff to talk to the other cities and find out how long they did not allow the seismic testing, and how they arrived at their decision. Councilmember Filidoro noted that there were private roads within gated subdivisions in Flower Mound. He asked how a company would do testing in one of those subdivisions.

Mr. Jefferson stated they would have to contact the **homeowners'** association. The Town would have no liability.

Councilmember Filidoro asked staff to bring information to the work session to show how public roads can be turned into private roads.

Councilmember Hayden stated he wanted to protect the **Town's** infrastructure. He stated staff met with an exploration company last week and was assured there would be no damage to the infrastructure.

Assistant Town Manager Kent Collins stated the consultant's (Fugro) analysis was to look at a pavement section under normal roadway loading (a 60,000 pound vehicle). The analysis did not consider vibratory loading.

Councilmember Hayden stated research was needed to show the extent of the **Town's** liability if seismic testing was done. He also wanted to know the content of the brining water regarding the wastewater collection facility. He stated the Town and the citizens had the right to know the contents.

Deputy Mayor Pro Tem Dixon stated when talking about actual vehicles, the Council needed the comparison of the 60,000 pound trucks with other heavy vehicles such as fire trucks and tractor trailers. He also wanted to see a comparison of the tire sizes.

Councilmember Hayden wanted staff to proactively go out and seek independent research organizations that would give data on what seismic activity would do to the roadways.

Councilmember Wallace stated he would like to see a formal policy on seismic testing, including what special conditions and specific locations where testing could be performed rather than allowing it town-wide. He noted that he would like to see a draft agreement that the Town would be able to have ready to execute with a company, if this was approved. Regarding any changes that needed to be made to the ordinance regarding the wastewater collection facility, he stated this should be rolled into an annual review of the pipeline ordinance. He noted the last time the ordinance was reviewed was 2007, and the Town had not been able to address it since that time due to pending litigation. He asked for a feasible schedule on how long the process will take to update the ordinance, and then staff should schedule a public hearing regarding these issues.

Mr. Jefferson clarified that he would include the four issues noted in his presentation into the draft agreement.

Councilmember Wallace reviewed the items that he wanted included in the agreement: operator provides specific locations of testing, not town-wide; operator provides full useful life replacement costs of infrastructure being tested; **operator's** payment must be received by the Town prior to testing being conducted; operator provides full indemnification of the Town;

operator provides written waiver of Town liability from each lease holder adjacent to where testing takes place; and operator provides insurance for any claims related to testing. He wanted to make sure all of the Town's risks were addressed and that the Town was fully compensated for any costs related to the testing.

Councilmember Filidoro stated in 2007 the Town said the ordinance would be reviewed annually; however it was not done in 2008 because of the lawsuit. He stated the Council was looking at a review of the ordinance, not opening up the ordinance to wholesale changes. He stated a review was an update on the ordinance. The purpose was to make sure there was a full report to the citizens. He stated it was time for a review. He wanted to see timeframes to get the issues resolved and provide "what if" scenarios.

Mayor Smith stated depending on what happens at the work session, some of the timeframes may be triggered.

Councilmember Hayden stated when staff was looking at getting indemnification from the property owners, a radius from that property needed to be determined.

Deputy Mayor Pro Tem Dixon asked Mr. Jefferson to put the Frequently Asked Questions Sheet on the website, along with his presentation.

Mayor Smith stated she wanted to see more information on seismic testing, along with any facts that showed these topics in relation to land size/masses (urban areas/rural areas). She added that the Town always went to the extreme regarding public hearings.

I. ANNOUNCEMENTS

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

Deputy Mayor Pro Tem Dixon stated Fiesta Flower Mound was quite successful.

Councilmember Wallace announced the public meeting on November 10 to discuss the Morriss/Gerault project. He encouraged residents to get connected for communication from the Town by using Twitter, etc. He announced the October 14 work shop for residents on communication means.

Councilmember Hayden stated the Lewisville Symphony was presenting Ruben Allred on Friday, October 9, at Trinity Presbyterian Church. He also noted that the Flower Mound Community Orchestra was holding a meet and greet at The Grotto on Sunday.

Mayor Smith stated she and Councilmember Wallace were traveling to Austin this week to visit with City of Austin staff about environmental initiatives.

G. PUBLIC PARTICIPATION

Jack Allison, Jr., 4027 Raintree, Flower Mound

Mr. Allison thanked staff for the presentation about gas drilling. He recommended that the Council approve the centralized wastewater collection system. He stated seismic testing was happening at DFW Airport.

Edward Barrows, 2624 Gentle Drive, Flower Mound

Mr. Barrows stated he had worked in the oil and gas industry, and the centralized

collection system was a good idea. It would reduce truck traffic through the Town. He noted the Town could limit the time of day that trucks could be in use. He applauded the Council for wanting more research on the seismic topic.

Tammi Vajda, 2828 Lakeville Lane, Flower Mound

Ms. Vajda stated the drilling ordinance protected all of Flower Mound. If it was changed because Williams wanted it, then it would change for the whole Town. She stated the gas industry did not disclose what was in the water in the pipes, adding that she had heard of three accidents involving wastewater since June. She suggested having on-site purification systems (although they were expensive). Ms. Vajda stated the ordinance recently held up in a court of law.

Corey Van Trease, 2104 Cavalier Way, Flower Mound

Mr. Van Trease stated he was speaking on behalf of Patty Smith, the Smith Foundation, and the Ron Hilliard family. They were all in support of the wastewater collection system. He agreed that the Town needed to review the ordinance on a regular basis. He stated all the issues deserved more research, however he believed there were more pros than cons.

Susan Hayes, 3715 Valley View Lane, Flower Mound

Ms. Hayes noted that at the November 19 work session, the Council planned to discuss environmental strategies. She was still concerned about the lack of information for the average person regarding mosquito spraying. She stated many things on the Town's website were not true, noting that the spray did not dissipate quickly. She gave copies of the book, The Organic Manual, to the Council. She asked them to read the book and return them to her in the spring.

Jim Holmes, 6408 Hillcrest Road, Flower Mound

Mr. Holmes urged the Council to approve the gas drilling requests. He stated seismic testing was not like earthquakes. He stated the Town also needed to move forward with the centralized collection point as it would reduce truck traffic. He noted there was a great deal of bicycle traffic on Shiloh Road.

Stan Martin, 6505 Frontier, Flower Mound

Mr. Martin stated he was involved with gas drilling across Shiloh Road and it was quiet with not much traffic. He stated he had gained a great deal of respect for Williams Company and added that they were trying to do the right thing for Flower Mound. He was glad to see the Council taking a positive look at seismic testing and how Williams wanted to handle the wastewater. He stated he would like to see the work session opened up to the citizens and to Williams. Not making a decision was dividing the Town.

Joe Northern, 4601 Portsmouth, Flower Mound

Mr. Northern stated he did research on the Internet on what was in the wastewater, as he had heard it contained benzene and salt water. He stated there had been reports of cancer and people dying. He asked what type of liabilities the Town would have. Mr. Northern stated the regulations needed to be looked at very carefully, and added that his homeowners' insurance did not cover seismic testing damage. He stated he had sent a list of questions to the Mayor and Council.

Rick Lust, 3805 Ridgecrest, Flower Mound

Mr. Lust stated Flower Mound had a huge proposal for the development of gas, and the Town should look at it in a cost-benefit way. Up to this point he had heard nothing about the

economic potential of the Barnett Shale. He found that remiss that it had not been studied. He stated it was a good idea to empower the Economic Development Division to explore this issue and get a third party analysis. Mr. Lust stated this could be huge for the Town. He stated the LISD and the Town had a great deal of leasable land. He suggested getting appropriate data. Mr. Lust stated the royalties could possibly pay for road improvements without a bond election or tax increase. He suggested seeing if other cities had budgets that were supplemented by gas royalties.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd stated seismic testing had been performed in various areas, and there was no proof of any damage. He offered his home and driveway as a test site. Regarding the centralized wastewater collection system, he stated probably only five landowners would be involved. He encouraged the Council to visit the drilling site north of US 377/FM 1171 in Argyle. He stated Williams was choosing to do things right in Flower Mound.

Bill Norris, 3223 Raintree, Flower Mound

Mr. Norris stated he was pleased with the research presented tonight but asked why it took so long. He stated he signed his lease in the fall of 2008, and Town staff should have had answers a year ago so that the Council could make informed decisions. He stated Flower Mound needed to push forward and be a leader for other towns in Texas.

John Graham, 2920 Dumas Court, Flower Mound

Mr. Graham understood that seismic testing enhanced the success of gas exploration. He stated the financial opportunities for everyone was significant. He commented that he had heard that Town staff requested an upfront payment from Williams for any damages. Williams stated they would put up a bond and staff rejected that. Mr. Graham stated staff did not have the technical expertise, nor did they retain someone with the technical expertise to deal with the issues. He stated he had found no empirical evidence that seismic testing caused damage to the roads. Mr. Graham stated there was a potential legal risk if the Town did not act in a reasonable way with Williams. He referred to the Stafford lawsuit that the Town had lost. He asked the Council to direct staff to provide responses to the following: why was Williams' offer to post a bond an unacceptable resolution to the issues; and produce whatever real evidence they had that seismic testing damages roads.

Larry Tullos, 6504 Hillcrest, Flower Mound

Mr. Tullos referred to a technical study on seismic testing he found on the Internet. He questioned the diligence of staff about doing research. He felt the wastewater collection pipeline was a win-win for the Town. He commented that generally technology brings about better solutions. He suggested making this a mandatory technique.

Loren Jaffe, 3705 Havenlake, Flower Mound

Mr. Jaffe stated he found much information and literature on the Internet to support both sides. He stated the residents had elected officials to help meet the needs, health, and safety of the Town and the citizens. He stated the Town had done a good job of managing growth and property values. He stated homes were not built for seismic shaking (he had lived in California through earthquakes). He asked the Council to consider all the facts before making decisions.

Melissa Northern, 4601 Portsmouth, Flower Mound

Ms. Northern stated the Council needed to take into account that there were many different areas in the Town - rural, high density areas, people who do and do not own mineral

rights. She stated the Council needed to talk about service right owners and mineral right owners and protect both sides. Ms. Northern stated she contacted Nationwide Insurance and her home was not covered for seismic testing. Additionally, she would not be receiving financial benefits. She referred to an email from Shiloh Road residents, and she asked them to look at the terms and conditions of their contracts to see if seismic testing and the pipelines were in there.

Bob Hayden, 5309 Heather Court, Flower Mound

Mr. Hayden stated he served in Iraq from 2004-2008. Soldiers were being killed by insurgents being paid by United States oil money. He encouraged the Council to look at the big picture, and stated the country needed to get out of energy dependence in the Middle East.

Rick Wright, 3725 Valley View, Flower Mound

Mr. Wright was in support of the wastewater collection and seismic testing. He stated he had more issues with the soil affecting roads than seismic testing.

Carl Thunem, 4016 Raintree, Flower Mound

Mr. Thunem stated time was of the essence to approve the seismic testing and collection system. He stated he did not want the area to lose the opportunity to drill wells. Mr. Thunem stated Williams proceeded to lease in the Shiloh area in good faith regarding the drilling ordinance, and it was not fair to change the rules in the middle of the game. He stated the collection system provided less opportunities for spills and for fewer trucks on the roads. He stated the financial benefits would be maximized and everyone would win.

Marilyn Rhodes, Williams Company, Tulsa, Oklahoma

Ms. Rhodes stated the Town assumed seismic testing would hurt roads. She stated safety was first at Williams. She stated Williams has an independent company that rides along when testing is done to measure the vibrations. She stated the earth moves as an elastic body. She stated the US Parks Service had guidelines which were shown to staff last week. The most delicate historic structures could withstand a guideline of .02 inches per second (peak particle velocity). She stated there was a low frequency vibration at the truck during the seismic testing. Ms. Rhodes stated vibration was perceptible to humans as low as .06 to .08. Damage is not caused until it reaches 2.0. Ms. Rhodes stated the highest level of measurement during testing was .015. She stated vibration did not cause damage to the roadways because the vibration was so low.

Frank Gavitt, 6501 Meadowcrest Lane, Flower Mound

Mr. Gavitt stated staff let the Council down with the fact sheet that had been distributed. He stated there would be 30 tanks with the central collection system. Without it, there would be many more. Mr. Gavitt stated staff did not witness the buried egg and light bulb demonstration. He stated staff should get the facts straight. He noted that the Town surveyed their list of 15 cities about seismic testing. Only Southlake and Denton allowed seismic testing on streets. He asked why staff did not survey cities in Johnson and Parker Counties, because many of the Town's survey cities (Allen, Carrollton, Frisco, McKinney, Plano, Richardson, and Rowlett) were outside the Barnett Shale. Regarding the leases, there was a clause that allowed everyone who signed a lease to allow vibrational testing on their property. He stated there was also a provision for insurance - requiring Williams to carry insurance against any damages caused by Williams or its contractors. He stated the Town should focus on getting data and understanding it.

Sherillyn Flick, 3220 Miracle Lane, Flower Mound

Ms. Flick stated for the last 14 months Town Hall had been consistently trying to figure

out how to interfere in a simple legal business contract between a reputable driller and the 400 very informed families along Shiloh Road. Williams and the families had publicly stated they did not want the ordinance opened because both the pipeline and gas drilling ordinances allowed for Williams' proposal to go forward without variances. She asked why the Town insisted on interfering. She stated the current ordinances allowed for Williams to go forward with seismic testing and a centralized collection system. She stated the Town knew the Smith wells were going in. Ms. Flick stated it was irresponsible and prejudicial to continue to misrepresent the residents of the Shiloh Road area. She asked why the Town was discounting the Williams demonstration.

Matthew Clotier, 6504 Meadowcrest Lane, Flower Mound

Mr. Clotier stated the national economy was sluggish at best, the North Texas economy was slated to maintain a healthy pace of growth, and the Barnett Shale was one of the primary reasons. Many people, including the Town, had benefitted from gas drilling. He stated logic and rational thinking should prevail. He asked the Council to allow Williams to proceed with seismic testing.

Tony Silvestri, Williams Company

Mr. Silvestri stated Williams was concerned with 4,500 acres on the west side of Flower Mound. Williams wanted to be a good partner with the Town and staff, adding it was a privilege to operate in Flower Mound. Regarding the water gathering, Mr. Silvestri stated if Williams did not start construction on the facilities in January, they would not be in place when the gas was ready to be sold. He stated the gas lift line would help mitigate any compression on the pads. Ms. Silvestri stated over half of the 100 wells had seismic coverage, and Williams needed to start acquiring data in November. Williams had engineers pull together information about the affects of the seismic activity, and there was no indication of negative affects to roadways by seismic testing. He suggested to staff that this information be used to draft an agreement sent to the Town Attorney. He stated Williams was prepared to set aside escrow money to cover any damage to roadways. He requested that Williams receive the permits as soon as possible.

Laurie Long, 2708 Lake Flower, Flower Mound

Ms. Long left a speaker form thanking staff.

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone stated he had completed his term as the Transportation Commission Chairman, and he expressed appreciation to the Council and citizens for allowing him to serve in that position (also on Council and the Park Board). He stated he would resume his role of Citizen Stone. Mr. Stone reminded the Council that in 2006-2007 the Town had a Charter Review Commission and subsequent election in 2007. One of the items that was discussed but did not go on the ballot was the possible need to create an Ethics Commission. He stated nothing had been done since that time, and he remembered a commitment from some of the candidates to create an Ethics Commission. He stated he wanted to insure that people who wanted to be involved in the Town government were monitored by ethics issues. He stated he would like to see the Council get rid of the computers on the dais and demonstrate a true commitment to the Open Meetings Act. He asked that they talk about this at their visioning retreat. He stated he was willing to serve the Town on future ad hoc committees.

Mayor Calvin Tillmen, 6026 Tim Donald Road, Dish, Texas

Mayor Tillmen stated Williams did not do business in Dish, however several Flower Mound citizens asked him to come and speak. He stated the Barnett Shale did add to the economy. One of the things that was standing between the way companies want to do

something and doing it right, was the Town Council. He had seen the negative and positive side affects of drilling in Dish. He stated Dish has several wells, compressors, noise, property devaluations, and pipeline easements. He stated an air quality study was performed around a compressor site in Dish. Chemicals were detected that matched a large tank farm in Fort Worth. 16 chemicals were above TCEQ standards. He invited the Town Council to come to Dish and see what was there.

Ken Scheepers, 6505 Burning Tree Drive, Flower Mound

Mr. Scheepers was in favor of the pipeline collection system and the seismic testing. He stated he had spent hours researching seismic testing and could not find a single article about the testing causing damage to streets and homes.

Duane Lock, 2817 Creekview, Flower Mound

Mr. Lock stated he was on the gas committee for Wichita Creek and River Oaks. He stated gas drilling was a good thing because he spent about 15 years in the electric business. On a nice day, 50% of electricity comes from natural gas power plants. He stated that might climb to 70% in the next five years. Mr. Lock stated the United States spent at least \$1 billion on oil each day. He added that the country needed less reliance on foreign oil. He referred to global warming and stated the waste of coal was devastating. He stated Flower Mound had an opportunity to participate in the reduction of greenhouse gasses. He requested that the Council force staff to bring data and to hold them accountable.

Phil DelVecchio, 7003 Woodridge Drive, Flower Mound

Mr. DelVecchio thanked Deputy Mayor Pro Tem Dixon for answering questions at his home last week. He stated he had experience with tank farms, and there was very little damage that can be caused by seismic testing. He stated he had a copy of an agreement with the City of Burleson that answered many questions. He supported the efforts of Williams Company and stated they did things the right way. He offered his services (free of charge) to help evaluate decisions. He added that he was representing 32 property owners off of Shiloh Road.

Greg Santschi, 6905 Meadowcrest Lane, Flower Mound

Mr. Santschi stated **staff's** presentation did not give much information. He stated it had been over a year and the Town had not made a decision. He asked why it was taking so long to move forward. He stated staff had talked about how the Town was a leader in technology, and stated it would be a travesty to not put in the wastewater pipelines. Mr. Santschi stated the Council was supposed to protect the citizens. He encouraged them to use common sense and move forward. He added that the community would benefit from the economic development of their resources.

Mayor Smith commented that staff took direction from the Council and now the issues were being addressed openly and publicly.

Gary Daniels, 6407 Meadowcrest Lane, Flower Mound

Mr. Daniels supported the requests by Williams.

Lucille DelVecchio, 7003 Woodridge Drive, Flower Mound

Ms. DelVecchio stated she had received an email including an article from the Denton Record Chronicle. She called the author of the article who informed her that the information was her interpretation of information that she received from the Department of Health Services. Ms. DelVecchio stated she could not believe the Council would take this information into consideration. Ms. DelVecchio encouraged more negotiation between the Town and Williams.

Carmen Ault, 3514 Ridgecrest, Flower Mound

Ms. Ault was in support of the requests by Williams.

Kris Pourroy, 5309 Meadow Chase, Flower Mound

Ms. Pourroy stated she wanted to support the ordinance. She encouraged the Council to continue to work on strengthening the ordinance. She asked for the composition of the chemicals to frac the wells. She encouraged the Council to carefully research the pros and cons.

Joel Loeb, 3404 Raintree, Flower Mound

Mr. Loeb supported the drilling effort, seismic testing and the wastewater pipeline. He stated he did not feel any vibrations when seismic testing was done in his backyard. Mr. Loeb stated he had spoken at length with an oil and gas attorney and with Williams. He was disappointed that it had taken so long to get to this point. He added that Williams would do the drilling no matter what.

Warren Campbell, 6000 Wichita Trail, Flower Mound

Mr. Campbell stated he would like to see something done soon. He felt Williams was trying to do the right thing. He stated there was more vibration from a cement truck than the seismic testing trucks. He urged the Council to instruct the engineers to do what was right.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie stated the community had a responsibility to the nation to provide natural gas that was under the properties. She stated Town leadership (the Town Manager and Town Attorney) had been stonewalling this. She encouraged the Council to make some changes.

Mark Stewart, 3932 Ridgecrest Drive, Flower Mound

Mr. Stewart stated 32 out of 37 people spoke in favor of the seismic testing and the pipeline system. He encouraged the Council to look at Los Angeles and he stated the majority of the LA Basin went through vibratory testing. Trucks were directly on the streets owned by the cities. There was no observed or claimed damage to utilities or streets. He stated there was data regarding the seismic testing. Mr. Stewart stated there were many wild accusations and issues mentioned tonight.

Deputy Mayor Pro Tem Dixon asked staff if they were going to send out any notification on behalf of the Council to please give Council the opportunity to review it first.

K. 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, 11, 12, 13, 14, 15, and 16. 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 minutes from a special meeting of the Town Council held on September 16, 2009.**

RECOMMENDATION: Approve of minutes from a special meeting of the Town Council held on September 16, 2009.

- 2. Consider approval of minutes from a work session of the Town Council held on September 17, 2009.**

ECOMMENDATION: Approve minutes from a work session of the Town Council held on September 17, 2009.

3. Consider approval of minutes from a regular meeting of the Town Council held on September 21, 2009.

RECOMMENDATION: Approve minutes from a regular meeting of the Town Council held on September 21, 2009.

4. Consider approval of an ordinance amending Chapter 2, Article III, Division 2, entitled "Parks, Arts, and Library Services (PALS) Board," Section 2-112, entitled "Organization," of the Code of Ordinances, by reducing the number of regular members.

RECOMMENDATION: Approve Ordinance No. 39-09 amending Chapter 2, Article III, Division 2, entitled "Parks, Arts, and Library Services (PALS) Board," Section 2-112, entitled "Organization," of the Code of Ordinances, by reducing the number of regular members. The caption of the ordinance reads as follows:

ORDINANCE NO. 39-09

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 2, ARTICLE III, DIVISION 2, ENTITLED "PARKS, ARTS, AND LIBRARY SERVICES (PALS) BOARD," SECTION 2-112, ENTITLED "ORGANIZATION," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY REDUCING THE NUMBER OF REGULAR MEMBERS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

5. Consider approval of an ordinance repealing Chapter 2, Article III, Division 8, entitled "Transportation Commission," Section 2-226, Entitled "Organization," of the Code of Ordinances, and replacing Section 2-226 with a new Section 2-226, regarding two alternate members; and amending Section 2-227 (a) by adding language regarding alternate members.

RECOMMENDATION: Approve Ordinance No. 40-09 repealing Chapter 2, Article III, Division 8, entitled "Transportation Commission," Section 2-226, Entitled "Organization," of the Code of Ordinances, and replacing Section 2-226 with a new Section 2-226, regarding two alternate members; and amending Section 2-227 (a) by adding language regarding alternate members. The caption of the ordinance reads as follows:

ORDINANCE NO. 40-09

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, REPEALING CHAPTER 2, ARTICLE III, DIVISION 8, ENTITLED "TRANSPORTATION COMMISSION," SECTION 2-226, ENTITLED "ORGANIZATION," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, AND REPLACING SECTION 2-226 WITH A NEW SECTION 2-226, REGARDING TWO ALTERNATE MEMBERS; AND AMENDING SECTION 2-227 (a) BY ADDING LANGUAGE REGARDING ALTERNATE MEMBERS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

6. Consider approval of an ordinance adopting the 2009 tax rolls for the Town of Flower Mound.

RECOMMENDATION: Approve Ordinance No. 41-09 adopting the 2009 tax rolls for the Town of Flower Mound. The caption of the ordinance reads as follows:

ORDINANCE NO. 41-09

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING THE 2009 TAX ROLLS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

7. Consider approval of a resolution allowing the Denton County Sheriff's Department to offer Franklin Hills Block 2, Lots 1, 2 (Southeast Part of Each), and 3 at a public auction, which property was previously foreclosed upon by the taxing entities, including the Town of Flower Mound, for property taxes owed.

RECOMMENDATION: Approve Resolution No. 31-09 allowing the Denton County Sheriff's Department to offer Franklin Hills Block 2, Lots 1, 2 (Southeast Part of Each), and 3 at a public auction, which property was previously foreclosed upon by the taxing entities, including the Town of Flower Mound, for property taxes owed. The caption of the resolution reads as follows:

RESOLUTION NO. 31-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, REQUESTING AND DIRECTING THE DENTON COUNTY SHERIFF'S DEPARTMENT TO SELL THE PROPERTY KNOWN AS FRANKLIN HILLS BLOCK 2, LOTS 1, 2, (SOUTHEAST PART OF EACH), AND 3 AT A PUBLIC VENUE AS PROVIDED UNDER TEXAS TAX CODE §34.05(c).

8. Consider approval of an interlocal agreement between the City of Nacogdoches and the Town of Flower Mound, for the purchase of various goods and services, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an interlocal agreement between the City of Nacogdoches and the Town of Flower Mound, for the purchase of various goods and services, and authorize the Mayor to execute same on behalf of the Town.

9. Consider ratification of Mayor's letter to the Texas Attorney General certifying compliance with Chapter 395 of the Texas Local Government Code relative to impact fees.

RECOMMENDATION: Approve to ratify the Mayor's letter to the Texas Attorney General certifying compliance with Chapter 395 of the Texas Local Government Code relative to impact fees.

10. Consider approval of Change Order No. 3; final acceptance for the construction of the Lusk Lane 20-inch Water Line project; final payment to John Burns Construction Company of Texas, Inc., in the amount of \$54,172.98; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Change Order No. 3; final acceptance for the construction of

the Lusk Lane 20-inch Water Line project; final payment to John Burns Construction Company of Texas, Inc., in the amount of \$54,172.98; and authorize the Mayor to execute same on behalf of the Town.

11. **Consider approval of Addendum No. 1 to the contract with Halff Associates, Inc., to provide professional engineering services and professional real property services associated with Wichita Trail Phase II, from Simmons Road to Skillern Road in the amount of \$16,038.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Addendum No. 1 to the contract with Halff Associates, Inc., to provide professional engineering services and professional real property services associated with Wichita Trail Phase II, from Simmons Road to Skillern Road in the amount of \$16,038.00, and authorize the Mayor to execute same on behalf of the Town.

12. **Consider approval of a Professional Services Agreement with Dunaway Associates, L.P., to provide landscape architectural, civil engineering, architectural, and surveying services in association with the Wilson-Carmel Park Phase I project, for a not-to-exceed amount of \$298,500.00, and authorization for the Mayor to execute same on behalf of the Town.**

This item was removed from the Consent Agenda by Mayor Pro Tem Levenick.

13. **Consider approval of Change Order No. 1 for the construction of the Wastewater Treatment Plant Rehabilitation Phase I project, amending the contract with Gracon Construction, Inc., for an increase in the amount of \$21,990.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 1 for the construction of the Wastewater Treatment Plant Rehabilitation Phase I project, amending the contract with Gracon Construction, Inc., for an increase in the amount of \$21,990.00, and authorize the Mayor to execute same on behalf of the Town.

14. **Consider approval of a Professional Services Contract with Promoter Line, Inc., to provide professional event production and planning services for the 2010 Wild About Flower Mound Festival, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Professional Services Contract with Promoter Line, Inc., to provide professional event production and planning services for the 2010 Wild About Flower Mound Festival, and authorize the Mayor to execute same on behalf of the Town.

15. **Consider approval of an ordinance to amend the following section of the Flower Mound Code, "Sec.32-3. Engineering Design Criteria and Construction Standards - Amendments" to amend Paragraph D of Part B, Section IV of the Town of Flower Mound Engineering Design Criteria and Construction Standards to create a new Subparagraph 2 entitled "Flood Damage Prevention Standards" and adopt certain requirements intended to reduce flood losses consistent with the requirements of the National Flood Insurance Program.**

RECOMMENDATION: Approve Ordinance No. 42-09 to amend the following section of the Flower Mound Code, "Sec.32-3. Engineering Design Criteria and Construction Standards -

Amendments” to amend Paragraph D of Part B, Section IV of the Town of Flower Mound Engineering Design Criteria and Construction Standards to create a new Subparagraph 2 entitled “Flood Damage Prevention Standards” and adopt certain requirements intended to reduce flood losses consistent with the requirements of the National Flood Insurance Program. The caption of the ordinance reads as follows:

ORDINANCE NO. 42-09

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 A, CHAPTER 32 OF THE CODE OF ORDINANCES, ENTITLED “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS,” THROUGH THE AMENDMENT OF SECTION 32-3, ENTITLED “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS--AMENDMENTS,” BY AMENDING PART B ENTITLED “TECHNICAL STANDARDS” THROUGH THE AMENDMENT OF SECTION IV “STORM WATER SYSTEM IMPROVEMENTS” BY AMENDING EXISTING SUBSECTION D “OTHER CRITERIA” BY INSERTING A NEW PARAGRAPH 2 TO BE ENTITLED “FLOOD DAMAGE PREVENTION STANDARDS” REGARDING THE ADOPTION OF CERTAIN REQUIREMENTS INTENDED TO REDUCE FLOOD LOSSES CONSISTENT WITH THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

16. Consider approval of Amendment No. 1 to a Tower/Ground Lease Agreement dated April 11, 2006, between the Town of Flower Mound and Dallas MTA, L.P. d/b/a Verizon Wireless, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Amendment No. 1 to a Tower/Ground Lease Agreement dated April 11, 2006, between the Town of Flower Mound and Dallas MTA, L.P. d/b/a Verizon Wireless, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

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

L. REGULAR ITEMS

12. Consider approval of a Professional Services Agreement with Dunaway Associates, L.P., to provide landscape architectural, civil engineering, architectural, and surveying services in association with the Wilson-Carmel Park Phase I project, for a not-to-exceed amount of \$298,500.00, and authorization for the Mayor to execute same on behalf of the Town. (Mayor Pro Tem Levenick requested that this item be removed from the Consent Agenda.)

Mayor Pro Tem Levenick asked that a free-standing senior center be included as an option.

Mayor Pro Tem Levenick moved to approve a Professional Services Agreement with Dunaway Associates, L.P., to provide landscape architectural, civil engineering, architectural,

and surveying services in association with the Wilson-Carmel Park Phase I project, for a not-to-exceed amount of \$298,500.00, and authorize the Mayor to execute same on behalf of the Town
. Councilmember Hayden seconded the motion.

VOTE ON THE MOTION

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

18.

Public Hearing

Public Hearing to consider approval of an ordinance amending Part B of the Engineering Design Criteria and Construction Standards, adopted and amended through Section 32-3 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Engineering Design Criteria and Construction Standards--Amendments," by and through the amendment of Section IV, entitled "Storm Water System Improvements," by amending Subsection A, entitled "Runoff Methods," by inserting a new Paragraph 1 to be entitled "2009 Town Wide Hydrologic Study" regarding the adoption of said hydrologic study and certain requirements associated with storm water runoff calculations as well as the re-numbering of existing Paragraph Numbers 1 and 2 as Paragraph Numbers 2 and 3. (The Planning and Zoning Commission recommended approval by a vote of 5 to 0 during the September 14, 2009, meeting.)

Staff Presentation

Edith Marvin, Town Engineer, gave background information on the study. She stated the Council had previously seen the information at a work session. In December 2007 a Town ordinance was adopted that modified the definition of the Town's floodplain. In January 2008, the Town contracted with Nathan Maier to produce a study that showed that the upstream limits of the floodplain within the entire Town as well as the flows that were calculated downstream from those points. She stated this would help clarify the point at which the floodplain begins. Additionally it would streamline the development process.

Bill Wallace, Nathan Maier, gave the following presentation.

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

Questions from the Governing Body and Answers None

Public Comments None

Close Public Hearing

Council Deliberation

Councilmember Wallace moved to approve Ordinance No. 43-09 amending Part B of the Engineering Design Criteria and Construction Standards, adopted and amended through Section 32-3 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Engineering Design Criteria and Construction Standards--Amendments," by and through the amendment of Section IV, entitled "Storm Water System Improvements," by amending Subsection A, entitled "Runoff Methods," by inserting a new Paragraph 1 to be entitled "2009

Town Wide Hydrologic Study regarding the adoption of said hydrologic study and certain requirements associated with storm water runoff calculations as well as the re-numbering of existing Paragraph Numbers 1 and 2 as Paragraph Numbers 2 and 3. The motion was seconded by Deputy Mayor Pro Tem Dixon. The caption of the ordinance reads as follows:

ORDINANCE NO. 43-09

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 A, CHAPTER 32 OF THE CODE OF ORDINANCES, ENTITLED "ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS," THROUGH THE AMENDMENT OF SECTION 32-3, ENTITLED "ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS--AMENDMENTS," BY AMENDING PART B ENTITLED "TECHNICAL STANDARDS" THROUGH THE AMENDMENT OF SECTION IV "STORM WATER SYSTEM IMPROVEMENTS" BY AMENDING EXISTING SUBSECTION A "RUNOFF METHODS" BY INSERTING A NEW PARAGRAPH 1 TO BE ENTITLED "2009 TOWN WIDE HYDROLOGIC STUDY" REGARDING THE ADOPTION OF SAID HYDROLOGIC STUDY AND CERTAIN REQUIREMENTS ASSOCIATED WITH STORM WATER RUNOFF CALCULATIONS AS WELL AS THE RE-NUMBERING OF EXISTING PARAGRAPH NUMBERS 1 AND 2 AS PARAGRAPH NUMBERS 2 AND 3, RESPECTIVELY; 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: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

17. **SP 11-09 -Flower Mound High School Locker Room Addition** **Public Hearing**
Public Hearing to consider a request for a Site Plan (SP 11-09 -Flower Mound High School Locker Room Addition) to construct an athletic building, with an exception to Section 90-423, Underground utilities, of the Code of Ordinances. The property is located at 3411 Peters Colony. (The Planning and Zoning Commission recommended approval, excluding the exception to the underground utilities by a vote of 5 to 0 at its September 14, 2009, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the proposed field house would be located on the south side of the football stadium. He showed the location of the utility lines in the vicinity of the school, along with the costs associated with burying the lines.

Overhead Utility Costs

	P&Z Costs Est.	TC Packet Costs Est.	Current Costs Est.	Provider Cost Est.
Oncor	0	526,500	350,500	208,700
Coserv	50,000	407,000	407,000	47,556
3 rd Line	0	37,500	37,500	?
Sub Total	50,000	971,000	795,000	293,756
Engineering Costs	0	124,500	100,500	
Contingency	0	109,550	89,550	
Total	50,000	1,205,050	985,050	293,756

Mr. Powell noted that the school district was dealing with three different providers (Oncor, CoServ and one other - probably a cable line). He noted there was some confusion at the Planning & Zoning Commission meeting regarding costs.

Applicant's Presentation

Michael Perry, Executive Director of Construction, Lewisville Independent School District (LISD)

Mr. Perry stated the \$50,000 number was not the cost estimate, adding that staff was notified on September 11 that it was not an accurate number. He stated the district had been struggling with the utility companies to get accurate numbers. Mr. Perry noted that the district hired a second engineer with history and experience in dealing with utility companies.

Robert Holman, Glenn Engineering

Mr. Holman stated he had looked at the lines and they were double-circuited (two circuits of electricity - high and low). He had contacted Oncor and CoServ. CoServ wanted a pull box and conduit system (a six inch conduit with a 4"x 5" box in the ground). Oncor wanted a duct bank system (a higher grade of a system - two six inch conduits with spacers and flowable fill). He stated CoServ was slower in responding than Oncor. They had indicated that they wanted their lines to be in a pull box and conduit with flowable fill. As of today, Mr. Holman stated the cost estimates had been adjusted with some additional information received from CoServ.

Mr. Holman stated there were two aerial lines that were CoServ's, serving the residents

to the north of the school. The Oncor aerial line that crossed the street only went $\frac{3}{4}$ of the way down the site in front of the student parking and then turned and went north and then back to the west. Mr. Holman stated putting the lines underground would create a hardship on the LISD, noting that CoServ had a duct bank system in place that served the school. There were two circuits on the poles above the duct bank. If they were placed underground, the utilities would have to be stacked.

Deputy Mayor Pro Tem Dixon asked if there happened to be additional space in the duct banks, would the numbers change.

Mr. Holman responded yes.

Deputy Mayor Pro Tem Dixon asked if the duct bank would be the preferable system.

Mr. Holman stated no because they would not be able to expand the system in the future. Mr. Holman stated Oncor was agreeable to having a conduit pull box system or a duct bank system. Mr. Holman stated the district would give an easement up against the existing easement for CoServ and then back out and give Oncor an easement. He stated each one of these provided that the utilities would be getting wider and farther apart as they crossed **Peter's** Colony. On the north side of the road, an easement would be required from the private property owners. He stated the existing right-of-way was already full of existing utilities. Mr. Holman stated the \$47,567 included \$3,400 for boring under the streets. He stated the Oncor prices had not changed. He had included \$37,000 for the engineering costs, inspection, testing, and surveying.

Mayor Pro Tem Levenick asked if all of the costs were included when the LISD budgeted for the expansion.

Mr. Holman responded they would have been included for the locker room, but not to place the lines underground.

Mayor Pro Tem Levenick asked when the district did the site plan for this project.

Mr. Perry stated it was done in the past six months.

Mayor Pro Tem Levenick asked why the district did not budget to bury the lines (costs) when the LISD knew about the ordinance.

Mr. Perry noted that a variance was granted for the Marcus High School stadium. He noted they would have to cross **Peter's** Colony with the lines to serve the residences across the street. Whatever the number, it was a large burden on the LISD.

Mayor Pro Tem Levenick stated the information provided by LISD was very hard to read and was very technical. She noted that one page showed the bottom line was \$547,000 and one said \$985,000.

Mr. Perry stated \$547,000 was the correct number, as they had received CoServ's updated information at 4 p.m. this afternoon.

Councilmember Hayden asked for the total cost of the project, and Mr. Perry responded it was approximately \$4 million.

Councilmember Wallace recalled the Marcus High School exception. He asked for a history of where other exceptions were granted.

Mr. Perry stated he was confident that exceptions were given in the past.

Deputy Mayor Pro Tem Dixon noted that the estimates went from \$1.2 million to \$985,000 to \$547,000.

Mr. Perry stated they started out at \$50,000, however LISD made a mistake.

Mayor Pro Tem Dixon stated he had previously asked a question about what was underground now, and Mr. Perry **didn't** know. No one knew who had the third line. He did not have much confidence that the last number was correct. He noted that tax dollars went to the Town and the LISD. He was sensitive to not wanting to put a burden on LISD, however the LISD knew what the ordinances were. He was in favor of postponing a decision on this to allow time for the LISD to get the additional information. He wanted to have truly accurate numbers so both entities could be good stewards of the tax dollars.

Town Manager Harlan Jefferson commented that Marcus was the only school that had received a waiver on burying the lines.

Mr. Holman stated it had been brutal dealing with CoServ's process, and they had just today at 4 p.m. received good numbers from CoServ.

Mayor Smith commented that maybe the project had come before the Council and P&Z way too early. She stated the Town always strove to have good relations with LISD. She was disappointed that the presentation at the P&Z meeting showed a cost of \$50,000, and their recommendation was based on that information. She noted the Town of Flower Mound was "slammed" on the **school's** website. She had asked for a retraction to clear the air and LISD refused. She stated the Town Council was struggling with the information.

Mr. Perry stated he was confident the numbers were in the \$500,000 range, and he added that staff was notified that the number was not \$50,000. Mr. Perry gave a presentation about the proposed building, adding that it would house the coaching staff and meeting\room facilities. The existing space would be used for other sports.

Mayor Pro Tem Levenick asked why the boys got the new facility and the girls did not.

Mr. Perry stated they would be expanding the existing facility and make it as new as possible.

Councilmember Hayden asked what would happen if the exception was not granted.

Mr. Perry stated the district would not do the project.

Public Comments

Carol Kyer, 2616 Crepe Myrtle, FM, LISD Board President

Ms. Kyer stated in 2008 the voters approved a \$697,000,000 bond package. From those funds the district would get three 9th grade campuses, a 9-10 grade center, a technology center, five field houses, Marcus Stadium, and land purchases. Currently all five field houses were being planned and **FMHS's** was budgeted at \$4 million. She stated that burying the lines had no

educational purpose for the children. The extra money spent here would take away from another facility. She stated FMHS might be the only one that does not have a beautiful field house.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie asked how the Council could waive this request for Marcus High School and not waive it for FMHS. She encouraged the Council to waive the requirement for burying the lines.

David Johnson, 3617 San Paula, Flower Mound

Mr. Johnson stated he was a member of the Planning & Zoning Commission, and he supported the LISD board. He stated it seemed there was too much confusion about the cost of burying the lines. He objected to misinformation that was being sent in emails.

Coach Cody Vandeford, 1601 Yaggi, Flower Mound, athletic coordinator at FMHS

Coach Vandeford spoke on behalf of the students at FMHS. He stated there were 179 girls in two locker rooms (300 square feet each). There would be a great deal more space with the expansion.

Mayor Smith asked if there was a 9th grade campus for FMHS, would the students be coming back on campus to use this building or have their own facility.

Mr. Perry stated the facility would have football at the main campus and sports facilities for boys and girls at the 9th grade center.

Mayor Smith noted that the location for the 9th grade campus that would feed into FMHS has not been decided yet.

Staff Comments

Mr. Powell stated that prior to the P&Z meeting, staff was struggling with not having the information on the costs to bury lines. On September 11, staff received an email from G&A Consultants listing the costs to be \$50,000. He noted that prior to the meeting, the LISD was concerned with the number, and there was much confusion about what was the true number. He noted that staff relied on the applicant to provide information about costs.

Mr. Perry stated he had spoken with staff on September 11 concerning the numbers.

Mayor Smith suggested bringing school site requests through the Executive Development Team (EDT) meetings in the future.

Close Public Hearing

Council Deliberation

Councilmember Hayden stated he could not support the request for not placing the lines underground. The request for Marcus High School was under completely different circumstances.

Deputy Mayor Pro Tem Dixon stated there were reasons why he was in favor of granting

the MHS waiver. The lines at MHS were in the middle of the property and behind the new stadium. There was not the same visual impact that FMHS had. Deputy Mayor Pro Tem Dixon stated burying the lines was not educational, and several citizens had asked him about how athletics was educational. He knew there was value to the students and the athletic program. He was torn with the Town Council continuing to grant exceptions to Town ordinances. He noted there was a probability that the numbers would change again with the utilities that were buried currently and no one still knew who had the third line.

Councilmember Filidoro agreed with Deputy Mayor Pro Tem Dixon that there was too much confusion and many outstanding issues. He stated it sounded like the school board thought the ordinance was ridiculous. He stated the residents wanted credibility from the Town Council and the Council wanted it from LISD. He stated he could not vote for or against this right now.

Mayor Smith asked if the Council could approve the site plan and defer the variance to a specific date.

Town Attorney Terry Welch responded yes.

Mayor Smith stated if the Council could trust the \$550,000 number, perhaps the variance could be approved. She stated if something in the close proximity might develop, perhaps the lines could be buried.

Councilmember Wallace agreed with Deputy Mayor Pro Tem Dixon about the lines at MHS. He noted that the Council had a work session about overhead utilities recently, and the Town Council's direction to staff was to enforce the ordinance. He asked how many times would the Town Council allow exceptions, and if they were going to approve them, why even have an ordinance. He was frustrated that the LISD knew the ordinances and that putting the lines underground was required. He was in favor of approving the site plan and denying the exception.

Mayor Pro Tem Levenick agreed with Councilmember Wallace.

Deputy Mayor Pro Tem Dixon proposed approving the site plan and deferring the request for the waiver to a date certain so that LISD could provide hard numbers. He stated he wanted to do the right thing for the citizens of Flower Mound.

Councilmember Filidoro stated it sounded like it was an ordinance issue, not a dollar issue.

Mayor Pro Tem Levenick stated she felt this way when MHS came in with their request.

Councilmember Hayden felt Councilmember Wallace summed it up well.

Mayor Smith asked Mr. Jefferson if a dollar figure had been mentioned during the presentation at the recent work session for burying all lines in the Town.

Mr. Jefferson stated staff did not have a good number. At the work session he had noted that the ordinance had been quite effective for staff. The challenge was for lines along thoroughfares, adding it would be a substantial amount to put all the utilities under ground.

Councilmember Hayden asked if the Council could allow LISD to pull the project and

come back with burying the lines being included in their budget.

Mr. Perry asked what number would be OK to grant the variance. He felt the \$500,000 number was good. He asked the Council to not drag this on if it was not a money issue. He stated he did not see the number changing but would be glad to look at it. He did not mind if the Council decided to postpone a decision for two weeks.

LISD President Carol Kyer stated it was a money issue for LISD and an ordinance issue for the Town. She noted that LISD was going to be \$18 million in the negative, as they would not be receiving as much money from the state. She felt it was not fiscally responsible to spend \$500,000 to bury lines, and this was an unexpected expense that LISD could not afford.

Mr. Holman stated the actual lines that served FMHS were underground. Hardships were being placed on the high school.

Deputy Mayor Pro Tem Dixon stated he would really like to see the lines be put underground. It came down to how does it affect the children. He stated he would support the waiver because it was the right thing to do. He noted that the P&Z did the right thing based on the information they were given.

Deputy Mayor Pro Tem Dixon moved to approve Site Plan SP 11-09 - Flower Mound High School Locker Room - to construct an athletic building, and grant an exception to Section 90-423, Underground utilities, of the Code of Ordinances. The motion was seconded by Councilmember Filidoro.

VOTE ON THE MOTION

AYES: Dixon
NAYS: Levenick, Wallace, Hayden
PRESENT: Filidoro

Mayor Pro Tem Levenick moved to approve Site Plan SP 11-09 - Flower Mound High School Locker Room - to construct an athletic building, and deny an exception to Section 90-423, Underground utilities, of the Code of Ordinances. The motion was seconded by Councilmember Hayden.

VOTE ON THE MOTION

AYES: Filidoro, Levenick, Wallace, Hayden
NAYS: Dixon

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Future meetings: October 15 work session, October 19 regular meeting, November 2 regular meeting

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:50 p.m. on October 5, 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 11:55 p.m. on October 5, 2009 to take action on the items as follows:

- a. **Discuss and consider economic development incentives.**

No action taken.

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

No action taken.

- b. **Discuss and consider appointments to the Board of Adjustment and the Parks, Arts and Library Services Board.**

Deputy Mayor Pro Tem Dixon moved to appoint Elizabeth Lumpkins from Alternate Place 12 to Alternate Place 8, term to expire September 30, 2010. Councilmember Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

- c. **Discuss Red Oak Sabine LP, Red Oak Gas LP, Red Oak Gas Operating Company LP, Red Oak Gas II LP vs. the Town of Flower Mound, and the Flower Mound Oil and Gas Board of Appeals, Cause No. 2008-10189-16, pending in the 16th Judicial District Court of Denton County, Texas.**

No action taken.

- d. **Discuss The Inclusive Communities Project, Inc. v. Town of Flower Mound, Texas, Civil Action No. 4:08-CV-0433, pending in the United States District Court for the Eastern District of Texas, Sherman Division.**

No action taken.

- e. **Discuss LIT HW 1, L.P., v. The Town of Flower Mound, et al., Cause No. 2009-20305-158, pending in the 158th Judicial District Court of Denton County, Texas.**

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 11:57 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY