

THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 20TH DAY OF FEBRUARY, 2010 IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 9:00 A.M.

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

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

A. CALL SPECIAL MEETING TO ORDER

Mayor Smith called the special meeting to order at 9:06 a.m.

B./C. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:06 a.m. on February 20, 2010 pursuant to Texas Government Code Sections 551.071, 551.072, and 551.087 to discuss matters relating to consultation with Town Attorney, real property, and economic development negotiations, and reconvened into an open meeting at 12:45 p.m. on February 20, 2010 to take action on the items as follows:

a. Discuss and consider economic development incentives.

No action taken.

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

No action taken.

Mayor Smith and Mayor Pro Tem Levenick recused themselves from discussion in the Closed Meeting and the vote in the Open Meeting on the following item. Deputy Mayor Pro Tem Dixon read the caption.

c. Discuss and consider Mockingbird Pipeline, L.P. v. Town Of Flower Mound, Cause No. PR-2010-00050, pending in the Probate Court of Denton County, Texas, and consideration of a resolution related to representation of the Town and all matters incident and related thereto.

Councilmember Filidoro moved to approve Resolution No. 05-10. The motion was seconded by Councilmember Wallace. The resolution reads as follows:

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. 05-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AUTHORIZING THE TOWN'S ATTORNEYS, BROWN & HOFMEISTER, TO REPRESENT THE TOWN IN A CONDEMNATION LAWSUIT AGAINST THE TOWN BY MOCKINGBIRD PIPELINE, L.P., AND ANY AND ALL OTHER LITIGATION INVOLVING THE TOWN; RATIFYING THE ACTIONS TAKEN BY BROWN & HOFMEISTER RELATIVE TO CONDEMNATION LAWSUIT AGAINST THE TOWN BY MOCKINGBIRD PIPELINE, L.P.; MAKING FINDINGS RELATIVE THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 4.05 of the Town Charter provides, in part, that the Town Attorney "shall represent the Town in all litigation and legal proceedings," and it has been the practice of the Town for decades that the Town Attorney represent the Town in all such litigation and legal proceedings; and

WHEREAS, Terrence S. Welch ("Mr. Welch") and his law firm have been the Town Attorney since early 1991; and

WHEREAS, when Mr. Welch and other attorneys formed the law firm of Brown & Hofmeister, L.L.P. ("Law Firm"), in 2001, the Law Firm was approved by the Flower Mound Town Council as Town Attorney on or about May 21, 2001;

WHEREAS, by correspondence dated December 21, 2009, the Town received a Final Offer Letter from Mockingbird Pipeline, L.P. ("Mockingbird"), for the conveyance of property for an easement across land owned by the Town, to wit: Fire Station No. 2; and

WHEREAS, the Town had been made aware of Mockingbird's request for an easement prior to the Town's receipt of the December 21 correspondence referenced herein; and

WHEREAS, the Town Council discussed the easement issues in closed session at both Town Council meetings in December 2009 and at the special Town Council meeting on January 21, 2010; and

WHEREAS, the Town Council, or those members so eligible to vote on the requested easement, could not reach agreement about the conveyance of the easement interest to Mockingbird; and

WHEREAS, notwithstanding the lack of agreement relative to the conveyance of the easement interest to Mockingbird, the Town Attorney was directed by the Town Council to vigorously defend any lawsuit that might be filed by Mockingbird; and

WHEREAS, on or about January 22, 2010, the Town was sued by Mockingbird relative to the condemnation of an easement interest at Fire Station No. 2; and

WHEREAS, the lawsuit filed by Mockingbird is styled Mockingbird Pipeline, L.P., v. Town of Flower Mound, Cause No. PR-2010-00050, pending in the Probate Court of Denton County, Texas; and

WHEREAS, since the filing of the lawsuit, Mockingbird has contended that the Town Attorney and the Law Firm are not authorized to represent the interests of the Town; and

WHEREAS, it is the intent and purpose of this Resolution to clarify that the Town Attorney and Law Firm are duly authorized to represent the Town in any litigation filed against the Town or any of its employees and officers, including but not limited to the Mockingbird lawsuit referenced herein, and to take whatever steps are necessary to defend the Town and its interests; and

WHEREAS, further, it is the intent and purpose of this Resolution to ratify any and all actions taken by the Town Attorney and Law Firm relative to the Mockingbird lawsuit.

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

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

It is the intent and purpose of this Resolution by the Town Council of the Town of Flower Mound to clarify, affirmatively state and affirm that the Town Attorney and Law Firm are duly authorized to represent the Town in any litigation filed against the Town or any of its employees and officers, including but not limited to the Mockingbird lawsuit referenced in the Preamble to this Resolution, and to take whatever steps are necessary to defend the Town in litigation. This authority includes but is not limited to seeking dismissal of the Mockingbird lawsuit.

SECTION 3

It is the intent and purpose of this Resolution by the Town Council of the Town of Flower Mound to ratify any and all actions taken by the Town Attorney and Law Firm relative to the Mockingbird lawsuit referenced in the Preamble to this Resolution.

SECTION 4

This Resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 4 TO 0, ON THIS 20TH DAY OF FEBRUARY, 2010.

VOTE ON THE MOTION

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

D. ADJOURN SPECIAL MEETING

Mayor Smith adjourned the work session at 12:47 p.m. on February 20, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY