

THE FLOWER MOUND TOWN COUNCIL WORK SESSION HELD ON THE 15TH 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 special meeting with the following members present:

Jody Smith	Mayor
Jean Levenick	Mayor Pro Tem (left 8:43 p.m.)
Steve Dixon	Deputy Mayor Pro Tem
Al Filidoro	Councilmember Place 2
Mike Wallace	Councilmember Place 3
Tom Hayden	Councilmember Place 5 (arrived 6:19 p.m.)

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
Doug Powell	Executive Director of Development Services

A. CALL WORK SESSION TO ORDER

Mayor Smith called the work session to order at 6:02 p.m.

B. INVOCATION

Chaplain Mike Liles gave the Invocation.

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

Mayor Smith led the pledges.

D. WORK SESSION ITEMS

1. Discuss and review perimeter fence regulations.

Executive Director of Development Services Doug Powell gave the following presentation.

Mr. Powell commented that the composite product probably had a longer life than wood.

Mayor Pro Tem Levenick clarified that masonry walls in neighborhoods with **homeowners' associations (HOAs) would continue to be** maintained by the HOAs.

Mayor Smith asked about the fence product discounts at **Lowe's** and Home Depot if a resident had a permit from the Town for a new fence portion.

Mr. Powell stated the Home Depot manager indicated that he was going to ask the corporate office to print out coupons. The store would also have the Flower Mound standards in its computer system.

Mayor Pro Tem Levenick asked for the process when a contractor went to purchase the materials from Home Depot or Lowe's.

Mr. Powell stated the contractors would receive a list of the Town standards, and the discounts would be built into the discounted costs. He felt that both a homeowner and the contractor would be entitled to the discounts.

Mayor Pro Tem Levenick asked staff to make sure the contractors were using the discounts for the residents. She noted this would help to ensure that everyone gets a permit.

Councilmember Wallace stated that even if cedar was the minimum standard, the Town should provide information about composite. He asked for the anticipated useful life of cedar and composite.

Mr. Powell stated there was a 25 year **manufacturer's** warranty on the composite product (**stocked at Lowe's**), noting it was a relatively new product.

Councilmember Wallace stated the Town should be environmentally sensitive and allow residents to have a fence with a longer life.

Mr. Powell commented there was a great deal of recycled content in the composite fence.

Mayor Smith asked if the Town would have to have a standard for the composite, like masonry.

Mr. Powell responded yes, that staff would create a minimum standard for composite (either a definition or specifications).

Councilmember Filidoro complimented staff on the findings. He suggested looking at the pricing annually. He stated he would like to see a plank of composite and cedar, adding that the Town needed to upgrade the standards based on the existing fences.

Councilmember Wallace commented that the cost was more for composite, but it was a much better product.

Town Manager Harlan Jefferson stated one of the merchants dropped off a panel of composite at The Atrium. He noted that based on the **Council's** comments, staff would bring back the appropriate ordinance for consideration.

Mayor Smith opened Items 2 and 3.

2. **Discuss the regulation of tank farms and centralized facilities associated with gas well produced water pipeline systems.**
3. **Discuss possible revisions to the Oil and Natural Gas Well Drilling and Operations Ordinance and the Oil and Gas Pipeline Standards Ordinance.**

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

Councilmember Hayden asked what the fluid that came out of the ground would do to the ground surface.

Mr. Woods stated there have been instances where truck spills did kill vegetation due to chemicals and high salt content. If an underground leak was undetected, it would contaminate the soil.

Councilmember Wallace asked about a closed loop system.

Mr. Woods stated the Town's ordinance required a closed loop system for gas well operations. There would be no open pits for the storage of any wastewater from the drill site allowed. The water would be stored in a tank then hauled off.

Councilmember Filidoro stated the Town did not really know what was in the water and he understood the contents did not have to be disclosed. He stated the Town should ask the companies about the contents.

Mr. Woods stated the contents could only be disclosed if the company chose to do so.

Mayor Smith asked if a standard would have to be established once the Town knew what was in the water. Regarding water well drilling, she asked if the additives were similar in the gas drilling process.

Mr. Woods stated the additives were different for gas drilling. The additives for formation fracturing include things such as acids, biocides, water, and sand, completely different than drilling water wells.

Councilmember Hayden stated it was important to know what was in the liquid, as this could affect setbacks from schools, parks, etc. An expert was needed to determine the toxicity.

Councilmember Filidoro asked if each company had a different set of additives.

Mr. Woods responded that was an unknown as there were different formulations depending on where they had to drill.

Mayor Pro Tem Levenick asked what agency mandates that companies **don't** have to disclose the contents.

Mr. Woods stated it was a federal statute and the oil and gas industry had an exemption from disclosure.

Councilmember Wallace noted that even with the centralized collection system, the amount of produced water was not reduced. The same number of trucks would have to go to the central location.

Councilmember Filidoro stated he had read that there would be 46,000 extra truck trips if a central system was not allowed.

Mr. Woods stated the process would divert truck traffic from each location to a central location.

Deputy Mayor Pro Tem Dixon asked if the Railroad Commission determined a set

number of tanks per well.

Mr. Woods stated he was not aware of a Railroad Commission requirement for two tanks per well but he would research that information.

Deputy Mayor Pro Tem Dixon understood that the Town would get economies of scale at one location. If there were fewer tanks, there should be economies of scale. Trucks would not have to go from pad site to pad site. Tanks might not be 100% full, and those trucks would be on the roads trucking the water away. He asked staff to get examples of that type of information. He stated he would like to see a photo of a pad site with all the equipment versus a pad site with a centralized system. He also noted that Flower Mound would require a great deal of screening from the tanks.

Councilmember Hayden understood there were three lines that would go underground - the water line to a central system, a line taking the gas to the main line, and a return line. He asked if the ordinance had to be amended for all three items.

Mr. Woods stated the gas line and the gas lift line (natural gas) provisions were in the pipeline regulations.

Councilmember Hayden understood there was something in the ordinances that was keeping the exploration company from putting in a line connecting to the Atmos line. He asked if that was accurate.

Mr. Woods stated it was not as far as a natural gas line going to the Atmos line; however it would be correct for the gas lift line and the associated centralized collection system.

Mayor Smith stated many residents were concerned with where drilling had occurred. She stated the furthest east well was at Flower Mound Road, south of 1171, near Rockpointe Church. She stated many people were **using the word "urban."**

Mr. Woods stated the location of the well she described was correct.

Councilmember Hayden noted that land had been leased all the way to Lewisville.

Mayor Pro Tem Levenick stated she was not in favor of opening the ordinance to talk about setbacks and noise - only centralized facilities, pad site requirements for storage tanks and applicable waste disposal requirements.

Mr. Woods stated to address the proposal for produced water in centralized facilities and a gas lift, yes, the ordinance would have to be amended.

Councilmember Hayden asked if the Town was amending or reviewing the ordinance.

Mayor Smith responded that it was only being reviewed at this time.

Councilmember Filidoro stated many efforts were going on. In 2007, the Town Council said there should be annual review of the ordinance. There was no review in 2008 due to litigation. He stated the Town had an obligation to the community to have the annual review, complete with a public hearing. He assured the public that there had been no delay tactics.

Mayor Smith commented that after the stakeholders' meeting, the review was

established for the comfort level of the constituents and for staff.

Councilmember Wallace felt these discussions should be rolled up into the annual review. He did not hear objections to this at the October 5, 2009 meeting. He stated the question was "how is the ordinance performing?" He asked for any ideas as to what could be made better.

Mr. Woods commented that in June 2008, an internal review was done of the ordinance.

Pipeline Regulations

Deputy Mayor Pro Tem Dixon stated he was looking for some monitoring standards of the pipeline regulations. The Town would want to know about a leak immediately. He also felt that automatic shutoffs were needed.

Mayor Smith asked if anyone knew what harmful things might be in the pipelines as compared to sewer lines.

Councilmember Hayden asked if there was any need to monitor air quality in general.

Mr. Woods stated air quality could be monitored, although that service would have to be contracted out. Independent and TCEQ studies were on-going.

Mayor Smith noted she had learned that the large compressors had more regulations than the smaller ones.

Councilmember Filidoro asked if there was an air quality baseline, referring to a recent Ch. 8 new story.

Mr. Woods responded that Flower Mound did not have a quality baseline. He stated that NCTCOG or TCEQ might have some data and that he would research that and provide a report to the Council.

Councilmember Dixon asked that staff do research on standards of air quality on the cleaning of the tanks.

Land Use and Zoning Issues

Councilmember Hayden asked if the Council amended the ordinance, would it be applicable to the Town as a whole. He asked if eminent domain could be used in other areas.

Town Attorney Terry Welch stated that eminent domain gave a pipeline company the authority to condemn property for the lines. He anticipated not looking at a use in every zoning district.

Councilmember Hayden asked if a company wanted a line to go through **someone's** property and they had not given permission, could eminent domain be used.

Mr. Welch responded yes.

Councilmember Hayden asked if there was **a way to protect people's property.**

Mr. Welch responded no, as eminent domain was used for this purpose. He noted that the fair market value of the property had to be determined. Pipeline companies did have the power of eminent domain under state law.

Public Input Options

Mayor Pro Tem Levenick asked why it would take longer to review the ordinance with a new group.

Mr. Woods stated that an existing board or commission might already be familiar with the ordinances and gas wells.

Councilmember Hayden stated the exploration company was under a time schedule, and the Town owed it to everyone to do this as quickly as possible.

Mayor Smith noted that other cities had fashioned their ordinances after Flower **Mound's** ordinance, and that ordinance had withstood many tests, including legislation. She stated the Council needed to hear from the public.

Councilmember Filidoro suggested having town hall meetings so that there could be interaction among the Council, staff, and the audience. He asked the Town Manager to give a report on how to do town hall meetings, and how to move the process along with open dialogue. He suggested a series of meetings in various parts of the community or at Town Hall, adding that it could also be done at a regular meeting.

Town Manager Harlan Jefferson stated the closest thing to a town hall meeting had been the Mayors Resident Advisory Group meetings. Staff made presentations and responded to questions. He noted that other communities do have them, particularly with single member districts. He stated he would research what is done in other cities and provide that information to the Council.

Councilmember Wallace stated a good recent example of a town hall type meeting was the Morriss Road project.

Mayor Pro Tem Levenick was in favor of having these meetings during regular council meetings and move the process along. She stated town hall meetings might extend the process.

Councilmember Filidoro stated he was not looking to extend the process - just provide for good dialogue.

Mayor Smith felt it would be better if the meetings were televised and documented, with all the members of Council present. She asked that the gas drilling issues be put on agendas as public hearings so that there could be public input and discussion.

Deputy Mayor Pro Tem Dixon suggested putting these items on the agendas as public hearings each meeting, and staff could bring updated information each time.

Mr. Jefferson commented that the November 2 meeting would be the first time to have this on an agenda.

Deputy Mayor Pro Tem Dixon asked for a Council Communication with the results of **staff's research**, by next week.

Mayor Smith stated the Town had heard many comments and she asked if Flower Mound had a non-biased expert on these issues to provide data (non-gas drilling company).

Councilmember Hayden agreed with Mayor Smith, and suggested that staff find an independent analysis from people who had many years in the field, and also with seismic testing.

Review Timeline

Councilmember Wallace suggested the following proposed schedule.

WASTEWATER TIMELINE

Nov. 2nd: First Council Public Hearing on any proposed changes to ordinances

- Presentation from Staff reviewing performance of ordinances and any proposed text changes
- Presentation should include Pros and Cons of piping wastewater to a central collection facility
- Questions and comments from the public (two-way dialogue with Staff and Council)
- Council deliberation but no action required by Council

Nov. 19th: Joint Work Session with Oil and Gas Board (OGBOA) on proposed changes to ordinances

- Presentation from Staff summarizing proposed changes to ordinances from first Public Hearing
- Council decides which changes Staff should bring forward in a second Public Hearing

Dec. 7th: Second Council Public Hearing to consider changes to ordinances

- Presentation from Staff on proposed text changes to ordinances from Work Session
- Questions and comments from the Public
- Council deliberation and action on proposed ordinance changes
- **If ordinance changes include piping wastewater to a centralized collection facility, proceed to next step. Otherwise, no further action required**

Dec. 17th: (If needed) Joint Work Session with P&Z on changes to Master Plan and Zoning

- Presentation from Staff on proposed text changes to Master Plan and Zoning
- Council decides which changes Staff should bring forward in a P&Z Public Hearing

Dec. 28th/Jan. 11th: (If needed) P&Z Public Hearing to recommend changes to Master Plan and Zoning

- Presentation from Staff on proposed changes to Master Plan and Zoning from Work Session
- Questions and comments from the Public
- P&Z recommends Master Plan and Zoning changes to Town Council

Jan. 4th/* Jan. 19th: (If needed) Council Public Hearing to consider changes to Master Plan and Zoning

- Presentation from Staff on proposed changes to Master Plan and Zoning from P&Z

- Questions and comments from the Public
- Council deliberation and action on proposed Master Plan and Zoning changes
- No further action required by Town Council
- Gas Operators may then submit a Master Plan Amendment and Zoning Change for their subject property

* Assumes January 18th Town Council Meeting is rescheduled to January 19th due to MLK Holiday.

SEISMIC TIMELINE

Nov. 2nd: First Council Public Hearing on Town-wide policy for seismic testing in the right-of-way

- Presentation from Staff reviewing Pros and Cons of allowing seismic testing
- Questions and comments from the Public (two-way dialogue with Staff and Council)
- Council deliberation but no action required by Council

Nov. 19th: Joint Work Session with Oil and Gas Board (OGBOA) on proposed Town-wide policy for seismic testing in the right-of-way

- Presentation from Staff summarizing options discussed in first Public Hearing
- Council decides policy to bring forward in a second Public Hearing

Dec. 7th: Second Council Public Hearing on Town-wide policy for seismic testing in the right-of-way

- Presentation from Staff on proposed Town-wide policy
- Questions and comments from the Public
- Council deliberation and action on proposed Town-wide policy
- No further action required by Town Council
- **If seismic testing is allowed, then Gas Operators may follow process defined in new policy**

Councilmember Hayden asked if an operator made a request after January 18, how long would it be to initiate activities that a company wanted to do.

Mr. Jefferson stated it might take 60-90 days to go through the process.

Councilmember Hayden stated at least 200 residents wanted to move forward. Some leases were expiring and that put the operator in a bind. He was in favor of making the process flow more expeditiously.

Mr. Jefferson stated once the Town Council provides direction on the amendments to the ordinance, the operator could put the pipelines in the ground - they just could not make them operational.

Councilmember Filidoro was in favor of expediting the process.

Mr. Jefferson stated staff just needed to verify and have safeguards and standards in place.

Mayor Smith stated she was glad to finally discuss these issues in a public forum. She noted that the January 18 meeting would be cancelled and a special meeting was scheduled for January 21. She stated Councilmember Wallace's timeline sounded doable, and she asked that it be incorporated into the presentation at the November 2 meeting. The Council could revisit the schedule at that meeting.

Setback Distance Review

Mayor Smith asked if the contents of the sludge determined a setback issue.

Mr. Woods stated there were no setbacks for pipelines, only tanks.

Councilmember Hayden asked if setbacks could be established for pipelines.

Mayor Smith asked if it might be more of a right-of-way width.

Mr. Welch stated most rights-of-way were 5 to 15 feet. There was not a 1000 foot right-of-way.

Councilmember Hayden asked if there was a concern about a spill or leak, if a distance between residents and the spill be established.

Mr. Welch responded that because of eminent domain, if property was condemned for a pipeline, that could be problematic.

Mayor Smith asked Mr. Welch to bring a case study or more information about eminent domain. She stated the Council needed a clearer explanation of the process and timeline.

4. Discuss seismic survey operations in the Town.

The Town council took a break at 7:41 p.m. until 7:58 p.m.

Ken Parr, Director of Public Works, gave the following presentation regarding street maintenance in Flower Mound.

Mr. Parr noted that Denton and Fort Worth allowed seismic testing. He stated it dealt with the design process of concrete. He stated Flower Mound's design standards were based on a typical load. The clay in the sub-base of the roads in the Town had to be stabilized. A design life of 20 years was based on certain load characteristics. If different types of loads were allowed, there would be some type of impact. To date, staff had no results of the seismic testing. In talking to other cities in the DFW area and outside of Texas, everyone was struggling with not knowing.

Councilmember Wallace clarified that he was not talking about the load of a truck. It was the actual seismic testing and the affect of it on the road.

Mayor Pro Tem Levenick asked if staff had contacted an un-biased expert on this.

Mr. Parr stated he had started that process by making initial contact with someone. His initial response was that seismic testing was not a good idea.

Mayor Pro Tem Levenick asked why Denton made the decision to allow seismic testing.

Mr. Parr responded that they decided to take the risk.

Mayor Pro Tem Levenick asked if the clay soil in Flower Mound was different from Denton or Fort Worth.

Mr. Parr responded that the expansion of clay was general throughout the area.

Councilmember Hayden stated staff needed to find an outside person and get a third-party analysis.

Councilmember Wallace asked if there was a way to quantify in real dollars the risk (town-wide) versus the revenue for the Town and for the gas driller.

Mr. Jefferson stated the graph in the presentation was just showing benefits versus risks.

Deputy Mayor Pro Tem Dixon asked for the useful life of a street. If the company wanted to test on a 19-year old street, would they still have to pay for the entire replacement cost.

Mr. Woods stated it would be full replacement costs.

Deputy Mayor Pro Tem Dixon stated if the street standards were not known, the Town would be replacing the street at known standards, which could be dramatically more expensive than the unknown standard street.

Mr. Woods stated if they tested on an asphalt street, the street would have to be replaced to current asphalt standards.

Deputy Mayor Pro Tem Dixon stated it sounded like the Town was putting a zero value on that street.

Councilmember Wallace stated the Town could not determine an exact value on the reduction in the life of a street. Vibration of a road was just one variable that might cause wear and tear on a road. He asked how the Town could come to a value that was how much the

useful cost was reduced on a stretch of road that had been tested. He stated he had heard people describe this as extortion.

Mr. Welch stated extortion was described as “a criminal offense which occurs when a person unlawfully obtains money, property or services from a person, entity, or institution through coercion.”

Councilmember Filidoro stated the Town needed to make the best business decision. He read another definition of extortion: **“the obtaining of property from another induced by wrongful use of actual or threatened force, violence or fear, or under the color of official right.”**

Mr. Welch stated this would never be extortion under any circumstance.

Mr. Jefferson noted the Town had franchise utility agreements for utility companies that **used the Town’s** rights-of-way, and the Town received franchise fees from the companies.

Councilmember Hayden read some information from Williams Company. He felt there was a real potential for numerous lawsuits. He was concerned that the Town would allow somebody to do something that would put the Town in legal jeopardy.

Mr. Welch stated that was the reason for indemnification, as the Town might have to spend money to go through a lawsuit. The issue was that the Town would incur expenses defending a lawsuit even if it was frivolous. Additionally, the Town would not be able to recover attorneys’ fees.

Councilmember Hayden asked if the Town could ever be in a position to not be held liable.

Mr. Welch stated the Town understood that it might be sued one day. Even if the Town expended funds defending a lawsuit, there would be money set aside to take care of the expenses that had been incurred.

Councilmember Hayden asked if the Town could just be held harmless.

Mr. Welch stated there was no mechanism to say nobody could sue the Town, just sue the company.

Councilmember Hayden stated it was important to not allow activities to occur where the Town might be held liable.

Mr. Welch stated it was a violation of the Texas Constitution for the Town to indemnify other people.

Deputy Mayor Pro Tem Dixon asked if it was advisable to have a situation where the **applicant had a “pot of money” to fix any streets or infrastructure.**

Mr. Welch stated insurance would be required by the company doing the testing, and if any infrastructure was damaged, the Town would have to make a claim on their insurance company. Indemnification protected the Town, when there was a third party claim, if someone **else’s property** was damaged.

Deputy Mayor Pro Tem Dixon asked if there was immediate damage to a road, it would

be agreed that the road would be fixed, telling the company that the Town expected the road to last a specific amount of time after seismic activity, and it might have lasted only half that time.

Mr. Welch stated that to a limited extent, bonds provided protection. Usually bonds were for a year or two with a construction project, however he had never seen a 15 year bond. He felt the Town would end up in a lawsuit with a bonding company, and there could be lengthy disputes over how much a bonding company would pay. The Town might have to settle for a lesser amount because of litigation, and might not get the total replacement costs.

Deputy Mayor Pro Tem Dixon did not see the bond or insurance being a long term solution, and there should be a way to make the Town whole.

Mr. Welch stated the unknown was that if the anticipated replacement costs for a road were \$5 million, there could possibly be other potential costs for legal fees.

Councilmember Wallace stated the Town had a responsibility for its infrastructure and for the residents. There was a possibility of private property being damaged. If **someone's homeowners' insurance did not cover the damage, he asked what remedy they had.**

Mayor Pro Tem Levenick left at 8:43 p.m.

Mr. Welch stated if **someone's** pool cracked, he would anticipate the property owner would sue the testing company and the Town.

Councilmember Wallace asked if it would make a difference if people signed waivers.

Mr. Welch stated that was not a guarantee. The Town would have exposure if someone did not sign.

Councilmember Hayden stated the Council needed to determine a fee that would protect the assets of the Town.

Mr. Welch suggested not capping the amount if the company was doing something with indemnification, and hope that the amount would not be exceeded.

Mayor Smith asked if there had been any issues in Denton since they allowed seismic testing.

Mr. Parr stated he had not heard of any. He noted that Denton required a waiver from the property owner in the 300 feet setback.

Councilmember Hayden stated he had read some information from the Department of Interior and they had a distance requirement of 300 feet from the vibration point source.

Deputy Mayor Pro Tem Dixon stated he would feel very uncomfortable with seismic testing in the highly populated areas of Flower Mound.

Mayor Smith asked if there was any history of testing on certain widths of road. She asked if land use standards could be used on seismic testing, adding that the tool might be in the setbacks.

Deputy Mayor Pro Tem Dixon stated Williams provided a report listing 29 cities that

allowed seismic testing. He asked for staff to report back to the Town Council about that information. He added that the report did not specify that testing was done on streets.

Mr. Jefferson stated staff would survey the cities to compare apples to apples.

Councilmember Wallace asked for an explanation of why the Town used a specific list of 15 survey cities.

Mr. Woods responded that the cities on the list had similar demographics as Flower Mound.

Mr. Jefferson stated the Town had been using this list since about 2000. It was developed because of the concern of using different cities for different topics. The list included fast growth cities similar to Flower Mound, some were larger than Flower Mound (to see what they were experiencing), and some were cities that the Town felt it competed with. He added that by using the list, it prohibited staff from coming up with a pre-determined decision.

Councilmember Hayden had read that there were three different types of vibroseis trucks. He asked if smaller trucks would cause less damage.

Mr. Woods stated smaller trucks would have to operate longer. He stated he could check into the different truck sizes used in different areas.

Councilmember Hayden stated some citizens were asking why the Town was not allowing the company to do seismic testing. He noted the Town had tried in good faith to reach out to Williams.

Councilmember Filidoro commented that the Shiloh Road residents were saying it was a dangerous road, however that point was not made during the road master plan. He stated maybe the road needed to be widened. He asked that staff and the Transportation Commission take a look at that.

Mayor Smith commented that some of the danger was related to road construction and bicyclists.

Deputy Mayor Pro Tem Dixon asked if the Burleson agreement had been executed.

Mr. Jefferson asked for consensus from the Council on having staff talk to the Transportation Commission about looking at Shiloh. He recalled that the Commission did recommend expanding Shiloh Road. He added that the other abutting cities would have to be contacted since they shared the road.

Mayor Smith suggested putting this on the list of topics at the visioning retreat. She asked for a report from the Police Department about incidences on Shiloh Road.

Councilmember Hayden stated he would like to visit the Burleson pad sites.

E. ADJOURNMENT

Mayor Smith adjourned the work session at 9:21 p.m., and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY

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