

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 2ND DAY OF NOVEMBER, 2009 IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Jody Smith	Mayor
Jean Levenick	Mayor Pro Tem
Steve Dixon	Deputy Mayor Pro Tem
Al Filidoro	Councilmember Place 2
Mike Wallace	Councilmember Place 3
Tom Hayden	Councilmember Place 5

constituting a quorum with the following members of the Town Staff participating:

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

A. CALL BRIEFING SESSION TO ORDER

Mayor Smith called the briefing session to order at 6:07 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports.

Councilmember Hayden stated the Planning & Zoning Commission recently voted on a request by Coram Deo and a replat in Roanoke Hills. The Commission held a discussion on the Open Meetings Act.

Mayor Smith announced that the Town Council attended the boards and commissions banquet last week.

Councilmember Filidoro stated the Board of Adjustment had only one case recently. They also discussed the Open Meetings Act.

2. Discuss Consent and Regular Items - no discussion.

3. Discuss Future Agenda Items - no discussion.

4. Discuss Council Communications.

Town Manager Harlan Jefferson stated the Council would be discussing wind turbines at the November work session.

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

Mayor Smith adjourned the briefing session and called the regular meeting to order at 6:09 p.m.

E. INVOCATION

Chaplain Mike Liles gave the Invocation.

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

Mayor Smith led the Pledges.

G. PRESENTATIONS

▪ **Proclamation - Arbor Day**

Mayor Smith presented a proclamation for Arbor Day (November 13, 2009) to Jared Martin (Environmental Services).

H. PUBLIC PARTICIPATION

Robert Glenn, Flower Mound Presbyterian Church, 731 Dewberry, Lewisville

Mr. Glenn announced the rededication of the Tabernacle at the Flower Mound Presbyterian Church. He thanked Mayor Smith for attending and for helping to clean up after the ceremony.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd stated street lights were needed at Simmons and Flower Mound Road, and at McKamy and Simmons. He stated these were dangerous intersections. He alerted the Council that Quail Run, in front of Liberty Elementary School, was being blocked in the afternoon by parents waiting to pick up their children.

Melissa Northern, 4601 Portsmouth, Flower Mound

Ms. Northern thanked staff for the presentation to the HOA Coalition regarding the building permit process.

I. ANNOUNCEMENTS

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

Mayor Smith stated most of the Council went on tours of three senior recreation centers in the area with members of Seniors In Motion and Town staff.

Mayor Pro Tem Levenick stated she attended the SIM Halloween Party last week, and reminded everyone of the November 7th SIM Craft Show at the Community Activity Center.

Councilmember Wallace reminded everyone about the Veterans Day Ceremony on November 8th between 1 pm and 3 pm at Flower Mound High School.

Councilmember Hayden stated the Flower Mound Orchestra would be performing on November 14 at Trietsch Memorial United Methodist Church.

Councilmember Filidoro stated the Flower Mound Performing Arts Theater was

presenting Cinderella Wore Combat Boots this weekend. He added that on November 15 there would be a dedication of Spring Lake Park from 11 am - 2 pm.

Mayor Smith reminded everyone about the Constitutional Amendment Election on Tuesday, November 3. Dorothy's Dash was scheduled for November 14.

J. LEGISLATIVE UPDATE

- Update on legislative issues - Fred Hill

Mr. Hill stated over 7000 bills were filed in the last session, and many were negative in relation to cities. In the next session, the legislators will be watching the state budget, as it looks like there may be a \$17 billion deficit. Sales taxes are down, and the state may take money from rainy day fund (\$4-\$6 billion). He did not foresee fees being increased. There will probably be a strong effort to cut services, and cities may see many bills for unfunded mandates (for cities). Mr. Hill stated there was a political race for governor, and the primary will be held next spring. Both Republican candidates had signed a no new taxes pledge. Local governments would be affected by that. He stated the census numbers will come out in March. When redistricting occurs, it is very contentious. There will be a possibility that the rural areas will diminish and the state may see a shift of power to the Republican side. He stated that Councils should be in a position to make decisions on how to spend money and keep local control.

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 reviewed the items from the October 15 work session. He stated that a sample of composite material for perimeter fencing had been placed at Town Hall. He asked for public feedback and comments. The Town received notification from TxDOT that the Green Ribbon Funding was forthcoming - to be used for median landscape improvements in the Town.

K. CONSENT ITEMS

Councilmember Filidoro made a motion to approve by consent, Items 1, 2, 3, 4, 5, 6, and 7. Deputy Mayor Pro Tem Dixon seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation for each, for the record.

1. **Consider approval of minutes from a regular meeting of the Town Council held on October 19, 2009.**

RECOMMENDATION: Approve of minutes from a regular meeting of the Town Council held on October 19, 2009.

2. **Consider approval of a resolution reappointing Jim Robertson as the Town's member on the Denton County Transportation Authority Board of Directors, and reappointing Assistant Town Manager Kent Collins as the Town's alternate member on the Denton County Transportation Authority Board of Directors, for two-year terms each.**

RECOMMENDATION: Approve Resolution No. 33-09 reappointing Jim Robertson as the Town's member on the Denton County Transportation Authority Board of Directors, and

reappointing Assistant Town Manager Kent Collins as the Town's alternate member on the Denton County Transportation Authority Board of Directors, for two-year terms each. The caption of the resolution reads as follows:

RESOLUTION NO. 33-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, RE-APPOINTING JIM ROBERTSON AS THE TOWN'S MEMBER ON THE DENTON COUNTY TRANSPORTATION AUTHORITY BOARD, AND ASSISTANT TOWN MANAGER KENT COLLINS AS THE TOWN'S ALTERNATE MEMBER ON THE DENTON COUNTY TRANSPORTATION AUTHORITY BOARD OF DIRECTORS FOR TWO-YEAR TERMS EACH.

3. **Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park on May 14 and May 15, 2010, during the Wild About Flower Mound festival. (The Parks, Arts and Library Services (PALS) Board recommended approval by a vote of 4 to 2 at its October 8, 2009, meeting.)**

RECOMMENDATION: Approve the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park on May 14 and May 15, 2010, during the Wild About Flower Mound festival.

4. **Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorize the Mayor to execute same on behalf of the Town.

5. **Consider approval of an interlocal agreement between the Town of Flower Mound and the Town of Little Elm, 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 Town of Flower Mound and the Town of Little Elm, for the purchase of various goods and services, and authorize the Mayor to execute same on behalf of the Town.

6. **Consider approval of the award of Bid No. 124-09-A Pulverized Quicklime to Texas Lime Company, at the unit price bid, in the estimated annual amount of \$67,824.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Bid No. 124-09-A Pulverized Quicklime to Texas Lime Company, at the unit price bid, in the estimated annual amount of \$67,824.00, and authorize the Mayor to execute same on behalf of the Town.

7. **Consider acceptance of Texas Division of Emergency Management Grant 09-SR 26232-01, awarded under the Fiscal Year 2009 Homeland Security Grant Program to carry out community preparedness and participation activities, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve acceptance of Texas Division of Emergency Management

Grant 09-SR 26232-01, awarded under the Fiscal Year 2009 Homeland Security Grant Program to carry out community preparedness and participation activities, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

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

M. REGULAR ITEMS

8. **CSP 01-09 - Sonic Drive-In** **Public Hearing**
Public Hearing to consider a request for a Comprehensive Sign Package (CSP 01-09 - Sonic Drive-In) for Sonic Drive-In. The property is located at 2925 Cross Timbers Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 12, 2009, meeting.)

Staff Presentation

Doug Powell, Executive Director of Development Services, informed the Council that Sonic did have a monument sign along FM 1171, however it was removed due to the road construction. The applicant and staff did not know when the building placards were installed. Mr. Powell showed renditions of the new monument sign, and the new signs to be placed on the side of the building. He stated staff received no correspondence relative to this application.

Applicant's Presentation

Dennis Clark, franchisee and owner of Sonic, Grapevine

Mr. Clark stated he requested a comprehensive sign package that included the replacement of the monument sign, and the new wallboard or poster signs. He stated they had been in place since 1997. He was not aware a permit was needed and he hoped to put them back in place. The poster signs added color to the brick wall and allowed them to do some advertising of seasonal items.

Questions from the Governing Body and Answers

Mayor Smith thanked Mr. Clark for the support he offered in the community and for the updated façade.

Councilmember Hayden agreed with Mayor Smith. He asked if the poster signs would be lighted or unlighted.

Mr. Clark stated they were designed to be lighted. The illumination was identical to that in the menu houses, using ambient light.

Councilmember Hayden asked if that was allowed by the sign ordinance.

Mr. Powell responded that per Code, the signs could be lighted.

Deputy Mayor Pro Tem Dixon noted that Mr. Clark was the franchisee for all three Sonics in Flower Mound. He stated the monument sign was previously lit and so were the

Mr. Powell stated the LISD had indicated they were going to write a letter, but then decided not to.

Public Comments

Bryan Webb, High Road, Flower Mound

Mr. Webb stated he had hoped to have feedback from the LISD. He stated he had an issue with masonry walls, but not tubular steel. He did not want to see an unfunded mandate on the school district by the Town. Schools were integral parts of neighborhoods, and a masonry wall was not the right way to go. He stated schools should be visibly open to the neighborhoods.

Close Public Hearing

Council Deliberation

Councilmember Wallace moved to approve a request to amend the Land Development Regulations LDR 02-09 - Compatibility Fences for Schools by amending Section 82-302, Compatibility buffer, of the Code of Ordinances, and adopt Ordinance No. 46-09 providing for said amendment. The motion was seconded by Councilmember Hayden. The caption of the ordinance reads as follows:

ORDINANCE NO. 46-09

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 B, CHAPTER 82 OF THE CODE OF ORDINANCES, ENTITLED "DEVELOPMENT STANDARDS," THROUGH THE AMENDMENT OF ARTICLE V, ENTITLED "LANDSCAPING AND SCREENING," DIVISION 4, "RESIDENTIAL COMPATIBILITY STANDARDS," SECTION 82-302, "COMPATIBILITY BUFFER," BY AMENDING PARAGRAPH (5) REGARDING THE BUFFER REQUIREMENTS FOR SCHOOLS; 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

Mayor Smith opened both Items 10 and 11.

10. Public Hearing to discuss seismic survey operations in the Town.

11. Public Hearing to discuss the regulation of centralized tank facilities associated with gas well produced water pipeline systems.

Staff Presentation

Matt Woods, Director of Environmental Resources and Director of Public Works Ken Parr gave the following presentation. Mr. Woods also introduced Dr. John Nichols, associate

professor at Texas A&M, who was available to discuss pavement and loading issues.

Mr. Woods also played two videos regarding air quality in the area.

Questions from the Governing Body and Answers

Councilmember Filidoro asked about the amount of funding for street maintenance.

Mr. Parr stated it was an uncertain number, and may not be \$67.5 million.

Mayor Smith asked how long the vibration occurred in one spot.

Mr. Woods responded it would be 4-8 seconds and maybe up to 10 seconds. There would be 165 feet between vibration points.

Mayor Pro Tem Levenick asked how much a full water truck weighed.

Mr. Woods stated it would weigh between 16,000 and 20,000 pounds.

Councilmember Hayden asked if there was a map that showed the roads that were requested for seismic testing.

Mr. Woods showed the map and identified some of the roads.

Councilmember Filidoro asked about the method of recycling wastewater on site, noting that Devon was doing that now. He asked if any research had been done and if it was successful.

Mr. Woods stated his research found that it was cost-prohibitive right now.

Councilmember Filidoro stated he would like more information about that option.

Councilmember Wallace asked Dr. Nichols if seismic testing caused damage to the roads.

Dr. Nichols stated the data supplied to him from Town staff included a maximum velocity of five inches per second (127 millimeters per second). The industry uses the velocity component as the measure. In seismic terms, the acceleration component was more likely used. Each could give a measure of potential damage. He stated if the five inch per second component was used, it would calculate displacement and acceleration. This would be equivalent to a .13 G earthquake with a displacement of about one inch. He stated this was more than adequate to cause destruction to buildings. He stated this was probably unlikely to happen (with seismic testing) because the load was reasonably small. He felt there was insufficient testing at this time. He did note that Flower Mound had poor soil. He stated there were three types of waves that were created (primary compression waves, shear waves, and surface waves). It is a wave that is reasonably slow and can do damage on the surface. He stated the ground could move about an inch up and down. Dr. Nichols stated the Town needed a test on the roads, particularly in the worst possible conditions.

Councilmember Hayden asked how one would quantify the damage done to the average life of a road if the vibroseis was done.

Dr. Nichols stated there were several tests that could assess the damage. The tests needed to be done by an independent contractor.

Councilmember Hayden asked about damage that might happen to the infrastructure

underneath the roads (Town pipes).

Dr. Nichols stated it depended on the type of pipes. He stated he would be more concerned with damage to residents' homes. Additionally, he stated it would be hard to tell when damage might show up.

Councilmember Hayden asked about the demonstration that a drilling company did with the raw eggs and light bulb.

Dr. Nichols stated he did not see that as a representative test.

Mayor Pro Tem Levenick asked if the Town had regulations in place for gas drilling operations.

Mr. Woods stated the companies would typically have to follow the Town's standard construction time regulations. Further review would not be necessary other than the Traffic Impact Analysis (TIA).

Mayor Pro Tem Levenick asked how a TIA would be done if the Town did not have adequate information about the trucks.

Assistant Town Manager Kent Collins stated staff would work with the applicant on developing the data and an estimate of the truck traffic.

Mayor Pro Tem Levenick asked what would trigger "could" or "would" in Slide 20.

Mr. Woods stated it would come into play if there was a land use issue and the property had to be re-zoned, or had to have a Master Plan amendment.

Mayor Smith stated it sounded like the Town needed to find a non-biased person to do the test on a local road. She asked how the Town would choose a road. She suggested using Flower Mound Road as it was going to be reconstructed anyway. She noted that some people had suggested the on-site treatment of water. She asked if any of the companies had gotten together to make some sort of neighborhood for on-site water purification.

Mr. Woods stated his preliminary research indicated that one of the larger operators in the area had an on-site system for their wastewater. He noted they had to either pipe it or have trucks come in to haul off the water. He noted that storage tanks and facilities were necessary for the on-site system. He was not aware of a conglomerate of operators.

Mayor Smith asked if the water could be used for irrigation.

Mr. Woods stated it could be used to frac other wells.

Mayor Smith asked if a well had to be capped off if it became non-operational.

Mr. Woods responded yes.

Councilmember Hayden stated he visited a site in Burleson that had a centralized wastewater system. Burleson regulated truck traffic during school hours. He requested staff to see if the truck traffic in Flower Mound could be regulated during off-peak hours because the water was not safe. Councilmember Hayden stated the first proposal was for a centralized

collection facility for seven pad sites on the Wilson, Bunn, Smith property. It had now grown to twelve pad sites. He asked if there was a way to have a specific permit in a specific area so that **it doesn't open up the whole Town** for central collection facilities.

Mr. Welch stated if the Town looked at a zoning ordinance amendment that would allow this as a Specific Use Permit in Agriculture zoning, as an example, there would have to be criteria established if the Town was going to limit it to a certain area.

Councilmember Wallace asked if the Town should test all different types of roads in the Flower Mound. He was interested in knowing the costs for the tests.

Dr. Nichols stated asphalt would be a good test surface, and he also suggested laying a concrete pad next to it. Based on his knowledge the tests might cost between \$10,000 and 15,000.

Councilmember Wallace asked if the **Town's** current ordinance required the capture of emissions outside of what EPA or TCEQ required.

Mr. Woods stated the current ordinance did not address that issue.

Councilmember Wallace asked about the scope of testing that TCEQ was doing.

Mr. Woods stated staff had contacted TCEQ, and added that Denton County was in the group that would be tested for air quality.

Councilmember Filidoro asked if staff had looked into establishing a baseline for air quality in Flower Mound.

Mr. Woods stated staff had researched that, and the cost could be anywhere from \$10,000 to \$50,000.

Councilmember Filidoro encouraged staff look at tests across the community, including areas in Lakeside and along FM 407.

Deputy Mayor Pro Tem Dixon stated he would like to see a recommendation from staff about testing before the next Town Council meeting.

Public Comments

Mark Stewart, 3932 Ridgecrest Drive, Flower Mound

Mr. Stewart volunteered his house and driveway for seismic testing, adding he would pay for any damage to the road in front of it. He stated 2.0 or lower will not damage any structure - certain study of testing.

Todd Schreiber, 925 Canongate, Flower Mound

Mr. Schreiber asked if TxDOT and/or the Corps of Engineers allowed seismic testing on their roadways or properties.

Mr. Jefferson spoke to the district manager for TxDOT, and he indicated that they did not have a formal policy; however he would not allow it in his district. The Corps of Engineers did not allow seismic testing either.

Sue Ann Lorig, 4613 Foxglove Court, Flower Mound

Ms. Lorig stated she was concerned that the Town might change the current ordinance that protected properties in Flower Mound. She was impressed with Flower Mound as a quiet and peaceful community. She recently found out that Williams had already identified drilling sites in Wellington, and she was concerned with heavy trucks, noise, etc.

Phil Del Vecchio, Windridge, Flower Mound

Mr. Del Vecchio stated he was a lease holder. He distributed information to the Town Council and gave his background information. Mr. Del Vecchio stated the USA did not need to be dependent on foreign oil. He believed seismic testing would have little or no impact on the Town's infrastructure. He stated **Burleson's** agreement was a good model. He supported the wastewater collection system, adding that most contamination was from transferring the water from the ground to tanks, etc. He asked the Council to consider requiring Williams to install a centralized collection system.

Joan Hicks, 2708 Lake Bluff Drive, Flower Mound

Ms. Hicks asked the Town Council to either make no changes to the ordinance or approve stricter ordinances. She wanted the Council to represent the best interests of Flower Mound citizens. She asked if it was appropriate for members of the Council who had signed over mineral rights, to vote or did they need to abstain.

Mr. Welch stated two members of the Town Council had signed leases with a specific company. The conversations during the public hearing were not specific to one company.

Tammi Vajda, Lakeville Lane, Flower Mound

Ms. Vajda stated the Council needed to protect the Town. She was against a central collection facility for the wastewater; however she did like the idea of an on-site recycling treatment facility. She stated the water from drilling had higher concentrations of bad chemicals. She stated she wanted to see safe drilling.

Richard Scott, 2805 Lakemont, Flower Mound

Mr. Scott asked who would be responsible to the homeowner if damage was done to private homes as a result of seismic testing. Requiring insurance was a fee to a homeowner. Regarding centralized tanks, he asked what was in the pipes. He asked where the tank farms would be located. He asked how the pipelines would be monitored (detecting leaks). He asked if the gas companies would be willing to provide quarterly evaluations of air quality and make them public. He asked who would be responsible for cleanup. Mr. Scott stated he supported the current ordinance.

Tom Marshall, president of Churchill Crossing HOA, 3200 Heatfield, Flower Mound

Mr. Marshall felt the discussion should be based on risks and benefits. He was concerned about infrastructure and homeowner assets. Regarding the central tank farms, he had not heard discussions and details about the miles of pipelines.

John Fergi, Yale Drive, Flower Mound

Mr. Fergi asked why the gas company was allowed to skip past the contents of the wastewater. He asked at whose cost would the wastewater be claimed. He asked if the gas finished product would be open to the world market.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd felt the WFAA videos contained misinformation. Regarding seismic testing, he stated he had been outside when a fully loaded truck drove by. He added he could feel

vibrations from that. He was in favor of running tests on any street in the Town.

Dana Smith, 5428 Lake Victoria Court, Flower Mound

Ms. Smith was opposed to the requests. She added the cement trucks and rain made a mess of the roads in her area.

Kelly McDonald, 4119 Mustang Trail, Flower Mound

Ms. McDonald stated the Town needed to focus on where emissions happened and where people lived. She referred to the proposed agreement and asked if the homeowners' associations and the residents would be indemnified. She stated it would take millions of dollars to replace Bridlewood's brick walls, the pools, etc.

