

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 7th DAY OF DECEMBER, 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 (arrived at 7:51 p.m.)
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
Kent Collins	Assistant Town Manager
Kenny Brooker	Police Chief
Eric Metzger	Fire Chief
Doug Powell	Executive Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Smith called the briefing session to order at 6:11 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports.

Councilmember Wallace attended the Environmental Conservation Commission meeting where Jay Yost was elected Chair and Freddie Guerra was elected Vice Chair. The Commission received a storm water update from staff, and discussed the Commission's future goals.

2. Discuss Consent and Regular Items - no discussion

3. Discuss Future Agenda Items.

Councilmember Wallace asked if the December 21 meeting might be cancelled or re-scheduled due to the holidays.

4. Discuss Council Communications.

Town Manager Harlan Jefferson stated he had received conflicting comments from members of the Council regarding the public arts policy. The item would be scheduled for a future work session. He stated he had not received any objections from the Council regarding the proposed agreement with Keep Flower Mound Beautiful.

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 6:15 p.m.

E. INVOCATION

Chaplain Phil Cook gave the Invocation.

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

Chaplain Cook led the pledges.

G. PRESENTATIONS

No presentations.

H. PUBLIC PARTICIPATION

Amy Yeager, 3701 Court, Flower Mound

Ms. Yeager stated she did not want oil and gas drilling in Flower Mound. She urged the Council to not weaken the existing ordinance.

I. ANNOUNCEMENTS

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

Councilmember Wallace announced that the 20th Annual Christmas Parade would be held on December 12 along Morriss Road. He reminded everyone about the CCA canned food drive. The Holiday Stroll was scheduled at Parker Square on December 12 from 3:00 pm to 6 pm. Councilmember Wallace highlighted the job opportunities in Flower Mound in the Police and Fire Departments. He noted that the website updated to allow applicants to apply on line.

Mayor Smith reminded citizens to use the 972.539.SERV line to report customer service items. She added that she and Councilmember Filidoro attended the Seniors In Motion Christmas Dance on Sunday.

Deputy Mayor Pro Tem Dixon stated he recently attended the ribbon cutting for the 24 Hour Emergency Room for Lewisville Hospital located at Windsor and FM 2499. He also attended the ribbon cutting for Rouge, A Modern Bistro, located at the southeast corner of Dixon and FM 2499.

Councilmember Filidoro stated he also attended the 24 Hour Emergency Room ribbon cutting. He noted that on December 12, the Flower Mound Symphony would present a concert at Trietsch Memorial United Methodist Church, and on December 18, the Voices of Flower Mound would be performing at the same location.

Mayor Smith announced the holiday concert for the Flower Mound High School Orchestra on Tuesday. She noted that both Kroger stores sold many Thanksgiving bags. Additionally, the Police Department was collecting toys and contributions for the Santa Cops program.

H. PUBLIC PARTICIPATION

Laurie Long, 2708 Lake Flower Road, Flower Mound

Ms. Long stated that most of the community did not want a centralized wastewater

collection facility. She urged the Council to not change the drilling ordinance.

J. TOWN MANAGER'S REPORT

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

Town Manager Harlan Jefferson stated that FM 2499 Section 3 was scheduled to start a phased opening last week, but due to the weather TxDOT was not able to open the lanes. TxDOT hoped to do so before Christmas.

K. CONSENT ITEMS

Councilmember Filidoro made a motion to approve by consent, Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. 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 November 16, 2009.**

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

- 2. Consider approval of minutes from a work session of the Town Council held on November 19, 2009.**

RECOMMENDATION: Approve minutes from a work session of the Town Council held on November 19, 2009.

- 3. Consider approval of a contract with Highmark Life Insurance Company in the amount of \$405,627 for reinsurance coverage for the Town's Group Health Plan, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a contract with Highmark Life Insurance Company in the amount of \$405,627 for reinsurance coverage for the Town's Group Health Plan, and authorize the Mayor to execute same on behalf of the Town.

- 4. Consider approval of the 2009 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.**

RECOMMENDATION: Approve the 2009 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.

- 5. Consider approval of an agreement for hardware and software to upgrade the Town's telephone network with Black Box Network Services Corporation, a sole source provider, in the amount of \$228,347, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve an agreement for hardware and software to upgrade the

Town's telephone network with Black Box Network Services Corporation, a sole source provider, in the amount of \$228,347, and authorize the Mayor to execute same on behalf of the Town.

6. **Consider approval of a resolution adopting the Town of Flower Mound's Program Year 2008 Consolidated Annual Performance & Evaluation Report, which is required under the Town's Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Resolution No. 34-09 adopting the Town of Flower Mound's Program Year 2008 Consolidated Annual Performance & Evaluation Report, which is required under the Town's Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town. The caption of the resolution reads as follows:

RESOLUTION NO. 34-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF FLOWER MOUND'S PROGRAM YEAR 2008 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

7. **Consider approval of the award of Bid No. 2-10-B Aerial Bucket Truck to Sam Pack's Five Star Ford, in the amount of \$74,037.**

RECOMMENDATION: Approve the award of Bid No. 2-10-B Aerial Bucket Truck to Sam Pack's Five Star Ford, in the amount of \$74,037.

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

9. **Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of fire protection 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 fire protection services for the benefit of the citizens of Denton County, and authorize the Mayor to execute same on behalf of the Town.

10. **Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of Emergency Medical Services for the benefit of the citizens of Flower Mound and 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 Emergency Medical Services for the benefit of the citizens of Flower Mound and Denton County, and authorize the Mayor to execute same on behalf of the Town.

11. **Consider approval of an ordinance amending Chapter 54, Parks and Recreation, of the Town's Code of Ordinances by adding Article V, Public Tree Care. (The Parks, Arts and Library Services (PALS) Board recommended approval by a vote of 6 to 0 at**

its November 12, 2009, meeting.)

RECOMMENDATION: Approve Ordinance No. 48-09 amending Chapter 54, Parks and Recreation, of the Town's Code of Ordinances by adding Article V, Public Tree Care. The caption of the ordinance reads as follows:

ORDINANCE NO. 48-09

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 54 OF THE CODE OF ORDINANCES BY ADDING ARTICLE V, "PUBLIC TREE CARE"; ADOPTING DEFINITIONS; ESTABLISHING PRACTICES GOVERNING THE CARE AND MAINTENANCE OF TREES ON TOWN PROPERTY; DESIGNATING THE TOWN PARKS AND RECREATION DIRECTOR WITH ADMINISTRATIVE RESPONSIBILITY FOR THE MAINTENANCE AND REMOVAL OF TREES ON TOWN PROPERTY; PROVIDING FOR THE REMOVAL OF DISEASED OR HAZARDOUS TREES UNDER CERTAIN CONDITIONS; PROVIDING FOR A PENALTY; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

12. Consider approval of an agreement with the Texas State Library and Archives Commission for a Loan Star Libraries Grant, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an agreement with the Texas State Library and Archives Commission for a Loan Star Libraries Grant, and authorize the Mayor to execute same on behalf of the Town.

13. Consider approval of Change Order No. 3 and final acceptance of the STEP Grant - Entry and Medians project, authorization for final payment to Legends Landscapes, LLC, in the amount of \$8,531.61, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Change Order No. 3 and final acceptance of the STEP Grant - Entry and Medians project, authorization for final payment to Legends Landscapes, LLC, in the amount of \$8,531.61, and authorize the Mayor to execute same on behalf of the Town.

14. Consider approval of Change Order No. 4 for construction of Spinks Road Phase IV, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$211,025.02, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Change Order No. 4 for construction of Spinks Road Phase IV, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$211,025.02, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

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

L. REGULAR ITEMS

15. Consider approval of a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Tarrant Appraisal District. (This item was postponed from the November 16, 2009 meeting.)

Councilmember Wallace moved to approve Resolution No. 35-09 casting the one vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Tarrant Appraisal District for John Fegan. The motion was seconded by Councilmember Filidoro. The caption of the resolution reads as follows:

RESOLUTION NO. 35-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CASTING THE VOTE OF THE TOWN OF FLOWER MOUND, TEXAS, FOR THE ELECTION OF BOARD OF DIRECTORS FOR THE TARRANT APPRAISAL DISTRICT.

VOTE ON THE MOTION

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

16. Receive presentations by candidates for the Board of Directors of the Denton Central Appraisal District, and consider approval of a resolution casting the votes of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District. (This item was postponed from the November 16, 2009 meeting.)

Councilmember Filidoro stated there were two candidates from Flower Mound, and the Town only had 134 votes. He was in favor of casting the 134 votes for Al Picardi.

Councilmember Wallace was in favor of splitting the votes - 67 for Lee Baker and 67 for Al Picardi.

Councilmember Wallace moved to approve Resolution No. 36-09 casting the votes of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District for 67 votes for Lee Baker and 67 votes for Al Picardi. The motion was seconded by Councilmember Hayden. The caption of the resolution reads as follows:

RESOLUTION NO. 36-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS CASTING THE VOTE OF THE TOWN OF FLOWER MOUND, TEXAS, FOR THE ELECTION OF BOARD OF DIRECTORS FOR THE DENTON CENTRAL APPRAISAL DISTRICT.

VOTE ON THE MOTION

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

Mayor Smith opened items 17 and 18 together.

17. **Public Hearing to consider a request for a Specific Use Permit (SUP 388-09 - Continuum Rehabilitation Hospital) to permit a rehabilitation hospital and to consider adopting an ordinance providing for said amendment. The property is located at 3100 Peters Colony Road. (The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its November 9, 2009, meeting.)**

18. **Public Hearing to consider approval of a Chapter 380 Partnership Agreement with Continuum Health Services, L.L.C., to provide for incentives for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of the Town.**

Staff Presentation

Doug Powell, Executive Director of Development Services, stated this was an existing building with an addition of a porte-cochere. A walking area with landscaping would also be added. He stated the applicant planned to lower the windows due to state provisions. Staff did not receive any comments from the public regarding this request. Mr. Powell stated the facility would be a 40-bed free-standing inpatient rehabilitation hospital, bringing 110 jobs and \$8.4 million in property tax. The incentive offer was 75% relief from impact fees and construction ~~-related~~ building permit fees as defined in the draft agreement. The net benefit to the Town would be \$155,215.

Questions from the Governing Body and Answers None

Public Comments **None**

Close Public Hearing

Council Deliberation

Councilmember Filidoro stated this was an exciting opportunity for the Town, especially since three major medical facilities were coming to the Town within a year. He stated the majority of the building was now empty, and he was glad to be able to add 100 jobs to the marketplace.

Councilmember Hayden stated this was a winning proposition for the Town by filling the building and adding jobs.

Councilmember Filidoro moved to approve Specific Use Permit SUP 388-09 - Continuum Rehabilitation Hospital - to permit a rehabilitation hospital, and to adopt Ordinance No. 49-09 providing for said amendment subject to the following conditions:

- a. The attached site plan and elevations, labeled Exhibit "B," an exhibit to the Specific Use Permit, shall be developed as approved, except that certain minor changes outlined in Section 82-37 of the Town's Land Development Regulations may be approved as set forth in that section.

- b. If a certificate of occupancy application has not been submitted to the Town's Building Inspections Division for consideration within six months of approval of the ordinance, the Specific Use Permit described herein will be a matter that will be automatically placed upon a subsequent Planning and Zoning Commission agenda

for consideration as a Town-initiated zoning change under normal zoning amendment procedures.

The motion was seconded by Councilmember Wallace. The caption of the ordinance reads as follows:

ORDINANCE NO. 49-09

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON LOT 2, BLOCK A OF THE TOWN CENTER WEST ADDITION FROM OFFICE DISTRICT (O) USES TO OFFICE DISTRICT (O) USES SUBJECT TO SPECIFIC USE PERMIT NO. 388 (SUP 388) TO ALLOW FOR A HOSPITAL IN ACCORDANCE WITH THE TOWN'S MASTER PLAN 2001 AND IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Councilmember Wallace moved to approve the proposed Chapter 380 Partnership Agreement with Continuum Health Services, L.L.P. to provide for incentives for the economic development of Flower Mound, and authorize the Mayor to execute same on behalf of the Town. The motion was seconded by Deputy Mayor Pro Tem Dixon.

VOTE ON THE MOTION

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

19. **Public Hearing to consider a request to amend the Land Development Regulations (LDR 03-09 - Mixed Use Analysis) by amending Section 98-904 regarding the analysis of Mixed Use development applications to be performed by a Town designated planning firm as part of the application and development review process for rezoning to a Mixed Use zoning development, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended denial by a vote of 4 to 2 at its November 9, 2009, meeting.)**

Staff Presentation

Executive Director of Development Services Doug Powell stated the proposed ordinance provided that for a zoning change to Mixed Use developments, an applicant had to go through a process and pay a fee. He provided the following presentation.

Mr. Powell informed the Council that the staff did not have the expertise to deal with making sure mixed use developments were viable in Flower Mound.

Questions from the Governing Body and Answers

Councilmember Hayden asked for **the cost of the applicant's fee per project.**

Mr. Powell stated it was going to be flexible, and for 100 acres, it might be \$10,000.

Councilmember Hayden asked what neighboring communities did.

Mr. Powell stated that in most cities, the zoning code usually had a Planned Development ordinance provision and went through a review process. The Town now had a set of standards that was not adopted when The Riverwalk at Central Park came in. A consultant would provide expertise not found on staff.

Councilmember Hayden asked if the review time would be extended for a project by including the review by a consultant.

Mr. Powell stated he did not think so. He added that the consultant would provide another set of eyes on the project, and the process could possibly be speeded up.

Councilmember Filidoro felt the consultant would be pretty expensive since there were only a few in the state that had the expertise.

Mr. Powell stated the Town could not hire someone like this to keep on staff.

Councilmember Filidoro clarified that the consultant would follow the **Town's** criteria, not design the project. He asked what else this type of person could do.

Mr. Powell stated there were guidelines in the ordinance. The Town had previously adopted an ordinance approving true mixed use projects - pedestrian-oriented downtown type projects.

Town Manager Harlan Jefferson stated if the project was denied, the Town would still charge the fee. It would not be a part of the zoning ordinance.

Deputy Mayor Pro Tem Dixon asked if the applicant wanted to do a large scale mixed use project in Flower Mound, what would the **applicant's** expectations be regarding the speed of the process.

Mr. Powell stated a flat fee of \$5,000 would be charged for the consultant to look at pre-application.

Deputy Mayor Pro Tem Dixon stated he would like to see a way where if a potential development came to the Town, staff would run the model for capacity first. He clarified that the consultant would not push personal preferences.

Councilmember Hayden asked how long the fee had been in the budget.

Mr. Jefferson stated since October 1.

Deputy Mayor Pro Tem Dixon clarified that the pre-application and application fees

would be passed through fees to the applicant.

Public Comments **None**

Close Public Hearing

Council Deliberation

Mayor Smith noted that previous applicants had told the Town they wanted to try to get through the system quicker. After working with the focus group on the mixed use ordinance, she believed this ordinance would be an asset for the Town, to the mixed use process, and the applicant.

Councilmember Filidoro moved to approve a request to amend the Land Development Regulations LDR 03-09 - Mixed Use Analysis by amending Section 98-904 of the Code of Ordinances, and to consider adopted Ordinance No. 50-09 providing for said amendment. The caption of the ordinance reads as follows:

ORDINANCE NO. 50-09

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 98 OF THE CODE OF ORDINANCES, ENTITLED "ZONING," THROUGH THE AMENDMENT OF ARTICLE III "DISTRICT REGULATIONS" BY THE AMENDMENT OF SECTION 98-904 ENTITLED "APPLICATIONS AND DEVELOPMENT REVIEW PROCESS" BY THE AMENDMENT OF SUBSECTION (A) ENTITLED "APPLICATIONS FOR REZONING" BY RE-NUMBERING EXISTING PARAGRAPH NOS. (2) AND (3) AS PARAGRAPH NOS. (4) AND (5) AND INSERTING NEW PARAGRAPH NOS. 2 AND 3 REGARDING THE ANALYSIS OF MIXED USE DEVELOPMENT APPLICATIONS BY A TOWN-DESIGNATED PLANNING FIRM AS PART OF THE DEVELOPMENT AND REVIEW PROCESS FOR REZONING TO THE MIXED USE ZONING DISTRICT; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

The motion was seconded by Councilmember Hayden.

VOTE ON THE MOTION

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

20. **Public Hearing to consider Town options relative to seismic testing on Town property or rights-of-way, including but not limited to (1) adoption of an ordinance amending Article VII, "Oil and Gas Well Drilling and Operations," of Chapter 34, "Environment," of the Town's Code of Ordinances, prohibiting seismic testing operations on Town property or rights-of-way; or, (2) authorization to permit seismic testing operations on Town property or rights-of-way, subject to the terms of a model seismic testing agreement and/or subject to various seismic testing analysis; and provide direction to Town staff regarding the foregoing.**

Mayor Smith appreciated everyone for attending the meeting and that the issues were being discussed in a public forum.

Staff Presentation

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

Questions from the Governing Body and Answers

Mayor Smith asked if the definition of roadways included the rights-of-way (ROW) where utilities might be located.

Mr. Woods stated the strict definition of a road might not include the ROW, but by policy, the Town did not allow seismic testing in the ROW.

Councilmember Hayden asked if the 300 foot buffer for infrastructure would be applied to private and public property.

Town Attorney Terry Welch stated the model agreement provided for any damage to public infrastructure.

Town Manager Harlan Jefferson did not remember a detailed discussion about banning seismic testing within 300 feet of the **Town's** infrastructure. Currently, a company could move a vibroseis **vehicle right outside of the Town's ROW and conduct the testing.**

Councilmember Hayden stated he had heard conflicting comments from residents in Denton County about the seismic testing. He asked if the testing was allowed on TxDOT roads.

Mr. Jefferson stated he had spoken to Gary Bailey with TxDOT. Mr. Bailey indicated that there was no policy, but he would not permit seismic testing on roadways in his district.

Councilmember Hayden asked who would be responsible for damage to a **neighbor's** private property if seismic testing was done - the operator or neighboring landowner.

Mr. Welch stated both parties could be sued.

Public Comments

Tammi Vajda, 2828 Lake Ville Lane, Flower Mound

Ms. Vajda stated this issue affected the whole Town, noting that Titan was contacting people in the Hilliard area and in Lewisville. She was concerned with foundations, septic systems, etc. She stated this was about the money the gas companies wanted to make. She urged the Council to stop the seismic testing now.

Randall Smith, 5428 Lake Victoria Court, Flower Mound

Mr. Smith stated seismic testing was the same as man-made earthquakes that would damage streets, water lines, sewer lines, homes, pools. He stated earthquakes caused damage to the structures they penetrated. Citizens would have to pay for the damages for decades. He stated the gas companies had the right to extract minerals, but they did not have the right to jeopardize others. He noted there could be possible damage to natural gas pipelines and asked the Council to not subject people to toxins in air.

Dana Smith, 5428 Lake Victoria Court, Flower Mound

Ms. Smith opposed seismic testing and had concerns for the soil.

Mayor Pro Tem Levenick arrived at 7:51 p.m.

Dulci Arredondo, 4005 Caruth Court, Flower Mound

Ms. Arredondo opposed seismic testing on public roads. She stated recent reports in

news talked about high benzene levels. She was concerned about radiation levels. She stated the Council did not need to rush into natural gas drilling until all concerns were addressed.

Tim Marini, Geoconetics

Mr. Marini stated hopefully his company would conduct the seismic testing in Flower Mound. He added they put a great deal of effort into finding gas and water lines. They had strict guidelines for buffers. Mr. Marini stated there were several methods of testing to determine measurements when getting close to structures. They could determine the velocity of energy in inches per second. He stated vibroseis compared to someone slamming a door, and in over 30 years, he had never encountered a problem.

Tony Silvestri, Williams Production Company

Mr. Silvestri appreciated all the concerns. They had been acquiring seismics on roads for some time in the Barnett Shale. He stated they recently were looking for information where this best practice had affected road longevity or integrity. They had contacted the Barnett Shale Information Council to see if they were aware of news information along these lines. They could not find anything that showed there was a point of contention, and he asked to see information if it was out in the public.

Marilyn Rhodes, regulatory manager, Williams Company

Ms. Rhodes stated Flower Mound had strong ordinances that were usable. She stated the test was conducted to find a conclusion. Dr. Nichols recommended a test to show his report. Over the past several months, Williams had tried to share the points of seismic testing. She stated there were established guidelines for seismic testing, and it was done over the world. Williams was sensitive to the concerns that had been expressed. She stated it was impossible for the trucks to be overloaded at the baseplate.

Josh Morrissey, 3324 Darcy Court, Flower Mound

Mr. Morrissey was against seismic testing and stated no one could guarantee that no damage would occur. If damage did occur, toxic fumes could be released into the air. He was concerned for the **children's** safety, adding that one of his children had leukemia (that was only caused by radiation and benzene). He asked the Council to not increase the risk.

Maylo Beemon, 3609 Old Mill Drive, Flower Mound

Ms. Beemon did not support seismic testing. This was technology best suited for rural areas. She asked the Council to not rush to a decision.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern was opposed to seismic testing and stated the risks outweighed the benefits.

Joe Northern, 4601 Portsmouth Court, Flower Mound

Mr. Northern stated Williams already had leases and asked why seismic testing was necessary now. He asked the Council to vote no.

Tony Robson, Courtney Drive, Flower Mound

Mr. Robson opposed seismic testing. His children were the reason he moved to Flower Mound. He was concerned with the levels of benzene. He stated one negative impact was declining home prices. He stated the Town was asking to be withdrawn from the liability.

Bruce and Faye Jarrett, 6947 Red Bud, Flower Mound

Mr. Bruce stated this was a question of tying Williams' hands or allowing them to do the most advanced way and efficient way of testing.

Zhe Shu, 3517 Arbor Creek Lane, Flower Mound

Mr. Shu did not want to ruin the reputation of the Town with seismic testing.

Jerry Hamilton, 1308 San Jacinto, Flower Mound

Mr. Hamilton stated that studies had shown that benzene could be leaked and it was very dangerous. He asked who would pay for the medical bills when the gas companies were gone. He was against seismic testing.

Todd York, Flower Mound

Mr. York opposed seismic testing. If it was approved, many guidelines would need to be put in place. He stated there was much more information to be analyzed, and asked that the Council make sure all residents were protected.

Bob Rogers, Geology Manager, Williams Company

Mr. Rogers appreciated hearing all the concerns. He responded to Dr. Nichols' report and stated he had shot two seismic surveys in Flower Mound and had seen no damage. He stated it was a common practice to do seismic testing, and other cities had allowed the testing.

Phil Del Vecchio, 7003 Woodridge, Flower Mound

Mr. Del Vecchio stated he had sent information to the Town Council over the past few weeks. He felt Dr. Nichols' report was wrong in many cases. He stated there was a standard already in the industry. The Council had a duty to get all of the facts and not make this a political issue. He suggested limiting Williams to a specific area and have an inspector look at their work.

Chris Tomlinson, Raintree, Flower Mound

Mr. Tomlinson was in favor of seismic testing and asked the Council to vote yes. He stated fewer holes would have to be drilled.

Laura Wolf, 4400 Cassandra Drive, Flower Mound

Ms. Wolf stated a financial difficulty would be put on homeowners and homeowners' associations. She stated gas wells were not beautiful. She added that the voters elected the members of Council to protect the citizens and their assets.

Bob Gibson, District Manager, Williams Company

Mr. Gibson pledged his support to do drilling the right way. He stated Williams was a 102 year old company. He watched all the operations of the company and added that this was a safe operation. He asked the Town to do the testing to show there was no problem. Williams would do the indemnifications.

Sue Ann Lorig, 4613 Fox Bluff, Flower Mound

Ms. Lorig opposed seismic testing and encouraged the Council to keep the gas drilling ordinance strong. She stated many residents were wearing green ribbons to show support for the environment in Flower Mound. Ms. Lorig stated only a few residents would make money. Dr. Nichols had stated that the Town had poor soil, and she felt there was a potential for damage to roads and homes.

Cyndy Dwyer, 2813 Mont Clair, Flower Mound

Ms. Dwyer stated no resident in Flower Mound was polled prior to the Board of the

Wellington HOA sending a letter to the Town Council. She reminded the Council that drilling was already occurring in Flower Mound. She stated property owners with mineral rights were able to benefit without seismic testing.

Kelly McDonald, 4119 Mustang Trail, Flower Mound

Ms. McDonald stated she was the newly elected president of the Board of Directors of the Bridlewood HOA. The board had many concerns as stated by former president, Mike Walker. They had listened to Dr. Nichols and read his report. She stated no level of damage to infrastructure was acceptable. She requested the Council to decline any requests for seismic testing on public streets.

Bev Fell, 3513 Arbor Creek Lane, Flower Mound

Ms. Fell was opposed to seismic testing. She did not welcome the testing until she knew the operations were safe.

Stan Martin, 6505 Frontier, Flower Mound

Mr. Martin stated he signed a lease with Williams and was in favor of seismic testing. He had hoped the Town would test on his street. He felt the staff information was biased. He stated the seismic machines did not cause earthquakes. His brother worked for Williams and was around natural gas every day and had no health problems. Mr. Martin stated it was time to vote for seismic testing.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd stated many people had been working on gas wells for some time and were not dying. He stated someone from Williams should explain what the testing would do.

Andrea Milton, Lane, Flower Mound

Ms. Milton stated that not enough information had been put out to the citizens. She asked what was the benefit of seismic testing on the roadways and wanted to know the risks to air quality.

Robin Farrell, Appleton Lane, Flower Mound

Ms. Farrell stated she moved to Flower Mound to live in a safe and healthy community. She was not against drilling or people having their mineral rights, and encouraged the Council to listen to the residents.

Sara Quinn, Highland Village

Ms. Quinn stated she was attending the meeting for a school project. She was glad that parents were at the meeting supporting their children.

Richard Scott, 2805 Lakemont, Flower Mound

Mr. Scott stated Titan was sending letters about seismic testing on private property. He asked if seismic testing was allowed on a ¼ acre lot. Mr. Scott stated Williams had high standards but if changes were made to the ordinance, all the companies would be able to do the testing on the roadways. He asked the Council to protect the residents of Flower Mound.

Gerald Robinson, 6920 Hidden Valley, Flower Mound

Mr. Robinson applauded the Council for the process and to find the best and safest way to proceed for the Town. He encouraged the Council to base their decision on facts and not emotional political interests.

Jack, Flower Mound

Jack asked the Council to just say no. He stated the companies could drill on the western side of the Town, and they had no business on the east side.

Mary Stessel, 3112 Cottrell, Flower Mound

Ms. Stessel stated wherever drilling was, it would get stinky and dirty. No one could say there would be no damage years down the road.

Close Public Hearing

Council Deliberation

Mayor Smith stated seismic testing might allow a company the ability to find pockets of natural gas, and they could be more productive. She asked staff to find out where seismic testing had been done in Flower Mound. The Town could not zone where seismic testing could be allowed. If there was a setback, it would almost eliminate drilling on the east side of Flower Mound. She could not see seismic testing on the roads in Wellington. She did not want to see east/west issues. She stated most wells were drilled in rural areas.

Mr. Jefferson reviewed the questions that had been asked during the Public Hearing. He stated he had read one article where people signed leases and with it was the ability for a company to do seismic testing on their property. He stated the Town was aware of some lawsuits and claims that were negotiated out once a matter went into dispute. Another question was would the Town approve this without indemnification. He stated state law prohibited the Town from insisting on indemnification. Another question was about the benefits of seismic testing. Mr. Jefferson stated Mr. Woods addressed that in his presentation, and the companies showed that seismic testing would increase the productivity and efficiency of the wells. There was question about whether or not the Town would allow testing on a quarter acre lot. Mr. Jefferson stated the Town did not have any restrictions on the acreage of private property on which seismic testing could be conducted.

Mayor Smith asked if the Town could put setbacks on seismic testing to protect private property on a ¼ acre lot.

Mr. Welch stated the gas operator asked if the Town could indemnify the operator and that was unconstitutional. Mr. Welch stated that recently landowners sued three cities in the Houston area and gas operators over seismic testing. The opinion from the Houston Court of Appeals only addressed the liability of the three cities and the cities were out of the case. There was no mention in the case of what happened to the claims of the other parties. Some people had given the ability to the gas companies to do seismic testing on private property. It could be problematic to have a uniform code to not allow seismic testing on private property anywhere in the Town, regardless of the underlying agreements.

Deputy Mayor Pro Tem Dixon stated some citizens said they were unaware of any information about seismic testing. He noted that a great deal of information was on the Town's website, and the entire packet for the meeting was online. He asked about eminent domain and seismic testing.

Mr. Welch stated he had not found any reported cases that discussed using eminent domain for seismic testing. There was a detailed state law regarding eminent domain, and the company would have to follow this procedure. He stated this would be a massive expenditure of

time, effort and money. There would be years of litigation as a consequence.

Councilmember Filidoro moved to approve an ordinance amending Article VII, "Oil and Gas Well Drilling and Operations," of Chapter 34, "Environment," of the Town's Code of Ordinances, prohibiting seismic testing operations to occur on Town property or rights-of-way. The motion was seconded by Councilmember Hayden.

Discussion on Motion

Deputy Mayor Pro Tem Dixon stated this had been a long drawn out issue. It was uncomfortable to approve seismic testing on Town streets unless there was hard evidence that no damage would be done. Residents would have to have the ability to say no to seismic testing within so many feet of their house. The Town had to protect the citizens and their assets. He noted that the Council had to realize that some people wanted seismic testing. He was in favor of moving ahead with testing and gaining the results.

Councilmember Hayden asked if staff would continue to look at how seismic testing might affect underground infrastructure and see if setbacks were necessary.

ORDINANCE NO. 51-09

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, AMENDING CHAPTER 34 "ENVIRONMENT" BY THE AMENDMENT OF SECTION 34-420 ENTITLED "OIL AND GAS WELL PERMIT REQUIRED" BY AMENDING PARAGRAPH (a) THEREOF TO PROHIBIT SEISMIC SURVEYS ON TOWN PROPERTY OR IN THE RIGHT-OF-WAY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- December 17 work session - move items on the consent agenda for the December 21 meeting to a special meeting on December 17.
- December 21 - cancel the meeting.
- Code of conduct - discuss at retreat.
- Jan 5, 6, or 12 for special meeting in January - decide on December 17.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:38 p.m. on December 7, 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 12:49 a.m. on December 8, 2009 to take action on the items as follows:

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

No action taken.

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

Deputy Mayor Pro Tem Dixon moved to change the Robert Dowell Property to the Patricia Sue Brown Property. The motion was seconded by Mayor Pro Tem Levenick.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

Mayor Pro Tem Levenick moved to approve the purchase of rights-of-way, in association with the Morriss-Gerault Improvement project 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 Wallace.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Levenick, Wallace, Hayden

NAYS: None

- c. **Consultation with Town Attorney regarding legal issues associated with the regulation of natural gas well produced water pipeline systems, centralized tank facilities, and centralized gas compression facilities, and all matters incident and related thereto.**

No action taken.

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

Mayor Pro Tem Levenick moved to replace Ellen Stallcup with Mary O'Meara for Place 1 on the Animal Services Board, term to expire September 30, 2011. Councilmember Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

Councilmember Wallace moved to move Elizabeth Moyer from Alternate Place 10 to the regular position for Place 2, term to expire September 30, 2010. Councilmember Filidoro seconded the motion.

VOTE ON THE MOTION

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

e. Discuss and consider annual review of Town Secretary.

Mayor Pro Tem Levenick moved to take action as discussed during Closed Session regarding the annual review of the Town Secretary. Councilmember Filidoro seconded the motion.

VOTE ON THE MOTION

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

f. Discuss and consider appointments to the Tax Increment Reinvestment Zone #1, and appointment of chair.

Councilmember Hayden moved to approve Resolution No. 37-09 appointing Bill Collins, Mike Wallace, and Jim Robertson to the Tax Increment Reinvestment Zone #1 for two-year terms beginning January 1, 2010 and ending December 31, 2011. The motion was seconded by Deputy Mayor Pro Tem Dixon. The resolution reads as follows:

RESOLUTION NO. 37-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPOINTING THREE MEMBERS TO THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (TIRZ #1), TOWN OF FLOWER MOUND, TEXAS; AND PROVIDING FOR OTHER MATTERS RELATING TO SUCH BOARD.

WHEREAS, on September 19, 2005, pursuant to Chapter 311 of the Texas Tax Code, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. 78-05 which designated an area as TIRZ #1, Town of Flower Mound, Texas, and established a Board of Directors for TIRZ #1; and

WHEREAS, Section 4 of the Ordinance provides that the Board of Directors for TIRZ #1 shall consist of seven members, three of whom shall be appointed by resolution of the Town Council and two of whom shall be appointed by the Commissioner's Court of Denton County, and the Flower Mound Mayor and Flower Mound Town Manager shall serve as ex officio non-voting members of the Board; and

WHEREAS, Section 4 of the Ordinance further provides that the terms of the members of the board shall be two years, save and except the ex officio non-voting members, and that each year the Town Council shall designate a member of the Board of Directors to serve as Chairman for a term of one year.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AS FOLLOWS:

SECTION 1

The following three individuals, who are qualified voters of the Town of Flower Mound, Texas, are hereby appointed to the Board of Directors of TIRZ #1, Town of Flower Mound, Texas, to serve for a term of two years ending on December 31, 2011:

1. Bill Collins

1. Mike Wallace
2. Jim Robertson

SECTION 2

This Resolution shall become effective immediately from and after its passage and it is accordingly so resolved.

VOTE ON THE MOTION

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

Councilmember Filidoro moved to approve Resolution No. 38-09 appointing Bill Collins as chairman to the Board of Directors for the Tax Increment Reinvestment Zone #1. The motion was seconded by Deputy Mayor Pro Tem Dixon. The resolution reads as follows:

RESOLUTION NO. 38-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING THE CHAIRMAN OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (TIRZ #1), TOWN OF FLOWER MOUND, TEXAS FOR A ONE-YEAR TERM BEGINNING JANUARY 1, 2010.

WHEREAS, on September 19, 2005, pursuant to Chapter 311 of the Texas Tax Code Annotated (Vernon 2002), the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. 78-05 (the "**Ordinance**") which designated an area as TIRZ #1, Town of Flower Mound, Texas, and established a Board of Directors for TIRZ #1; and

WHEREAS, Section 4 of the Ordinance provides for the creation, composition, and appointment of the Board of Directors for TIRZ #1; and

WHEREAS, Section 4 of the Ordinance provides that the Town Council shall designate a voting member of the Board of Directors to serve as Chairman of the TIRZ #1 board for a term of one year beginning on January 1 of the immediately following year; and

WHEREAS, the Town Council now desires to designate the voting member of the Board of Directors who will serve as Chairman of the TIRZ #1 board for a term of one year beginning on January 1, 2010.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

The following individual, who is a qualified voter of the Town of Flower Mound, Texas, is hereby designated and appointed Chairman of the Board of Directors of TIRZ #1, Town of Flower Mound, Texas, to serve for a term of one year beginning on January 1, 2010:

Bill Collins

SECTION 2

This Resolution shall take effect immediately from and after its adoption and is accordingly so resolved.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Levenick, Wallace, Hayden

NAYS: None

P. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 12:54 a.m. on Tuesday, December 8, 2009, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY

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