

**THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 25<sup>th</sup> 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 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
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 6:05 p.m.

**B. BRIEFING SESSION**

**1. Town Council Boards and Commissions Liaison Reports**

Mayor Pro Tem Levenick stated the Planning & Zoning Commission heard cases regarding Clear Wireless, Love Your Pet, and Wonderland Montessori.

Councilmember Wallace stated the Transportation Commission considered and made arecommendation on residential street speed limits of 25 mph.

**2. Discuss Consent and Regular Items - No discussion**

**3. Discuss Future Agenda Items - No discussion**

**4. Discuss Council Communications - No discussion**

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

Mayor Smith adjourned the briefing session and called the special meeting to order at 6:07 p.m.

**E. INVOCATION**

Chaplain Mike Liles gave the invocation.

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

Mayor Smith led the pledges.

**G. PRESENTATIONS**

There were no presentations.

**H. PUBLIC PARTICIPATION**

Susan Sandles, 3004 Yorkshire Court, Flower Mound

Ms. Sandles stated her parents had previously been active members of the Lewisville Senior Center. After her father passed away, Ms. **Sandles'** mother moved in with her in Flower Mound. SPAN told her she could go anywhere other than the Lewisville Senior Center. She stated it was hard for her mother, at 89 years of age, to make new friends. She asked if the Town could fund the SPAN bus to take Flower Mound citizens who had been members of the Lewisville Center for many years to that center.

Pat Sibly, 997 S. Edmunds Lane, Lewisville

Mr. Sibly stated he was the 2010 President of the Greater Lewisville Area Realtors (GLAR). He stated the many new projects in Flower Mound had created a demand for residential properties. He noted there were 434 properties on the market in Flower Mound. The current sign ordinance did not adequately address the needs of homeowners trying to sell homes, specifically **when applied to** "open house" directional signs.

Brian Hutchinson, 997 S. Edmonds, Lewisville

Mr. Hutchinson stated he was a board member of GLAR. He presented copies of ordinances from neighboring cities to the Town Council. He stated that each weekend across the area, many people drove the neighborhoods in Flower Mound looking for the right home. He stated he was available to assist the Town management in helping to structure ways to accommodate everyone. Mr. Hutchinson stated there were 907 members of GLAR and they asked that the Town take a fresh look at the current ordinance.

Angie Cox, 7616 Emerson Lane, Flower Mound

Ms. Cox stated Flower Mound was now known as Cancer City, USA. She stated that on the news, a reporter talked about higher rates of cancer. She commented that if the studies showed there were higher rates of cancer, she would come to the Council and complain. She stated the media should do stories about Rheudasil, Gerault, and Bakersfield parks, the Community Activity Center, the Wilson tract, and the new hospital.

Bryan Webb, 4112 High Road, Flower Mound

Mr. Webb stated he had seen much dissention in Flower Mound. Those wanting change wanted to implement a moratorium regarding gas drilling. He had seen a letter from two councilmembers asking for a moratorium. Other than calling for one, he asked what had been done on the issues that were on the list. He asked the Council to not wait until May 8—deal with it today. He stated his reasons for running for Town Council.

Stan Martin, 6505 Frontier, Flower Mound

Mr. Martin asked about the easement for Williams at FM 1171 and Shiloh. He did not understand why the easement was not granted by now. He stated the Town went to court and now the case was on appeal. He felt the appeal should be dropped, and the Town should let Williams connect the pipeline and move the gas to market.

Sharon Wilson, 199 PR 2655, Decatur

Ms. Wilson showed a video about Drill Right Texas. She stated Williams used some of the best practices in other cities. She noted emissions were toxins and could adversely affect human health. Ms. Wilson stated Flower Mound residents had a more immediate existing concern with the cancer studies. She stated citizens were depending on the Council to protect the public's health and safety. She encouraged the Council to adopt a moratorium.

Amy Yaeger, 3701 Kentmere Court, Flower Mound, Flower Mound Cares Petition Group

Ms. Yaeger stated the group had 5,000 signatures toward their goal of 6,000. She commented that the group had met opposition from time to time from the Town of Flower Mound. She was informed that the petition group could not sit on public benches at the Easter Egg Scramble. She stated the Charter guaranteed the citizens the right to petition the Town.

Alisa Rich, 2901 Corkwood Circle, Flower Mound, President of Wolf Eagle Environmental

Ms. Rich stated her firm was studying the emission studies. She stated the Town hired Kleinfelder to perform the study and she was disappointed that the study was a waste of money. She encouraged the Council to adopt a moratorium.

Margarete Neale, 731 Hillcrest, Denton

Ms. Neale stated she lived near a well site in Denton. She stated there was a strong correlation between gas production and what was in the air. She stated the technology was there to reduce emissions and could be used if mandated.

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated he was running for Place 4 on the Town Council. He had concerns with the Kleinfelder study. He was disappointed that the public would not have an opportunity to address the Council during the agenda item. He stated the reports needed to be studied, questioned, discussed in a public meeting, and then voted on. Mr. Lyda stated that was what the community expected from a councilmember.

Gerald Robinson, 6920 Hidden Valley Road, Flower Mound

Mr. Robinson stated he was a candidate for Place 2 on the Council and had received many calls from citizens and past elected officials. He stated there was great harm being done to the reputation of the Town.

Sheri Schmidt, 2408 Northshore Blvd., Flower Mound

Ms. Schmidt stated her daughter was suffering from cancer. She stated the cancer study data was conducted up to 2007, and that the study was stuck on the **Governor's** desk for almost a month. She stated it was edited to cause the least amount of alarm. Ms. Schmidt was concerned that the report came out the day before the Council meeting. She stated she was opposed to irresponsible drilling that affected the residents, especially children.

Jodie Boutilier, 2201 Jester Lane, Flower Mound

Ms. Boutilier stated the Town needed the cancer study results for 2008, and they would not be available for 12-18 months. She asked if the Town Council took the same swift action about the spill as they did about the cancer study. She wanted to know what action the Town took about the spill. She was opposed to irresponsible drilling that affected the residents. She noted there did appear to be an upward trend in cancer in 2008-2009.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern stated the Council should preserve the vision of Flower Mound. She stated the outrage in the community was not political. She stated that no one said “no drilling,” they just were saying to “do it responsibly.” Regarding the air study, she was disappointed in the quality and scope and commented that there were many inconsistencies in the air quality report.

Ladd Biro, 3405 Veronica Drive, Flower Mound

Mr. Biro addressed the 3,000-gallon spill of water and plumes at several sites. He stated that benzene and other toxic materials had been found in Denton. Mr. Biro stated that drilling bans and moratoriums had been enacted in many areas around the country, and Congress was considering a “frac act.” Many people had done much due diligence and there were many reasons to be concerned. He stated the Council should call for a moratorium.

Sue Ann Lorig, 4613 Foxborough Court, Flower Mound

Ms. Lorig stated she had researched much data and the information was alarming. She referred to the storage tanks in Decatur. She asked what would happen if Flower Mound had such an incident. Ms. Lorig was concerned there would be a centralized collection facility (CCF) a mile from Liberty Elementary.

Dennis McKaige, 3400 North Drive, Flower Mound

Mr. McKaige complimented Doug Powell, Executive Director of Development Services, for his presentation at the HOA Coalition meeting. Mr. Powell explained the processes for development and how to communicate with residents and developers. Mr. McKaige hoped the presentation **would be placed on the Town’s website.**

Tony Robson, 3421 Courtney Drive, Flower Mound

Mr. Robson asked when was the right time to enact a moratorium on gas drilling and a CCF. He stated many residents had signed petitions for a moratorium, and the cities of DSHS and Fort Worth were very concerned.

Renee Doyle, 1920 Widgon Lane, Flower Mound

Ms. Doyle stated she had emailed the Mayor and Council to remove Item 9 from the Consent Agenda (Morriss Road/Gerault Road item). She stated she had contacted the Attorney General’s office for a response about a quorum of Council on the email. She referred to the **Town’s website** where it noted that in March 2009, the Town had sufficient right-of-way (ROW) for the project and now there was an agenda item for funding for design services for ROW and condemnation proceedings. She stated Morriss and Gerault were supposed to be widened because of the River Walk project. She understood it was in foreclosure. She asked if the River Walk project was going to pay for their proportionate share.

Erin Bouck, 3429 Courtney Drive, Flower Mound

Mr. Bouck felt the Town was playing Pass the Trash (a card game) with gas drilling. He encouraged the Council to create an ordinance for the oil and gas board to accommodate those with and without mineral rights.

**I. ANNOUNCEMENTS**

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

Councilmember Filidoro stated that on Saturday the Summit Club would be carrying the three crosses to The Mound for the 35<sup>th</sup> Annual Easter Sunday Sunrise Service.

Mayor Smith announced the Town's Easter Egg Scramble on Saturday at 2 p.m. at Jake's Hilltop Park. The groundbreaking for the Treitsch Family Life Center would be held on Sunday at 2:30 pm. She noted that the beams for the Spinks Road bridge were going up. She announced the annual Relay for Life on May 14 and 15 which would celebrate survivors and those who have cancer. The Wild About Flower Mound festival would be held on the same dates. Mayor Smith stated she was participating in the Dancing for CAUSE event on Saturday.

**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 the beams arrived Monday and Tuesday for Spinks Road. Since January 2009 staff had talked about strategies for low construction bids, etc. The bid for the Flower Mound Road project from FM 1171 to Skillern came in \$1.9 million under budget. The bid for Garden Ridge from FM 3040 to Spinks to improve capacity came in \$1.4 million under budget. The bid opening for Dixon would occur in April. Regarding FM 1171, the contractor was behind and moved the completion date from July 2010 to March 2011. The state anticipated bidding Phases 2 and 3 before the end of the year.

**K. CONSENT ITEMS**

Councilmember Wallace made a motion to approve by consent Items 1, 2, 3, 4, 5, 6, 7, 8, and 9. Mayor Pro Tem Levenick 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 work session the Town Council held on February 18, 2010.**

**RECOMMENDATION:** Approve minutes from a work session the Town Council held on February 18, 2010.

- 2. Consider approval of minutes from a regular meeting the Town Council held on March 1, 2010.**

**RECOMMENDATION:** Approve minutes from a regular meeting the Town Council held on March 1, 2010.

- 3. Consider approval of the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2009.**

**RECOMMENDATION:** Approve the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2009.

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

5. Consider acceptance of the 2010 National Incident Management System Compliance Assistance Support Tool (NIMSCAST) and Texas Regional Response Network (TRRN) certification form, and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Approve to accept the 2010 National Incident Management System Compliance Assistance Support Tool (NIMSCAST) and Texas Regional Response Network (TRRN) certification form, and authorize the Mayor to execute same on behalf of the Town.

6. Consider approval of the award of Bid No. 22-10-B, to TNT's Pipeline Corporation, for the construction of Kirkpatrick Force Main, in the amount of \$485,513.00, and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Approve the award of Bid No. 22-10-B, to TNT's Pipeline Corporation, for the construction of Kirkpatrick Force Main, in the amount of \$485,513.00, and authorize the Mayor to execute same on behalf of the Town.

7. Consider approval of a Professional Services Agreement with Surveying and Mapping, Inc., to provide plat preparation for the Flower Mound Parks and Public Works Addition, in the amount of \$22,210.00, and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Approve a Professional Services Agreement with Surveying and Mapping, Inc., to provide plat preparation for the Flower Mound Parks and Public Works Addition, in the amount of \$22,210.00, and authorize the Mayor to execute same on behalf of the Town.

8. Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound relating to prima facie speed limits for specific streets by lowering the prima facie speed limit for Kolenby Drive to 25 mph.

**RECOMMENDATION:** Approve Ordinance No. 16-10 amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound relating to prima facie speed limits for specific streets by lowering the prima facie speed limit for Kolenby Drive to 25 mph. The caption of the ordinance reads as follows:

**ORDINANCE NO. 16-10**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 66, ARTICLE V, SECTION 66-214 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS BY REVISING THE LIST OF ENUMERATION OF PRIMA FACIE SPEED LIMITS FOR SPECIFIC STREETS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

9. Consider approval of Addendum 2 with Halff Associates, Inc., to provide professional engineering design services and real property appraisal services; for the Morriss/Gerault Improvement project, in the amount of \$73,500.00, and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Approve Addendum 2 with Halff Associates, Inc., to provide professional

engineering design services and real property appraisal services; for the Morriss/Gerault Improvement project, in the amount of \$73,500.00, and authorize the Mayor to execute same on behalf of the Town.

**VOTE ON THE MOTION**

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

**NAYS:** None

**L. REGULAR ITEMS**

10. **Presentation and discussion regarding air quality evaluations and health-related items including a review of the Town's ambient air evaluation, and a discussion on the Town's future objectives to monitor and evaluate potential impacts to the Town's air quality.**

**Staff Presentation**

Dr. Eric Miller, Epidemiology Manager, Texas Cancer Registry, Texas Department of State Health Services

Dr. Miller apologized for the delays for the study and he stated that no changes were made to the report that he approved. He gave the following presentation.











Councilmember Hayden asked what the data would show at a 95% confidence level.

Dr. Miller responded that a 99% level was to prevent undue alarm. He was not trying to dismiss the borderline ones. He added that the 99% level protected them from saying there were too many clusters.

Councilmember Hayden noticed that in Table 1, in the 75022 zip code, primarily in the Wellington area and the west side of the Town, the levels were higher than in the Bridlewood area and the east side of Town. He asked if there was any significance with the plume.

Dr. Miller stated the population was less in 75022. The lower the expected number of cases made a greater SIR.

Mayor Smith asked if the Town had a huge construction boom in 2001 in Denton County.

Mr. Jefferson stated the construction boom mostly covered the 1990s and hit a peak in 1999 in Flower Mound with about 1,600 residential permits. Construction then started slowing down. However, there was probably a great deal of building in the entire county in 2001.

Mayor Smith commented that she was concerned about all environmental issues, not just gas drilling.

Dr. Miller stated that as the population grew in Denton County as a whole, the number of breast cancer and leukemia cases grew.

Councilmember Filidoro asked how the data was collected.

Dr. Miller stated that most of the reporting came from hospitals and cancer treatment centers. Sometimes they had to send staff out to collect the data. It was then downloaded into special software.

Councilmember Filidoro asked about the confidence level Dr. Miller had about recovering the data.

Dr. Miller assured him that periodic audits were conducted.

Mayor Smith **asked that Dr. Miller's** presentation be placed on **the Town's** website.

Councilmember Hayden noted that there were 36 different methods recommended for identifying clusters. He asked how the subject test was chosen out of the 36.

Dr. Miller stated the method chosen was used long before he started working there.

Councilmember Hayden noted that the CDC report suggested that an advisory committee may be utilized.

Dr. Miller stated that would be a community decision. He commented that the community meeting in Lantana was helpful.

Councilmember Hayden asked if there was any specific reason why there was a slight rise in cases in 2008-2009.

Dr. Miller stated he did not see a huge spike but would continue watching it.

Councilmember Wallace noted that the 2000 population in Flower Mound was 51,796, and it was 68,337 in 2007 (32 percent increase). He asked if the rate of increase in cancer correlated with the rate of increase in population.

Dr. Miller stated they could do a trend analysis and see if the slopes were the same. He stated the link between breast cancer and benzene could not be established.

Councilmember Wallace asked how quickly Dr. Miller would get his data as a result of the 2010 census.

Dr. Miller responded that he did not know when the data would be released.

Deputy Mayor Pro Tem Dixon stated that a citizen commented that the report had been edited and there were references of it going to the **Governor's** office. He asked if anyone would have any knowledge of this.

Dr. Miller stated that his staff did the analysis, but he was the primary person taking care of it. Any changes that were made were done within his team.

Deputy Mayor Pro Tem Dixon asked Dr. Miller to verify whether or not the study was sent to the **Governor's office**.

Mayor Smith thanked Dr. Miller for making the presentation.

Dr. Kenneth Tramm, Kleinfelder Central

Dr. Tramm gave the following presentation.











Councilmember Wallace understood that the Town had 33 wells, and Fort Worth had over 1,000 wells.

Mr. Jefferson stated that the Town's number was closer to 40 wells, and understood through media that the Fort Worth number was correct.

Deputy Mayor Pro Tem Dixon understood that the summa canisters were open for 24 hours to collect air. He asked if a puff of VOCs traveling by the canister would be detected and included in the report.

Dr. Tramm explained that they would want the inlet close to the plume to be able to pull it in and the other factor was the time period to capture the air. There are instantaneous capture samples (15 minutes or less), one-hour captures, and 24-hour captures.

Councilmember Hayden asked if all the canisters were at ground level.

Dr. Tramm stated they were all placed with an inlet tube at the 5.5 foot level, representing the breathing zone.

Mayor Pro Tem Levenick asked if there was a complete report of all the data for a 24-hour period.

Dr. Tramm stated there was not a complete report as the canister is sent to a lab and there would be an average of the information over a 24-hour period.

Councilmember Wallace asked if it was always a bad thing when there were clouds on the videos.

Dr. Tramm stated the clouds may only be steam or heat. Tests would have to be performed to see if there was something else. Dr. Tramm addressed the different types of things that happen at a pad site and the volatiles that could be released at different points of the process.

Councilmember Filidoro asked how TCEQ found out there was a problem with the two sites in Flower Mound.

Dr. Tramm stated TCEQ was conducting a study in the whole area. There was a suspected release and they took samples.

Councilmember Filidoro asked how long the problem was going on before they found out.

Dr. Tramm stated he had no idea.

Councilmember Filidoro stated that if there was no monitoring, it could happen any time.

Dr. Tramm stated it was very important to have a quick response time when people noticed odors.

Councilmember Filidoro asked if there could be constant monitoring to provide more protection for a community.

Dr. Tramm stated there would have to be a balance. There were operations at a well that could cause releases, particularly when the operations changed at a well. Well operators wanted to address the problems as quickly as possible.

Mayor Smith stated she had discussed permanent testing sites in Flower Mound with the Town Manager and other councilmembers. She noted that the height of the testing was an important component.

Councilmember Hayden stated benzene was considered a carcinogen by the EPA. He asked if there was an acceptable level of benzene.

Dr. Tramm responded that one component was how healthy someone was. Indoor and outdoor air had many variables. An absolute number would be population dependent and all the variables involved would have to be studied.

Dr. Miller agreed that there were many variables, including genetic makeup. **Some people have good genetic makeup to repair these things and some don't.**

Deputy Mayor Pro Tem Dixon asked for the cost of doing continuous testing.

Dr. Tramm stated he had looked at some equipment for the Town.

Deputy Mayor Pro Tem Dixon stated gas wells could be in the area of hundreds of millions of dollars. He asked Dr. Tramm if he had experience with putting continuous monitoring stations at every pad site within a municipality.

Dr. Tramm responded that he did not know of one that had continuous monitoring.

Mayor Smith read a quote from Dr. Phillip Landregen, Director of the Center for **Children's Health in the Environment at New York's Mount Sinai School of Medicine.**

Councilmember Wallace noted there were a number of potential causes of cancer, not just benzene.

Mayor Pro Tem Levenick asked Dr. Tramm why he could not get to certain sites for testing.

Dr. Tramm stated that the owner refused to let them on-site.

Councilmember Filidoro asked for the difference between a snapshot in time and a baseline study.

Dr. Tramm stated that the definition of a baseline study was that prior to operations at a site, the conditions were known. The preference would be to study the conditions every three days for a period of time. In general, this would suffice to gain an understanding of ambient air in the Town.

Councilmember Filidoro stated that it was clear that TCEQ did not do any baseline studies before drilling started. He wanted to know that the Town had a snapshot in time to bounce against.

Dr. Tramm stated if more samples and trends were known, the Town could come up with an average of what urban air would look like in Flower Mound.

Councilmember Filidoro asked if there was a standard to measure long-term affects.

Dr. Tramm responded that to make the standards general was a little easier than making them specific. The data had to mean something and the study had to mean something.

Mayor Smith noted that the Council made a commitment to have a baseline.

Dr. Tramm commented that he was proud that the Town had committed to spending money on the study.

Councilmember Hayden asked if hydrocarbons were dormant in the winter.

Dr. Tramm stated that the processes that may produce them could make a difference, as they were more active with heat.

Councilmember Hayden asked if different results would be realized if the same test was done in 95 degree weather.

Dr. Tramm responded he would anticipate some differences in the results. Wind activity would also make a difference. There were many variables.

Councilmember Hayden commented that to have a true baseline, more testing was needed at other times of the year.

Mayor Smith understood that there were a few drilling companies in Flower Mound that did this testing. Perhaps there could be some collaboration with the companies.

Councilmember Hayden referred to the map and commented that it looked like there was a migration east of the number of wells. He asked if the Town could expect a total number of pollutants based on the number of wells coming into the Town.

Dr. Tramm stated that it would depend on if the Barnett Shale was accessible. The Shale was thicker in some areas. He noted there would be diminishing returns as they headed east. From the TCEQ study, there was a point when there would not be an adequate impact from a well. It would depend on the operator. It was hard to say that if there were 10 new wells, the Town would have 10% more pollutants. In a perfect scenario, operators would have equipment that would not allow releases. It all depended on the expectations of the Town.

Councilmember Hayden stated that the Council wanted to know how to be proactive in prevention. He stated that he would like suggestions of solutions to be proactive in keeping the air quality at the best level.

Dr. Tramm stated that they would continue monitoring and would give options to staff.

Mayor Smith stated that it was fortunate that the drilling in Flower Mound was under Town ordinances instead of in unincorporated land.

Mayor Smith thanked Dr. Tramm for his presentation.

Matt Woods, Director of Environmental Services

Mr. Woods gave the following presentation.



Councilmember Hayden asked if the monitoring systems could be on existing pad sites or only new ones.

Town Attorney Terry Welch stated they could be put on existing sites.

Councilmember Filidoro asked if it would be possible to have operators participate in the cost.

Mr. Welch stated the Town was looking at health and safety issues. He stated he would have to look to see if there was some authority to do that. He noted the Town could do monitoring on the sites.

Mr. Jefferson stated the Town could possibly charge fees in order to recoup as much of the costs as possible.

Mayor Smith asked if an operator could be fined if they exceeded certain levels.

Mr. Welch responded yes.

Mayor Smith stated she had been in conversations with Senators Chris Harris and Jane Nelson and Representatives Tan Parker and Myra Crownover in an effort to address similar issues in the region. She stated many people did not want an industrial use in Flower Mound, however that would exist if there was on-site recycling of the wastewater. She stated it needed to be clear when doing research that citizens knew the implications. The Town needed to give good information to the citizens.

Mr. Woods stated the impact could be large.

Councilmember Wallace stated the Council discussed this topic at a previous meeting. He asked if the Town could be on difficult ground.

Mr. Welch stated that discussion was for a centralized collection facility (CCF). He stated the Town had a greater ability to regulate the recycling at a pad site than at a CCF.

Deputy Mayor Pro Tem Dixon stated that more water was used in the fracing process up front, so as research is being done on the possibility of recycling on the individual pad sites, he wanted to see the possibility of bringing in a temporary recycling facility for the fracing fluid and another option for a stand-alone that stays on the property that does both the fracing and the produced water. He stated it appeared one option was to do a microsystem (temporary) and after the fracing process the water would be hauled off.

Mayor Smith asked about condensation in oil and gas drilling.

Dr. Tramm responded that in the Flower Mound area, by and large there was more produced water than condensated oil. He stated it had to do with the formation.

Mayor Smith asked about a vapor recovery system.

Dr. Tramm stated there would be a benefit.

Councilmember Hayden stated he liked many of the suggestions, however it looked like major changes would be needed to the gas ordinance. He wanted to make sure the variance

process was up to date. He asked if a moratorium might be needed in order to go through the ordinance.

Councilmember Filidoro asked for the process when a Council wanted to look at an overview or review of an ordinance.

Mr. Jefferson stated that in Flower Mound in the mid-1990s, the Town looked at development and the number of permits that were being issued. The Town decided to self-monitor the applications. After that time, when the Council decided to create or make an ordinance to prevent a rush of permits, moratoriums were implemented on a number of occasions. In recent history there had been four moratoriums implemented. With the oil and gas ordinance, there had been committees, staff, and Council working together.

Mayor Smith asked how many applications had come in for gas wells when the Council discussed a moratorium in December.

Mr. Jefferson stated the Town had received no application since the December 17 discussion. He added that on the day before the administrative moratorium was implemented, the Town received ten applications.

Councilmember Wallace clarified that since December 8, the Town had no applications. On May 19, 2003, the Council adopted the original oil and gas ordinance, and had a moratorium prior to that while writing the ordinance.

Mr. Jefferson stated that was correct.

Councilmember Wallace asked if there had been any other moratoriums on gas drilling applications since then except for the administrative moratorium. He reviewed the timeline for ordinance amendments that was located on the **Town's** website. He stated there had been multiple changes to the gas ordinance, none of which involved a moratorium. On January 21, 2010, the Council strengthened the pipeline ordinance and there was no moratorium. He believed that none of the changes in Mr. **Woods'** presentation deserved a moratorium. The purpose of this item tonight was to give staff direction. He stated the staff needed to prepare a Council Communication about how some of the items would be implemented, with input from Mr. Welch. He suggested having a work session and the Council could decide on the common sense enhancements and then have a public hearing.

Mayor Smith suggested surveying other cities as part of the legal research.

Councilmember Filidoro stated it was **naïve** to believe there may not be any applications to be submitted. He added that an operator had stated he would come in with applications for 110 wells.

Mayor Smith asked how many wells could be at a pad site.

Mr. Woods stated the typical pad site was 1.5-2 acres and an operator could get 4-6 wells on it. The December 7 application was for 10 wells on 3 pad sites.

Councilmember Wallace stated the Town had heard many numbers about the number of future wells. Based on a recent article, a prominent operator had 24 wells in the Flower Mound area and expected the number to grow to around 80 in three years. In the past 7 years, Flower Mound had about 40 gas wells. He did not believe a moratorium was needed.

Councilmember Hayden stated there had been discussion that wells would be located near Chinn Chapel, Hilliard Field, and Point Noble. He stated 2004-2005 was a totally different period in the Barnett Shale. If the Town was going to do a major re-write of the ordinance, a moratorium should be put in place.

Deputy Mayor Pro Tem Dixon desired to direct staff to spend additional money for more tests and then update the Council Communication. The Council needed suggestions about what could legally be done retroactively (such as vapor recovery). He was in favor of moving forward on the field analyzers and infrared cameras. He asked staff to look at continuous monitoring, the fee schedules, and recycling fluids both on fracing water and produced water.

Mayor Smith stated that the biggest thing about a CCF was that it had been rumored that it would be located by Liberty Elementary. It had also been rumored that the Town Council had adopted this and that was not true. She had heard descriptions that it would be a tank without a lid. She asked staff to educate the citizens that it would not. She asked if the ordinance had been strengthened when the Town Council created the recent zoning change for a CCF.

Mr. Welch stated this was discussed during this process, and since the pipeline company had eminent domain, it had more property rights.

Mayor Smith stated it would be a good idea to conduct a training session for the Oil and Gas board members on-site.

Mr. Welch stated he was working on the training, appropriate site, and date with the staff. He noted the Town Council could attend if the appropriate notice was posted.

Mayor Smith stated she would like to understand more about benzene, carbon disulfide, and methane.

Mr. Jefferson stated the request for funding for additional testing would be a future agenda item.

Councilmember Hayden noted one possible change to the ordinance could be how the Town would react to environmental issues (spills).

Mr. Woods addressed the Cummings C West flowback spill on March 17, 2010. He gave the following presentation.





Councilmember Filidoro asked for a copy of the Texas Railroad Commission report.

Mr. Woods stated the fluid from the spill extended about 30 feet from the stock pond on Mr. Cummings' property, however it did not get into the water.

Mayor Smith asked if a press release was done that morning.

Mr. Woods responded yes.

Councilmember Hayden asked when the operator found the spill.

Mr. Woods stated the operator was informed at 7:30 a.m. Staff was notified at 10:00 a.m.

Councilmember Hayden asked if the spill on the other side of the fence was remediated.

Mr. Woods responded yes, and the grass was re-sodded a day or two later.

Councilmember Filidoro asked if the tank was under pressure. He asked if it was a sudden or slow leak.

Mr. Woods stated the tank was under pressure and the leak could have happened over several hours.

Mayor Pro Tem Levenick thanked staff and the presenters for making their presentations.

The Council took a break from 10:15 p.m. until 10:35 p.m.

11. RP 01-10 - Roanoke Hills **Public Hearing**  
**Public Hearing to consider a request for a Replat (RP 01-10 - Roanoke Hills) to create a residential lot with an exception to Section 90-302, Concrete streets, as authorized by Section 90-301, Exceptions to street standards, of the Code of Ordinances. The property is located at 9224 Shawnee Trail. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 2010, meeting.)**

#### **Staff Presentation**

Doug Powell, Executive Director of Development Services, stated this was a replat for a lot in Roanoke Hills. The request was to combine two lots into one.

#### **Questions from the Governing Body and Answers**

Councilmember Filidoro asked how this lot would affect the character of the surrounding neighborhood.

Mr. Powell stated many lots had already been combined.

**Public Comments**                      **None**

**Close Public Hearing**

**Council Deliberation**

Councilmember Wallace moved to approve Replat RP 01-10 - Roanoke Hills Addition to create a residential lot and grant an exception to Section 90-302, Concrete streets, as authorized by Section 90-301, Exception to street standards, of the Code of Ordinances. The motion was seconded by Deputy Mayor Pro Tem Dixon.

**VOTE ON THE MOTION**

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

**NAYS:** None

12. **Z 01-09 The River Walk at Central Park, Apartments** **Public Hearing**  
Public Hearing to consider a request for rezoning (Z 01-09 - The River Walk at Central Park, Apartments) to amend The River Walk at Central Park Zoning Ordinance No. 46-08, by amending Section 2.3, Residential Density, by adding language that allows the first phase of development to exceed the fifteen percent (15%) cap on sub-700-square-foot, multi-family dwelling units per building provided that the overall number of multi-family units containing less than 700 square feet of floor area do not exceed fifteen percent (15%) of all multi-family dwelling units constructed during the first phase of development, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Buckeye Street, south of Eaton Street, and west of Morriss Road. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its February 22, 2010, meeting.) The applicant has requested this item be postponed to the April 5, 2010 regular Town Council meeting.
13. Consider a request for a Site Plan (SP 14-09 - The River Walk at Central Park Apartments) to construct an apartment complex. The property is generally located on the west side of Morriss and north of Buckeye Street. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its February 22, 2010 meeting.) The applicant has requested this item be postponed to the April 5, 2010 regular Town Council meeting.

**Council Deliberation**

Councilmember Wallace moved to postpone Items 12 and 13 to the April 5, 2010 regular Town Council meeting. Councilmember Filidoro seconded the motion.

**VOTE ON THE MOTION**

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

**NAYS:** None

14. **MPA 05-09 - SPA 8 Update** **Public Hearing**  
Public Hearing to consider a recommendation to amend Section 3.0, Specific Plan Areas (MPA 05-09 - SPA 8 Update), of Master Plan 2001, to amend Specific Plan Area 8 (SPA 8) to incorporate changes to the plan identified by the Master Plan

**Update Steering Committee and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 2010, meeting.)**

### **Staff Presentation**

Executive Director of Development Services Doug Powell introduced the item. He stated Specific Plan Area (SPA) 8 was adopted with the 2001 Master Plan after being newly annexed into the Town. This was basically a placeholder in anticipation that it might come back in the future. The boundaries on the east side were the overhead power lines. The Master Plan Update Committee operated for several months on updating the Master Plan, and the Committee looked specifically at this area. There was a series of work sessions, tours, and public meetings. The final report was adopted by the Town Council. Mr. Powell stated that part of the property was designated with Estate density (one acre lots). Previous to the work of the Committee, the area was all part of the Cross Timbers Conservation Development District. The area below the escarpment was different in character than the Cross Timbers area. That was now known as the Prairie Vista District. Mr. Powell stated the triangular area on the eastern side following the power lines may need to be bigger at some point. SPA 8 was actually expanded to encompass more property. He stated this was an excellent location for a mixed-use development. Mr. Powell stated that in 2008, the Town did not have mixed-use zoning. Subsequent to the Master Plan Update Steering Committee, another group was formed to look at mixed use and the ordinance was ultimately adopted by the Council. Notices were sent to everyone affected by the change. One letter in support was in the packet, and County Commissioner Andy Eads sent an email in support. Mr. Freeman and Mr. Furst were not able to attend the meeting, however they were in support. Mr. Powell stated the proposed SPA would replace the old SPA. It provided for a larger land area and set the area up for future growth.

### **Questions from the Governing Body and Answers None**

### **Public Comments**

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie supported this item.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern asked if there was a concept plan and a plan for density.

Mr. Powell stated staff worked with TxDOT to try to show roadway alignments and intersections that were reasonable. The plan in the packet was conceptual, but based on reality. Density would be controlled by the mixed-use ordinance. An applicant would have to meet all the standards. The Master Transportation Plan called for a grade-separated interchange and was so indicated in the SPA. He noted that an applicant would still need the zoning change, site plan approval, and plat approval.

Diana Hanson, 4048 Pepperwood Drive, Flower Mound

Ms. Hanson stated many people were concerned about roadways. She supported the item. Ms. Hanson did not understand why so many people talked about how wonderful Flower Mound was and they continued to question the experts. She trusted the Planning & Zoning Commission, the Council, and staff.

### **Close Public Hearing**

### Council Deliberation

Councilmember Wallace stated the 2006 Master Plan Update Committee held many meetings. He was excited to see this come to fruition and to have mixed use at this important intersection. He stated the floodplain area buffered the mixed use from the conservation development area. He noted that the Canyon Falls development would have lots ranging in size from 5,000 square feet up to 2-acre lots. If approved, he asked if the plan would now be known as the 2010 Master Plan. He was in support of the item.

Mr. Powell stated it was the last update to the Master Plan, and staff intended to have a new Master Plan (a compilation of other plans). The re-packaged plan would be brought back to the Council probably at the end of the year.

Councilmember Hayden asked if there was a possibility of having a Tax Increment Reinvestment Zone (TIRZ).

Mr. Jefferson stated that staff had talked about that internally for a couple of years. The county has recently declined to create TIRZ districts in the northern area of the county. Staff is still running numbers on the creation of that type of district.

Mayor Pro Tem Levenick moved to approve the request to amend Section 3.0, Specific Plan Areas (MPA 05-09 - SPA 8 Update), of Master Plan 2001 and to adopt Ordinance No. 17-10 providing for said amendment. The motion was seconded by Councilmember Wallace.  
The caption of the ordinance reads as follows:

#### ORDINANCE NO. 17-10

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING MASTER PLAN 2001, BY AMENDING ORDINANCE NO. 24-01 IN PART, WHICH ADOPTED MASTER PLAN 2001, THROUGH THE AMENDMENT OF SECTION 3.0 SPECIFIC PLANS BY AMENDING SPECIFIC PLAN AREA #8 (SPA 8) AND THROUGH THE AMENDMENT OF SECTION 1.0 LAND USE PLAN BY AMENDING THE LAND USE DESIGNATION ON THE LAND SITUATED WITHIN SPECIFIC PLAN AREA #8 (SPA 8) TO MIXED USE DEVELOPMENT; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, OR RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

#### VOTE ON THE MOTION

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

15. **LDR 01-10** **Public Hearing**  
**Public Hearing to consider a request to amend the Land Development Regulations (LDR 01-10) by amending Section 90-301, Exceptions to street standards, of the Code of Ordinances to add a provision to allow for administrative approval of exceptions for established residential subdivisions and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 2010, meeting.)**

#### Staff Presentation

Executive Director of Development Services Doug Powell stated that this item, if approved, would add language to the Code of Ordinances that would allow the Planning & Zoning Commission (P&Z) to approve the exceptions for streets standards in older neighborhoods. It would allow the Commission to approve the replats.

### **Questions from the Governing Body and Answers None**

### **Public Comments**

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated he was glad to see that the Commission could approve these requests and that it was not simply administrative approval.

Renee Doyle, 1920 Widgon Way, Flower Mound

Ms. Doyle did not support this item. She believed the Town Council should make the decisions. She asked how this would apply to Morriss Road, or was this limited to only older neighborhoods.

Mr. Powell read the caveats to the Commission approval. He stated this would apply to older neighborhoods, with asphalt streets and bar ditches. The Council had been granting exceptions for some time because the neighbors did not want to change the character of their neighborhoods. This ordinance would not apply to Morriss Road, as the streets would not qualify. They were already platted, concrete, and built to the Town standards.

Councilmember Hayden asked if the applicant had an appeal process to the Town Council if there was a disagreement.

Mr. Powell responded yes.

Ms. Doyle noted that in November 2001 and in 2002, Brian Shamburger, traffic consultant, said Morriss needed to be reclassified. At that time, the Town Council decided not to reclassify. However, now Morriss Road was going to be expanded.

Mayor Pro Tem Levenick asked if there was a way to list historic subdivisions in the ordinance and authorize the Planning and Zoning Commission approval.

Mr. Powell stated it could be done many ways. Staff picked the most effective way to do this to refrain from making it complicated. If the ordinance included a list and there was no discretion, that could be a cause for problems. He did not think the Planning and Zoning Commission would vote for something it was not intended for.

Mr. Welch stated it was not a good idea to draft an ordinance that only applied to a certain group of people or neighborhoods. He recommended not listing subdivisions in the ordinance.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie stated the Town forced the developer to build Morriss Road many years ago and he went bankrupt. She stated it was always meant to be six lanes.

Diana Henson, 4048 Pepperwood, Flower Mound

Ms. Henson stated she also knew that Morriss Lane was intended to be six lanes. She

believed in less government and restrictions. She trusted the Planning and Zoning Commission, the Council, and the staff.

### Close Public Hearing

### Council Deliberation

Councilmember Wallace moved to approve the request to amend the Land Development Regulations (LDR 01-10) by amending Section 90-301, Exceptions to street standards, of the Code of Ordinances to add a provision to allow for the approval of exceptions for established residential subdivisions by the Planning and Zoning Commission and to adopt Ordinance No. 18-10 providing for said amendment. The motion was seconded by Dixon. The caption of the ordinance reads as follows:

### ORDINANCE NO. 18-10

**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 90 OF THE CODE OF ORDINANCES, ENTITLED "SUBDIVISIONS," THROUGH THE AMENDMENT OF ARTICLE VI, ENTITLED "STANDARDS," DIVISION 3, "STREETS," BY AMENDING SECTION 90-301, "EXCEPTIONS TO STREET STANDARDS," TO ALLOW THE TOWN'S PLANNING AND ZONING COMMISSION TO APPROVE EXCEPTIONS FROM CONCRETE STREETS IN FOR REPLATS WITHIN CERTAIN ESTABLISHED RESIDENTIAL SUBDIVISIONS; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

### VOTE ON THE MOTION

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

### M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- Regular meetings were scheduled for April 5 and 19

### N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 11:25 p.m. on March 25, 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 12:13 p.m. on March 26, 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.

Mayor Pro Tem Levenick moved to approve the purchase of right-of-way, a mutual access easement, drainage easements, and temporary construction easements, in association with the Dixon Lane project (east of FM 2499 to Crestside Drive), from Justin/Dixon Properties and Kenneth G. Whyburn, 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. Councilmember Filidoro seconded the motion.

**VOTE ON THE MOTION**

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

Councilmember Hayden moved to approve the purchase of easements, in association with the Northlake Highlands II Water Line Improvement project, from Kathy Whitworth and Betty Odle and Anne Carroll O'Keefe, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize initiation of all actions incident and related thereto, including the Town Attorney or his designee filing condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Deputy Mayor Pro Tem Dixon seconded the motion.

**VOTE ON THE MOTION**

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

**c. Discuss and consider appointments to the SMARTGrowth Commission.**

No action taken.

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

No action taken.

**P. ADJOURN SPECIAL MEETING**

Mayor Smith adjourned the special meeting at 12:15 a.m. on Friday, March 26, 2010, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

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**JODY A. SMITH, MAYOR**

**ATTEST:**

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PAULA J. PASCHAL, TOWN SECRETARY

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