

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 1ST DAY OF MARCH, 2010 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
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Smith called the briefing session to order at 6:04 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports

Mayor Pro Tem Levenick commented that the Planning & Zoning Commission recommended approval of The River Walk apartments, and a re-zoning in Roanoke Hills. The Commission received an update on Specific Plan Area 8. Mayor Pro Tem Levenick stated she was chosen as the Chair of the Animal Services Board. She announced that the Animal Adoption Center would be holding an Open House in April.

Deputy Mayor Pro Tem Dixon stated the Oil and Gas Board of Appeals ruled on three items. Two items were not granted, and one item was granted.

2. Discuss Consent and Regular Items - No discussion

3. Discuss Future Agenda Items - No discussion

4. Discuss Council Communications

Town Manager Harlan Jefferson commented that the only outstanding communication dealt with engineering design criteria.

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 6:07 p.m.

E. INVOCATION

Chaplain Don Cone gave the invocation.

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

Mayor Smith led the pledges.

G. PRESENTATIONS

There were no presentations.

H. PUBLIC PARTICIPATION

Stan Martin, 6505 Frontier Drive, Flower Mound

Mr. Martin stated there was much division in the Town, specifically over gas drilling, and he was bothered by that. He commented that Councilmember Hayden brought a jar labeled "toxic" to a recent Council meeting. Mr. Martin stated that some of the chemicals might be considered hazardous. He had found that chemicals were very much diluted in fracking fluid. He asked the Council to stick to the truth.

Glen Faulkner, 3921 Pocahontas Drive, Flower Mound

Mr. Faulkner stated that last week his dog attacked him, and he drove to Fire Station #2 and there were no fire fighters. A maintenance worker assisted him by calling 9-1-1. He talked to the Town Manager and Fire Chief about the incident and stated that there needed to be someone in the station 24 hours a day. The firefighters were at Central Fire Station in a training session.

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone stated a group of students and parents from Garden Ridge Elementary recently cleaned up the park near his home. He sent his thanks out to them.

Virginia Simonson, 3104 Native Oak Drive, Flower Mound

Ms. Simonson stated she was a member of Flower Mound Cares. She stated a petition drive was being held to propose an ordinance that would result in a 180-day moratorium on the acceptance and processing of applications for Special Use Permits for any centralized natural gas compression facility, natural gas lift facility, or centralized natural gas produced water storage facility, as well as permits for the new pipelines that would be directly related to these facilities. She reported that they had surpassed the 5% threshold of petition signatures and would be collecting more signatures this week. She believed they would meet the needed number of signatures needed. She offered to turn in the petitions on Tuesday, if the Council would provide the Town Secretary's Office with enough assistance to certify the petitions.

JW Hand, 106 Red Oak Lane, Flower Mound

Justice of the Peace Hand stated his precinct covered a good deal of Flower Mound. He reminded everyone that Tuesday was election day.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie thanked those who were involved with the Friends of the Flower Mound

Library murder mystery dinner this past weekend. She commented that the grand opening of Fire Station #4 was well-attended.

I. ANNOUNCEMENTS

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

Mayor Smith recognized Councilmember Mike Wallace for achieving the Texas Municipal League Institute Certificate of Recognition. She presented his certificate and also presented him with a Certificate of Achievement from the Town.

Councilmember Wallace encouraged the Mayor and Council to continue education efforts and networking.

Mayor Smith reminded everyone about the 10th anniversary of the Flower Mound Public Library on Sunday.

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 acknowledged Ms. Simonson's offer to help certify the petitions, noting that the last day to call an election was March 8. The Town Council would have to have a special meeting to call the election on March 8. He thanked everyone involved in the grand opening of Fire Station #4 and noted that Fire Station #5 should open later this summer. He stated he had intended to have a presentation dealing with various studies regarding gas drilling tonight, however he had not received a final report. He also noted that the cancer cluster report had not been finalized, and staff would invite someone from TCEQ to the March 25 meeting.

K. CONSENT ITEMS

Mayor Pro Tem Levenick made a motion to approve by consent Items 1, 2, 3, 4, 5, 7, 8, and 9. 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 February 15, 2010.**

RECOMMENDATION: Approve minutes from a regular meeting of the Town Council held on February 15, 2010.

2. **Consider approval of minutes from a special meeting of the Town Council held on February 20, 2010.**

RECOMMENDATION: Approve minutes from a special meeting of the Town Council held on February 20, 2010.

3. **Consider approval of the purchase of Automatic Vehicle Locator (AVL) System Software and Support from Integrated Computer Systems, Inc., a sole source provider, in the amount of \$108,508.38.**

RECOMMENDATION: Approve the purchase of Automatic Vehicle Locator (AVL) System Software and Support from Integrated Computer Systems, Inc., a sole source provider, in the amount of \$108,508.38.

4. Consider approval of the purchase of two public safety rated sport utility vehicles for the Fire and Emergency Services Department from Caldwell Country Chevrolet, in the amount of \$52,806, through an existing interlocal agreement with Tarrant County.

RECOMMENDATION: Approve the purchase of two public safety rated sport utility vehicles for the Fire and Emergency Services Department from Caldwell Country Chevrolet, in the amount of \$52,806, through an existing interlocal agreement with Tarrant County.

5. Consider approval of an interlocal agreement between the Town of Flower Mound and the City of Odessa, 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 Odessa, 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 purchase and installation of playground equipment at Westchester Park from Child's Play, Inc., for the Westchester Park Playground project in the amount of \$129,399.00, through the Texas Local Government Purchasing Cooperative.

Item 6. was moved from Consent Items to Regular Items by Councilmember Wallace.

7. Consider approval of the award of Bid No. 20-10-B, subject to approval of funding by Denton County, Texas, with TISEO Paving Company Inc., for the phase I construction of the Morriss/Gerault Improvement project, in the amount of \$14,011,110.29; and approval of an agreement with TISEO Paving Company Inc., to provide for delay of notice to proceed for Bid Alternate No. 1, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve the award of Bid No. 20-10-B, subject to approval of funding by Denton County, Texas, with TISEO Paving Company Inc., for the phase I construction of the Morriss/Gerault Improvement project, in the amount of \$14,011,110.29; and approve an agreement with TISEO Paving Company Inc., to provide for delay of notice to proceed for Bid Alternate No. 1, and authorize the Mayor to execute same on behalf of the Town.

8. Consider approval of Change Order No. 2 and final acceptance for the construction of the Timber Creek Road 12-inch Water Line, amending the contract with Jim Bowman Construction Company L.P., for a decrease in the amount of \$257.00; acceptance of the project; authorization for final payment to the contractor, Jim Bowman Construction Company L.P., in the amount of \$3,844.63; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Change Order No. 2 and final acceptance for the construction of the Timber Creek Road 12-inch Water Line, amending the contract with Jim Bowman Construction Company L.P., for a decrease in the amount of \$257.00; accept the project; authorize final payment to the contractor, Jim Bowman Construction Company L.P., in the

amount of \$3,844.63; and authorize the Mayor to execute same on behalf of the Town.

9. Consider approval of an ordinance amending Appendix A, "Fee Schedule," to add fees associated with Chapter 34, "Environment," Article VIII, entitled "Oil and Gas Pipeline Standards" of the Town of Flower Mound Code of Ordinances.

RECOMMENDATION: Approve Ordinance No. 12-10 amending Appendix A, "Fee Schedule," to add fees associated with Chapter 34, "Environment," Article VIII, entitled "Oil and Gas Pipeline Standards" of the Town of Flower Mound Code of Ordinances. The caption of the ordinance reads as follows:

ORDINANCE NO. 12-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S CODE OF ORDINANCES THROUGH THE AMENDMENT OF APPENDIX A, "FEE SCHEDULE," TO ADD FEES ASSOCIATED WITH CHAPTER 34, "ENVIRONMENT," ARTICLE VIII, ENTITLED "OIL AND GAS PIPELINE STANDARDS" OF THE TOWN OF FLOWER MOUND CODE OF ORDINANCES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

L. REGULAR ITEMS

6. Consider approval of the purchase and installation of playground equipment at Westchester Park from Child's Play, Inc., for the Westchester Park Playground project in the amount of \$129,399.00, through the Texas Local Government Purchasing Cooperative. (This item was removed from the Consent Agenda by Councilmember Wallace.)

Councilmember Wallace recused himself due to a conflict of interest.

Mayor Pro Tem Levenick moved to approve the purchase and installation of playground equipment at Westchester Park from Child's Play, Inc. for the Westchester Park Playground project in the amount of \$129,399.00, through the Texas Local Government Purchasing Cooperative. Councilmember Hayden seconded the motion.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Levenick, Hayden

NAYS: None

RECUSAL: Hayden

Items 10, 11, and 12 were opened together.

10. Consider approval of an ordinance ordering the May 8, 2010 general election for the purpose of electing a Mayor, Councilmember Place 2, and Councilmember Place 4

for two-year terms each.

11. Consider approval of a joint election agreement with other Denton County Political Subdivisions and contract for election services with Denton County for May 8, 2010, and authorization for the Mayor to execute same on behalf of the Town.
12. Public Hearing to consider approval of an ordinance ordering a special election for May 8, 2010, for the purpose of authorizing the sale and conveyance for fair market value of an approximate 15.815-acre tract of land located on the northwest corner of FM 407 and Chinn Chapel Road (known as Chinn Chapel Soccer Complex), and purchase of an approximate 23.374-acre property located on the east side of Chinn Chapel Road between Dixon Lane and Waketon Road.

Staff Presentation

Town Secretary Paula Paschal informed the Council that this year the new Denton County Elections Administrator requested that the surrounding Denton County entities contract with his office to conduct the May elections. She stated that in previous years, the Town only leased the voting equipment from Denton County. She presented a map of the polling places for Flower Mound registered voters. The majority of the voters would continue to vote at the Police and Courts Building. Because the Town shared several county precincts with other entities, there would be three additional polling locations on election day. Precincts 422 and 419 would vote at the Double Oak Town Hall (34 registered voters). Precinct 417 (304 registered voters) would vote at the Bartonville Town Hall. Precinct 413 (7 registered voters) would vote at the Roanoke Town Hall. She stated the Town should realize a cost savings of approximately \$3,000 because of sharing costs with the other entities. The results of the election would come from Denton County, and she noted that they would post the unofficial early voting results shortly after 7 pm on their website, and the other results as they came in from the polling locations.

Assistant Town Manager Kent Collins stated Item 12 was to decide whether a special election would be called to authorize the sale and conveyance of the Chinn Chapel Soccer Complex and purchase a different property at the southeast corner of Chinn Chapel between Waketon and Dixon. He stated the new complex would be constructed by the land developer under the supervision of the Town. He presented the following table showing the land proposal summary.

Element	Chinn Chapel Soccer Complex	23.374 acre property
Size	15.815 acres	23.374 acres
Value	\$3,100,000 (valued as commercial) \$4,281,825 (valued as soccer complex)	\$4,567,786 (valued as soccer complex)
Location	NW Corner of FM 407 and Chinn Chapel	SE Corner of Chinn Chapel and Dixon
Field Configuration	Five (5) 60yd x 120yd fields	Six (6) 75yd x 120yd fields
Parking	288 spaces	408 spaces
Other amenities	Concession stand, playground, shed, water well, lights, fencing, goals, irrigation	Concession stand, playground, shed, water well, lights, fencing, goals, irrigation (to establish equal or better condition)

Questions from the Governing Body and Answers

Councilmember Hayden stated some citizens had told him that this seemed to be happening in such a hurry. He asked how long the Town had been working on this.

Town Manager Harlan Jefferson stated staff received a proposal in June 2009. Both pieces of property had been appraised, and the exchange of land would be at market value.

Councilmember Hayden asked what assurances did the Council have that the project would be done **to the Town's** high standards.

Mr. Jefferson stated that the proposition on the ballot would just give the Town the authorization to sell and convey and purchase. The Town would need to enter into an agreement with the landowner and identify specifications. He stated the project might not move forward if the agreement was not followed. Mr. Jefferson stated when the Town received the first proposal last year, it addressed a land swap, a gas well site, and a residential development north of the soccer complex. The Town Council directed staff that all three items would have to each stand on their own merit. The residential portion was known as Teracina. None of the three items were interdependent, however the connection was that all three were owned by the same owner. The gas well site was within the 1,000 foot setback of the soccer complex. He addressed the expansion of Chinn Chapel Road and stated it was one of the capital projects within the TIRZ CIP and the construction would start in the next couple of years, helping the traffic flow in that area.

Councilmember Wallace stated the Town would be supervising the development of the new site to insure that the Town got the same or better design and quality. He asked if the Town owned the minerals now and would they be retained.

Mr. Collins responded that the answer to both questions was yes.

Councilmember Filidoro stated there had been some issues regarding how the soccer complex property was evaluated. He asked how staff arrived at the proposed numbers. He also asked staff to address the road situation at Waketon and Chinn Chapel.

Mr. Collins stated that on the existing soccer complex, there were two ways to look at the property. The contemplated use was commercial, and that was how the appraiser came up with the \$3.1 million number. If it was valued as a soccer complex and included the improvements that the Town has made, the value of that property would be \$4.3 million.

Councilmember Filidoro asked how much the other land was worth.

Mr. Collins stated it was not appraised as commercial. The underlying zoning was residential and appraised at agricultural/residential.

Councilmember Filidoro asked for the value of land for land.

Mr. Collins responded that the value on the appraisal, without any improvements, was \$1.1 million. In response to the question about the roads, Mr. Collins stated that the Town was working on the design of Dixon, east of FM 2499. Chinn Chapel would be the next project selected. The 23 acres included some right-of-way dedication. He added that the Plaza of the Oaks Addition would also have to dedicate right-of-way. Also, some of the property owners on

Chinn Chapel had indicated that they would be willing to dedicate right-of-way in order to get Chinn Chapel to move forward. He stated there was no firm schedule for Waketon; however staff continued to look for funding sources.

Councilmember Filidoro asked for the size of improvements to Chinn Chapel.

Mr. Collins stated it would be a four-lane undivided roadway from FM 407 to Waketon. He did not know how much that would cost at this time.

Mayor Smith noted that she and Councilmember Filidoro had the opportunity to see another proposed development south of Plaza of the Oaks to Dixon. She understood there was a favorable response. That development would also give up right-of-way or easements to the Town. She asked if they would be subject to improving the road.

Mr. Collins stated they would be responsible for their proportionate share.

Councilmember Hayden asked if there were additional properties that would need to be purchased, and if the land would then increase in value.

Mr. Jefferson stated it would include the entire property that the Town would acquire. There were four properties involved in the 23 acres.

Councilmember Hayden stated the highest and best use for the soccer complex property would be commercial. He asked for the current zoning.

Mr. Collins believed it was zoned agricultural.

Councilmember Hayden stated there were no assurances that development would happen on that corner. He stated there was anticipation that there would be commercial at that corner. He wanted to hear what the developer had planned for the corner.

Mr. Jefferson responded to Councilmember Filidoro's question about the cost of the improvements to Chinn Chapel and stated it would be about \$3.1 million. He noted that the developer's contribution may or may not be the right-of-way. He stated it was budgeted in the TIRZ, and Denton County would also make a contribution.

Councilmember Wallace asked for an estimate of property tax and sales tax revenues.

Mr. Jefferson responded that staff had not prepared any of those estimates. He understood that the developer might have some numbers.

Councilmember Wallace asked if there would be another public hearing if the proposition passed at the election.

Mr. Jefferson stated the Town would provide 30 days notice and have a public hearing before election day.

Applicant's Presentation

Bobby Dollack, 111 Hillside, Lewisville, G&A Consultants

Mr. Dollack stated the Chinn Chapel Soccer Complex corner had a potential sales tax base. This opportunity came up when Mr. Moayedhi asked how he could make this happen, and

how Flower Mound could get something like the Shops At Highland Village. They felt like a mixed-use development on 112 acres would be too close to The River Walk at Central Park, and they would compete with each other. Mr. Dollack stated the existing soccer complex had five fields on 15.81 acres. Mr. Dollack stated the current soccer fields were within the Bartonville Water Supply District, thus a well was put in. The proposed location was 23.74 acres. Mr. Moayedhi had most of the property under contract. The new fields would be 75 yards x 125 yards for competition fields. The proposal called for right turn lanes and left turn lanes into the new fields, along with landscaping along Dixon, Chinn Chapel, and Waketon. The proposal for the new site included a water well and detention pond. There would be an 8-foot trail along Waketon and Chinn Chapel. He stated the developer would work closely with staff on creating a complex that was equal to or better than the existing complex. He noted that the Town needed a seamless transition to the new fields. The proposal provided bigger fields (plus an additional field), flexible scheduling, the potential for more soccer tournaments, quick access to the fields, and safer and multiple points of access. The new location would also encourage spending at adjacent retail centers in Flower Mound.

Deputy Mayor Pro Tem Dixon stated the subject property was adjacent to an existing mobile home park. He asked if the Town could acquire that property, was there a possibility to add three more fields.

Mr. Dollack responded that two fields would definitely fit—maybe three.

Councilmember Filidoro asked Mr. Dollack to address lighted fields adjacent to residences.

Mr. Dollack stated the Town would have the ability to light up only the fields that would be in use, noting that the parking lot would have to be lit.

Brad Kerley, 1608 Springwood, Flower Mound

Mr. Kerley, President of GLASA, stated that GLASA used the lighting system designed by the Town. GLASA was using the Chinn Chapel Complex for recreational games on Sunday s. He supported the proposal. He stated that of the 5,218 players in GLASA, 55% were Flower Mound residents. Mr. Kerley stated GLASA was hosting five tournaments a year, with 160 teams in a tournament. The parking area was small at Chinn Chapel and people had to park in Highland Village. He added there was much traffic on FM 407 and on Chinn Chapel.

Councilmember Hayden asked how lighting would impact the residents to the east of the new complex.

Mr. Dollack stated the lights would be shielded and would shine on the fields, not on the residents.

Councilmember Hayden asked if there would be any trees buffering the residents.

Mr. Dollack stated the zoning ordinance required buffering, and there would be a 12-foot fence for screening.

Councilmember Hayden asked what was being planned for the FM 407/Chinn Chapel corner.

Mr. Dollack stated there was no guarantee of that corner being zoned commercial. It would require zoning and master plan changes. He added that it would bring a quality retail project that the Town would be proud of. He stated he had run preliminary numbers on

the acreage and estimated that at complete build out, the local sales tax could be \$350,000 a year, and state tax could be \$1.1 million.

Councilmember Hayden asked if Mr. Dollack had any idea when something might come forward.

Mr. Dollack stated it would probably draw much interest. He noted that the Chinn Chapel soccer fields would not be taken out of service until the new fields were ready.

Mayor Smith asked when the widening of FM 407 west was scheduled to be let.

Mr. Jefferson stated the section of FM 407 from Briarhill to Chinn Chapel had already been let, and TxDOT would improve the roadway 600 feet west of the intersection.

Mayor Smith stated Market Street had been interested in that corner before, noting that Flower Mound also had the demographics for a Whole Foods Market. She added that the Town already signed a lease on a possible gas well somewhere on the 90 acres north of this land.

Public Comments

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated the Chinn Chapel Soccer Complex was a great facility. He did not think the proposal had been adequately explained to the public, and it had not been discussed at the Parks Master Plan hearings by the PALS Board. He stated the infrastructure was inadequate on Waketon and Chinn Chapel.

Dale Andrews, 3016 Chinn Chapel, Flower Mound

Mr. Andrews stated he owned a 140+-year-old house on Chinn Chapel, and he chose to keep the house in Flower Mound. Although there were many moving parts to the proposal, he stated Flower Mound had always prided itself in looking forward. He felt this was the right thing to do for the Town.

Buddy Tompkins, 6000 Chinn Chapel, Flower Mound

Mr. Tompkins owned a 120+-year-old home and acreage on Chinn Chapel. He stated he originally did not want Target to be built, but the development had been wonderful. He stated it seemed logical to have the soccer complex moved as it would get the kids off FM 407. He was ready to see Chinn Chapel widened.

Mike Smith, 5950 Chinn Chapel, Flower Mound

Mr. Smith supported moving the soccer fields. He stated the traffic on Chinn Chapel was unbearable. He was concerned with the safety of the children, and he thanked the Town for being proactive.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie expressed concern for the safety of the children, and stated this would be a logical swap. She encouraged the Council to put this on the ballot.

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone stated initially he was not in favor of the swap, however he now felt it was a tremendous opportunity for the Town.

Bryan Webb, 4012 High Road, Flower Mound

Mr. Webb stated the Council had the opportunity to let the voters decide. He encouraged the voters to vote yes.

Chris Tomlinson, Flower Mound

Mr. Tomlinson supported the proposal.

Dave Johnson, 3617 San Paula, Flower Mound

Mr. Johnson stated this was the perfect example to show there were processes in place to let the voters decide.

Patsy Mizeur, 1821 Castle Court, Flower Mound

Mr. Mizeur, President of Flower Mound Voters for Conservative Spending, stated this was a great opportunity to realize some revenue off of the surrounding residents.

Close Public Hearing

Council Deliberation Item 10

Councilmember Hayden stated he was not endorsing the land swap, but it would give the residents an opportunity to vote.

Councilmember Filidoro stated that in the next two months there would be plenty of time to discuss this matter. The Council had been looking at this for several months. He was not endorsing this—he just wanted to let the voters decide.

Councilmember Wallace stated the Town was not actually giving up the land. Hopefully the Town would get more increased revenue. He encouraged the residents to vote in favor of it.

Councilmember Wallace moved to approve Ordinance No. 13-10 ordering the May 8, 2010 general election for the purpose of electing a Mayor, Councilmember Place 2, and Councilmember Place 4 for two-year terms each. The motion was seconded by Mayor Pro Tem Levenick. The caption of the ordinance reads as follows:

ORDINANCE NO. 13-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ORDERING A GENERAL TOWN ELECTION TO BE HELD ON THE 8th DAY OF MAY 2010, FOR THE PURPOSE OF ELECTING A MAYOR AND TWO COUNCILMEMBERS, PLACES 2 AND 4, FOR TWO-YEAR TERMS EACH; PROVIDING FOR ELECTION OFFICERS; DESIGNATING THE PLACES AND MANNER OF HOLDING SAID ELECTION; AND PROVIDING FOR THE POSTING AND PUBLICATION OF NOTICE.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

Council Deliberation Item 11

Councilmember Filidoro moved to approve a joint election agreement with other Denton County Political Subdivisions and contract for election services with Denton County for May 8, 2010, 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: Filidoro, Dixon, Levenick, Wallace, Hayden
NAYS: None

Council Deliberation Item 12

Mayor Pro Tem Levenick moved to approve Ordinance No. 14-10 ordering a special election for May 8, 2010, for the purpose of authorizing the sale and conveyance for fair market value of an approximate 15.815-acre tract of land located on the northwest corner of FM 407 and Chinn Chapel Road (known as Chinn Chapel Soccer Complex), and purchase of an approximate 23.374-acre property located on the east side of Chinn Chapel Road between Dixon Lane and Waketon Road. The motion was seconded by Councilmember Wallace. The caption of the ordinance reads as follows:

ORDINANCE NO. 14-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ORDERING A SPECIAL TOWN ELECTION TO BE HELD ON THE 8th DAY OF MAY 2010, FOR THE PURPOSE OF SUBMITTING ONE PROPOSITION TO THE ELIGIBLE VOTERS OF THE TOWN OF FLOWER MOUND ON WHETHER THE TOWN OF FLOWER MOUND, TEXAS, MAY AUTHORIZE THE SALE AND CONVEYANCE FOR FAIR MARKET VALUE AN APPROXIMATE 15.815-ACRE TRACT OF LAND LOCATED ON THE NORTHWEST CORNER OF FM 407 AND CHINN CHAPEL ROAD (KNOWN AS CHINN CHAPEL SOCCER COMPLEX), AND PURCHASE OF AN APPROXIMATE 23.374-ACRE PROPERTY LOCATED ON THE EAST SIDE OF CHINN CHAPEL ROAD BETWEEN DIXON LANE AND WAKETON ROAD; PROVIDING FOR ELECTION OFFICERS; DESIGNATING THE PLACES AND MANNER OF HOLDING SAID ELECTION; AND PROVIDING FOR THE POSTING AND PUBLICATION OF NOTICE.

VOTE ON THE MOTION

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

Items 13, 14, and 15 were opened together.

13.

Public Hearing

Public Hearing to consider a tree removal permit for the removal of three specimen trees on property proposed for development as Montalcino Estates. The property is generally located north of FM 1171 and west of the Tour 18 subdivision. **(The Environmental Conservation Commission recommended approval by a vote of 5 to 0 at their January 5, 2010, meeting).**

14. ZPD 08-08 - Montalcino Estates **Public Hearing**
 Public Hearing to consider a request for rezoning (ZPD 08-08 - Montalcino Estates) from Agricultural District to Planned Development District-107 (PD-107) for a conservation development, and an exception to Section 98-147, Topographical slope protection, as authorized by Section 98-147(b); and to consider adopting an ordinance providing for said amendment; subject to the terms and conditions in the attached development agreement; and authorization for the Mayor to execute same on behalf of the Town. The property is located north of Cross Timbers Road and west of Tour 18 Drive. **(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 8, 2010 meeting.)**
15. Consider a request for a Development Plan (DP 01-09 - Montalcino Estates) to develop a residential subdivision. The property is located north of Cross Timbers Road and west of Tour 18 Drive. **(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 8, 2010 meeting.)**

Staff Presentation

Executive Director of Development Services Doug Powell briefed the Council on this item. Mr. Powell stated the subject property was located north of FM 1171 and west of Tour 18. He showed the portion of the property that was north of the Town's corporate limits and in its extra-territorial jurisdiction (ETJ). The property within the corporate limits was subject to the Town's zoning regulations. The property outside the corporate limits was not subject to the Town's zoning regulations, but it was subject to the Town's subdivision regulations and was part of the development plan. The land use was Cross Timbers Conservation Development District and the current zoning was agricultural. Mr. Powell pointed out a zigzag line on the plan, stating that was designed to represent the escarpment through the hill. The applicant proposed a conservation development where half the land was set aside in an easement owned by Connemara Conservancy. The zoning would allow for two-acre lots and the conservation development allowed one-acre lots, with the other acre to be set aside into a shared open space area. Therefore the density would not change and much of the property would be reserved. Mr. Powell stated the total number of acres was 104.36. It included an equestrian trail that would be made a part of the Town's trail system, a jogging trail, benches, and a 10-foot vegetation maintenance buffer. A 50-foot landscape buffer would be placed along FM 1171, and the houses would not be seen from the roadway. The exception request was for slopes greater than 12%. Most of the slopes were in the conservation easement. The applicant was requesting to remove three specimen trees. The Environmental Conservation Commission approved the removal of the trees by a vote of 5-0. Mr. Powell also noted that there was a list of incentives that the Town could offer as part of the conservation development.

1. Fifty percent reduction in park land dedication
2. Waiver of Upland Habitat and Riparian Mitigation Fees
3. Plat application fee(s)
4. Permit fee(s) for perimeter wall(s)
5. Permit fee(s) for internal fencing (tubular steel) around open space that must be installed prior to acceptance of the subdivision
6. Permit fee(s) for guard shock
7. Permit fee(s) for irrigation associated with the 50-foot scenic road setback and landscape buffer
8. Permit fee(s) for subdivision entry signage

Mayor Smith was concerned about the northern portion of the property that was in the To

wn's ETJ. She recalled the emotion associated with the annexation of Phase 3 of Tour 18.

Mr. Powell stated since the application for this project had been submitted, staff asked about the annexation of the property. The applicant had indicated he did not have a problem with that, however he did not want to do the annexation process until a lot had been platted in that area.

Mayor Smith asked if the future underpass under FM 1171 would connect with the proposed horse trails and walking trails.

Mr. Powell believed that was being considered.

Mayor Smith applauded the application and the conservation district. She asked what levels of incentives were granted to Chimney Rock or The Sanctuary.

Mr. Powell stated he did not have that information at this time.

Councilmember Filidoro stated he would prefer that the annexation be done up front.

Deputy Mayor Pro Tem Dixon noted that the Environmental Conservation Commission did not make a recommendation on the fees. He asked if the Commission normally did that.

Matt Woods, Director of Environmental Services stated this was the first time the Commission had heard waivers for fees. They did not make recommendations on that.

Applicant's Presentation

Bobby Dollack, 111 Hillside Drive, Lewisville, G&A Consultants

Mr. Dollack stated they had been working on this project for four years and many parties had been involved. The 478.58 acres included 280.62 acres in the **Town's** limits (106 residential lots, proposed) and 197 acres in the ETJ (proposed 71 lots). There would be 140.364 acres in the conservation development district.

Ron Stewart, Environs Group

Mr. Stewart stated he attended the Environmental Conservation Commission meeting regarding the requests for tree removal. He stated he had been working with TxDOT and within the Town's engineering standards regarding the tree that was located in the entranceway into the subdivision. He noted this would be a gated community.

Councilmember Wallace asked if there would be tree mitigation and if the applicant planned to plant additional trees in the subdivision.

Mr. Stewart responded that they did plan to plant more trees along FM 1171 and into the property. He noted they were saving many trees in the conservation development.

Councilmember Wallace asked if the equestrian trail would be open to the public.

Mr. Stewart responded yes.

Mr. Dollack stated the zoning application was for 280.62 acres inside the **Town's** limits. The planned development was for one-acre lots. The proposed nine easement lots totaled 140.364 acres, and excludes all rights-of-way, buffers, amenities lots, gas pad sites, and the

access roads. Connemara would manage the conservation development district. He stated there were three existing gas wells on the property. The surface developer could request down to a 300-foot setback from the 500-foot setback for the gas equipment. Pad sites were not included in the areas for the conservation. He stated the gas pipeline easement came from the ETJ area where the gas compressor and the Atmos tap were located. Trucks could have access through the existing easement along the roadway via a secondary entrance off FM 1171. The stub outs from Tour 18 would be connected. The **homeowners'** association would maintain the private roads. Mr. Dollack stated there were several traffic circles. The actual road was 26 feet wide. He noted that the cul-de-sacs were widened to 30 feet.

Deputy Mayor Pro Tem Dixon asked if grooved concrete was planned for the streets.

Mr. Dollack responded that stamped concrete would only be located in a small area. He added that the entrance to the subdivision would line up with the ultimate median cut in FM 1171.

Councilmember Filidoro asked if this would be a "green" subdivision.

Mr. Dollack stated they would not have impervious paving as it would be cost prohibitive. He noted they would have concrete roads, an estate section. The ETJ area contained 197.96 acres—71 lots. There was one existing gas well pad site and one compressor site. There was one future gas pad site planned with Red Oak. There was an existing floodplain. The lots would be laid out so that none of them would be in the ultimate flood. There would be 62.32 acres of open space. He showed the pipeline that collected the gas and brought it to the compressor station and into the Atmos line. He showed the 200-foot setback from the gas wells, as required by Denton County. He noted that the applicant had submitted the paperwork to Denton County on January 14, 2010.

Councilmember Hayden asked who had jurisdiction over gas wells in the ETJ.

Mr. Dollack responded that Denton County had that jurisdiction.

Councilmember Hayden asked for the setback for the Atmos pipeline for homes.

Mr. Dollack answered that it was probably 75 feet.

Councilmember Hayden asked how much traffic was anticipated by the water trucks.

Mr. Dollard stated only two wells were drilled on Pad 3.

Councilmember Hayden stated it seemed odd that the main traffic for the trucks would be up and down the main road.

Councilmember Wallace asked if there would be notification to the buyers that there was gas drilling and truck traffic on the property.

Mr. Dollack responded yes. They planned to phase in the project. He discussed the list of incentives as described by Mr. Powell earlier.

Councilmember Hayden asked why the applicant was delaying annexation of the ETJ.

Mr. Dollack stated there was no value (streets or houses) on the ETJ property now.

When they did the construction plans, and prior to constructing any streets or houses, he planned to come back with the request for annexation.

Councilmember Hayden stated the Tour 18 Phase 3 annexation was very strained, and he wanted to avoid any problems. He asked if the applicant would commence the annexation now.

Mr. Dollack stated there were some pad sites that had not been built. There were some issues in the ETJ area regarding the many parties.

Councilmember Hayden stated he had no concerns with the incentives. He felt it was a great development, but the applicant might be making a mistake if the annexation was not done now.

David Kenner, Centurion Development

Mr. Kenner stated the project had taken seven years so far to come forward. The landowner was adamant about getting the gas drilling matter done first. He was willing to put in the development agreement that, upon platting, they would initiate the annexation process.

Mr. Dollack stated one of the pad sites was critical to getting the gas drilling. It met all the County regulations. Annexation right now would create a hindrance to getting the minerals from the property.

Councilmember Wallace asked if the land owner would agree that he would not put in an injection well.

Mr. Dollack stated he could not make that determination.

Councilmember Hayden asked how far the future pad site was from Tour 18.

Mr. Dollack stated it was a five-acre pad site.

Town Attorney Terry Welch suggested that the Council go into a Closed Meeting to discuss a few issues.

The Town Council convened into a closed meeting at 9:20 p.m. on March 1, 2010 pursuant to Texas Government Code Section 551.071 to discuss matters relating to consultation with Town Attorney on these three agenda items, and reconvened into an open meeting at 9:45 p.m. on March 1, 2010 to take action on the items as follows:

No action was taken at this time.

Mr. Welch addressed the ETJ regarding wells. There was a vested rights theory. When someone applied for something, a snapshot of the Codes in place at that time was taken, and those regulations would guide the process. When the development plan was submitted to the Town, pad sites were already shown in the ETJ area. Under Chapter 245 of the Local Government Code the County regulations were locked in on those pad sites. If the Town annexed the property and the developer wanted to put in new sites, then Flower Mound regulations would come into play.

Mr. Dollack stated Pad 3 in the ETJ had a well site and a compressor. There is another pad site that is not drilled on.

Mr. Welch stated the Town received fair notice that there was a pad site in the corner.

Mayor Smith stated in order to protect the Town, the Council needed to go through the annexation process to protect new future sites.

Questions from the Governing Body and Answers

Public Comments

Don Hanvey, 8801 Cross Timbers Road, Flower Mound

Mr. Hanvey first thought the lots were too small and the density was too high. He stated the lots in The Vineyard and in Tour 18 were much bigger. He had concerns with the truck entrance, and he stated that 22 lots were very close to the road. He stated now it looked like a fabulous project. He asked how long Phase 1 might take, who owned the property, and how the septic systems would work in a dense area.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern asked for some discussion about access for the equestrian trail. Ms. Northern stated she **didn't** see how many lots were being impacted by the 12% slope. She asked for the total dollar amount for fees that were being waived.

Robert Furst, 4215 Beverly Drive, Dallas

Mr. Furst supported the request. He wanted to make sure that any roads that connected to his property were not pre-determined to make it required that his roads would end there.

Close Public Hearing

Mayor Smith stated the septic systems would be aerobic. She asked if the land had been purchased.

Mr. Dollack stated it had not yet been purchased but was under contract.

Mayor Smith asked if land would have to be acquired to do the connectivity for the horse trails.

Mr. Dollack responded that they planned to do so.

Mayor Smith stated the density averaged out to one home on two acres.

Mr. Dollack stated the truck entrances were off FM 1171. There would be a median cut for the road that will meet with it on the south side of FM 1171. He stated that water trucks were just like other trucks. The number of trucks depended on the number of wells. There were about six lots affected by the 12% slope easement that would have preserved grading easements on them to protect them.

Mr. Jefferson stated the total amount in fees to be waived was \$757,105.

Mr. Powell stated that some of the fees would vary due to the cost of the building.

Mehrdad Moayedi, 1221 I-35, Carrollton

Mr. Merdad understood that the Town was asking for the property to be annexed into

Flower Mound.

Mayor Smith stated the Town wanted to be comfortable with knowing that if any new wells come in (in the ETJ), that they would come in under Flower Mound regulations.

Mr. Moayedid stated the mineral owner was different from the land owner. He could not accept annexation at this time.

Mr. Welch stated on the development plan there was an existing pad site, an existing compression station, and a future well site. Those would be under existing County regulations.

Mr. Moayedid stated that the mineral holder could not accept annexation at this time.

Mayor Smith reiterated that currently Flower Mound could not change anything with the mineral rights on the three well sites in the ETJ.

Phillip Baker, Vice President of Rayzor Company (owner of the 478-acre tract)

Mr. Baker stated he had leased the mineral rights to Red Oak. There were many standards in the lease agreement. He made sure the surface rights were intact, and added that there would never be a disposal well on that tract of land.

Council Deliberation on Item 13

Councilmember Wallace moved to approve a tree removal permit for the removal of three specimen trees on property proposed for development as Montalcino Estates. The motion was seconded by Mayor Pro Tem Levenick.

VOTE ON THE MOTION

AYES: Filidoro, Dixon, Levenick, Wallace, Hayden

NAYS: None

Council Deliberation on Item 14

Councilmember Wallace moved to approve a request for rezoning ZPD 08-08 - Montalcino Estates from Agricultural District to Planned Development District-107 (PD-107) for a conservation development, and an exception to Section 98-147, Topographical slope protection, as authorized by Section 98-147(b); adopt Ordinance No. 15-10 providing for said amendment subject to the terms and conditions in the attached Development agreement; to approve the requested incentives listed on Pages 12 and 13 of the agenda packet; and to authorize the Mayor to execute same on behalf of the Town. The motion was seconded by Deputy Mayor Pro Tem Dixon. The caption of the ordinance reads as follows:

ORDINANCE NO. 15-10

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 FROM AGRICULTURAL DISTRICT (A) USES TO PLANNED DEVELOPMENT DISTRICT NO. 107 (PD-107) FOR AGRICULTURAL (A) USES WITH CONSERVATION DEVELOPMENT STANDARDS, ON

APPROXIMATELY 280.622 ACRES OF LAND IN THE J.M. GIBSON SURVEY, ABSTRACT NO. 484, THE J.C. MCGOWAN SURVEY, ABSTRACT NO. 959, THE T. & P. R.R. COMPANY SURVEY, ABSTRACT NO. 1303, AND THE JESSE GIBSON SURVEY, ABSTRACT NO. 478 IN ACCORDANCE WITH THE TOWN'S MASTER PLAN 2001 AND SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Council Deliberation on Item 15

Deputy Mayor Pro Tem Dixon moved to approve a Development Plan DP 01-09 - Montalcino Estates to develop a residential subdivision, and accept Park Development Fees in the amount of \$174,128.00, and cash in lieu of land in the amount of \$26,712.00 to satisfy the requirements of the Park Land Dedication Ordinance. The motion was seconded by Councilmember Wallace.

VOTE ON THE MOTION

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

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Councilmember Filidoro asked for a special meeting on March 8 to consider the proposed petitions.

Councilmember Wallace stated a Planning & Zoning Commission was already scheduled for that evening.

Mayor Pro Tem Levenick stated she was glad to have people involved in the public process, however she did not think the timing was right.

Councilmember Wallace stated the Council had a lengthy conversation last weekend about the park land, and the petition process needed to be held to the same standard.

Councilmember Hayden stated the Town would probably see 3,000 signatures and the Council should respect the wishes of the citizens. He suggested finding the resources to aid the Town Secretary in verifying the signatures.

Mayor Smith stated she did not want to have a special meeting to put something on the ballot at this late time. She suggested putting it on the November ballot.

Mayor Pro Tem Levenick stated it was not being fiscally responsible to ask the Town Secretary to find funds to help with verifying the petitions.

- March 15 meeting cancelled
- March 25 special meeting

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:26 p.m. on March 1, 2010 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 12:02 a.m. on March 2, 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.

- c. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, Parks, Arts and Library Services Board, Planning and Zoning Commission, Tax Increment Reinvestment Zone Board and Transportation Commission.

Deputy Mayor Pro Tem Dixon moved to appoint Claudio Forest to the Alternate Place 6 position on the Board of Adjustment, and to appoint Ken Whisler to the Alternate 8 position of the Board of Adjustments; terms to expire September 30, 2010. Councilmember Wallace seconded the motion.

VOTE ON THE MOTION

AYES: Hayden, Wallace, Levenick, Dixon, Filidoro

NAYS: None

- d. Discuss and review services rendered by Brown & Hofmeister, L.L.P.

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 12:05 a.m. on Tuesday, March 2, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY

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