Nancy Dietrich, 5405 Lake Victoria Court, Flower Mound

Ms. Dietrich was against many of the issues raised about seismic testing and air quality. If there was any possibility of contaminants being released in the air, the public had the right to know about it. She stated the decisions should not be rushed.

Julie Lilly, 5317 Balmoral Lane, Flower Mound

Ms. Lilly stated the Council should keep the current ordinance or make it stronger.

Cathy Pendola, 5309 Balmoral Lane, Flower Mound

Ms. Pendola expressed concerned with the amount of water used to frac wells. She felt the Town residents were being used a guinea pigs.

Laurie Long, 2708 Lake Flower Drive, Flower Mound

Ms. Long did not feel Williams had been forthcoming about seismic testing. She commented that Williams had said it was safe and then they requested indemnification. She stated there needed to be trust in the contract and the residents should have both sides of the story. She asked if seismic testing was needed to allow access to the minerals. She did not believe so, and she did not believe there was an urgency to change the ordinance. Ms. Long stated there were many unknowns, and other options that the Town needed to think about. Regarding the collection system, she asked why the Town would allow a pipeline system without knowing what was in the water.

Neil Carnes, 5618 Burning Tree, Flower Mound

Mr. Carnes stated it appeared Flower Mound was forcing Williams to use roads to get rid of wastewater. He stated it was short-sighted that staff has not worked with Williams to find out how much weight in water would have to be transported. He felt Williams had been forthright and he encouraged the Council to make a decision.

Chris Tomlinson, 3907 Raintree, Flower Mound

Mr. Tomlinson stated he was a lease holder. He stated the Town had over a year to do something, and there was already an ordinance on the books. Other cities had allowed seismic testing and no damage had been reported. He asked if the Town owned the mineral rights underneath the streets. He was in favor of seismic testing and he supported the wastewater collection system.

Stephanie Phipps, 2824 Lakeville Drive, Flower Mound

Ms. Phipps was against the seismic testing and collection system. If allowed, pipelines would affect homeowners and their yards.

Joe Rotman, 5417 Thistlehill Circle, Flower Mound

Mr. Rotman stated there was no evidence of seismic testing causing damage. He stated the Town brought in an expert who did not have relevant experience.

Rebecca Belcher, 2900 Aberdeen, Flower Mound

Ms. Belcher, representing Flower Mound Citizens Against Urban Drilling, stated her group supported the need for better regulations. She presented a petition signed by hundreds of residents.

Frank Gavitt, 6501 Meadowcrest Lane, Flower Mound

Mr. Gavitt stated the residents in the Shiloh Road area were tired of misinformation. He stated Williams had attempted to lease the Shiloh Road area since 2004. He stated the residents negotiated a strong lease that provided protections. Mr. Gavitt stated that wells were going to be on the Smith property regardless of people signing leases. He was in favor of the wastewater collection system.

Tony Silvestri, Williams Company, Tulsa, OK

Mr. Silvestri introduced the experts from the Williams Company who were in attendance. He stated Williams considered it a privilege to operate in Flower Mound.

Councilmember Hayden asked Mr. Silvestri if Williams would allow Town staff to collect water from the tanks and send it to a lab to be tested.

Mr. Silvestri stated Williams had already done that for the Town, and the results would be provided soon.

David Johnson, 3617 San Paula Drive, Flower Mound

Mr. Johnson stated wells would be drilled with or without seismic testing. He asked the Council if they wanted to have less truck traffic on the roads.

Mike Psaromatis, 4210 Calloway Court, Flower Mound

Mr. Psaromatis was concerned with the horizontal propagation of the ground waves. He stated they could be different with different types of foundations of homes. He stated there were potential downsides of quality of life issues with seismic testing. He asked for a clarification of the conflict of interest comments.

Mike Walker, 5121 Marshall Creek, Flower Mound, president of Board of Directors of Bridlewood

Mr. Walker asked if there had been any proposals on the land area for the central collection system. He asked if anyone had estimated the number of trucks that will be on the roads going to and from the central collection system. He stated he had been contacted by Williams about the possibility of testing in his neighborhood. Mr. Walker stated the Bridlewood Board of Director examined their insurance protection and found that seismic testing would not be covered. Mr. Walker, representing the Board and the homeowners' association, read prepared statements in opposition to seismic testing and the central collection system.

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated that the efforts spent on these issues had divided the community. He felt that seismic testing and a centralized collection system would not benefit the entire community.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern stated that natural gas exploration was moving from rural areas to the urban areas of the Town. Several neighborhoods had expressed their opinions. People did not

want seismic testing to affect their homes, and she encouraged the Council to not allow seismic testing on Town streets. She noted that Alisa Rich said children absorbed toxins at a rate of three times that of adults. She asked how far away the collection system would be from schools and residents.

Warren Campbell, 6000 Wichita Trail, Flower Mound

Mr. Campbell stated this discussion should have happened a long time ago. People liked Flower Mound because of things that had been done in the past - low density, few apartments, and underground utilities. A centralized collection system was a must in order to have control. He stated it would reduce contamination. He felt Williams was trying to do the right thing.

**Close Public Hearing
Council Deliberation**

Mayor Smith recapped the questions that were asked.

Who is responsible for damage that might occur during seismic testing?

Mr. Welch stated currently there was no agreement with a company for seismic testing on public roads. The testing was permitted on private property, and the property owner would have an agreement with the company regarding any damage. The idea for insurance would be to protect the Town, and the Town could only take out insurance to protect itself, not to protect private individuals.

Will Williams indemnify the Town and residents in a contract?

Mr. Welch stated that would be possible, but the Town did not have a contract with any company at this time.

Councilmember Wallace stated the model agreement required the gas company to provide \$1 million in insurance. He asked if that was for claims from the Town or from individuals.

Mr. Welch stated the insurance would be provided on behalf of the Town - if Town property was damaged. That was one recovery method. The other method would be that the Town would be indemnified for any costs associated with damage. For example, if someone sued the Town because of a cracked foundation, the Town would still go to court over that. The other indemnification that was included in the agreement was that a company would have to provide indemnification of people within x number of feet radius of the seismic testing so that they would have recourse.

Can the Town lease right-of-way mineral rights?

Mr. Welch stated the law was changed on September 1, 2009 and now the Town could lease mineral rights.

What is the percentage of land owned by the Town that has mineral rights?

Mr. Welch stated the number was probably minimal. In the western part of Flower Mound, many of the roads were through prescriptive easements, but the Town would have no interests in mineral rights.

Regarding horizontal propagation, how far will the sound waves travel?

Mr. Jefferson stated staff relied on information from the City of Denton (300 foot setback)

Dr. Nichols recommended doing tests within the Town to see what would actually happen. He stated estimates could be derived, but there were many unknowns.

Deputy Mayor Pro Tem Dixon asked if staff contacted Burleson after learning they had contracts with multiple gas companies.

Mr. Woods stated seismic testing had been done several times.

Deputy Mayor Pro Tem Dixon asked if there were any damage complaints.

Mr. Woods responded no.

Deputy Mayor Pro Tem Dixon stated Mark Stewart and John Todd made offers to have seismic testing on their property. He suggested that those who were interested, contact Williams about the testing. He stated they should have "before and after" analyses. He asked when staff could get additional information from Burleson about the testing.

Mr. Woods stated no damage was reported since the contract was executed three years ago.

Mayor Smith summarized the concerns with the central collection system.

What is in pipes?

How are pipelines monitored?

Where can they be located - what is a safe distance?

Air quality?

Who is responsible for cleanups or leaks?

Where does water get moved to?

Who buys the products?

How much land and property is needed?

Estimated number of trucks and how long truck traffic can go on?

How close to a habitable building can the wastewater collection system be located?

Mr. Jefferson stated the proposed site for a central collection facility was 48-50 acres off Scenic Road, south of FM 1171. The footprint would vary with a proposal. The Town might rely on the oil and gas ordinance, including the 1,000 foot setback from a gas well facility.

Mr. Woods stated the current ordinance required a 1,000 foot setback from a residence. There were other setbacks for property lines, public rights-of-way, for surface equipment. He noted pipelines would be under pressure.

Deputy Mayor Pro Tem Dixon asked if it was possible that a wastewater line would go under a house or pool.

Mr. Welch stated that gas companies had the power of eminent domain, however it was highly unlikely the pipelines **would go under someone's home.**

Mr. Woods stated he had a general list of compounds that might be in the frac fluid, noting that the fluid would have a high saline content.

Councilmember Filidoro asked if the Council could direct a random testing of the fluid.

Mr. Jefferson stated the Town would need permission to go on **someone's** property to collect the fluid.

Deputy Mayor Pro Tem Dixon asked if the Town could control the routes of the pipelines through a development agreement and a Specific Use Permit.

Mr. Welch stated the Town could not control where the lines would go.

Mr. Woods stated the pipelines had automated monitoring 24 hours a day. Flyovers could also be done. A pipeline operator would be responsible for any spills. He noted that if the water was not recycled, it would go to a salt water injection well (not allowed in Flower Mound). He stated presently the water was trucked out of the Town. Mr. Woods stated it was difficult to estimate how many trucks would be on the roadways. The finished product (gas) would go into the Atmos line to go to the open market.

Councilmember Wallace asked what protections were available for the residents.

Mr. Jefferson stated the model agreement was only about protecting the **Town's** assets. It did not focus on private properties. Citizens would have to pursue claims against a gas company.

Councilmember Wallace stated he would like to see what remedies the residents had.

Mr. Welch stated the model agreement was done to provide some assurance for the Town. If a **landowner didn't have insurance**, he would have to file a lawsuit to recover.

Mayor Smith stated she was hearing that there was a huge desire to put some things to rest. Citizens were concerned with the safety of the central collection system.

Councilmember Wallace stated he would like to get some insight from the Oil and Gas Board. He proposed a joint work session with the Board on November 19.

Mayor Smith asked if staff could find more information on seismic testing by November 19.

Deputy Mayor Pro Tem Dixon recalled that Dr. Nichols said there was a mathematic calculation. He asked staff to check with companies in Dallas.

Councilmember Filidoro asked if there could be a conflict if a joint work session was held with the Oil and Gas Board.

Mr. Welch stated the Council would not be asking the Board to take any action. They would just be asking for their expertise and input.

Mayor Smith asked staff to get a copy of the Burleson agreement.

Mr. Welch stated he had reviewed the agreements in Burleson and Denton. There were

significant differences between those two and the one for Flower Mound.

Mayor Pro Tem Levenick asked if staff would have information about where testing could be done in the Town (by the November work session).

Mr. Jefferson stated staff could identify sites and some cost estimates.

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- **Discuss possible cancellation of January 4, 2010 meeting.**

The consensus of the Council was to cancel the January 4, 2010 meeting.

- **2-day retreat in January.**

The consensus of the Council was to plan for a retreat on January 22 and 23.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:43 p.m. on November 2, 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 12:51 a.m. on November 3, 2009 to take action on the items as follows:

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

No action taken.

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

Mayor Pro Tem Levenick moved to approve the purchase of water line easements, in association with the Waketon Road 16-inch Water Line project, from Bobby L. Engle, Wanda Dianne Furgerson, Teddy M. Jackson and Monte L. and Karen Boyd, not to exceed the settlement amounts, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Levenick, Wallace, Hayden

NAYS: None

- c. **Consultation with the Town Attorney regarding legal issues associated with proposed amendments to Chapters 34 and 98 of the Town's Code of Ordinances relative to seismic testing, produced water centralized collection facilities and land use issues associated therewith.**

No action taken.

- d. Discuss Red Oak Gas LP and Red Oak Gas Operating Company LP v. Town of Flower Mound, Cause No. 2009-30345-211, pending in the 211th Judicial District Court of Denton County, Texas.

No action taken.

- e. Discuss and consider appointments to the Animal Services Board, Board of Adjustment and Environmental Conservation Commission.

No action taken.

- f. Discuss and consider annual review of Town Secretary.

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 12:53 a.m. on Tuesday, November 3, 2009, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY