

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 5TH DAY OF APRIL, 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 6:02 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports

Councilmember Wallace stated the next Planning & Zoning Commission meeting was scheduled for Monday, April 12, 2010.

Councilmember Hayden stated the next Parks, Arts, and Library Services meeting was scheduled for Thursday, April 8, 2010.

2. Discuss Consent and Regular Items - No discussion

3. Discuss Future Agenda Items

Councilmember Wallace asked when the Town Council would receive the recommendation from the Transportation Commission regarding 25 mph residential speed limits.

Town Manager Harlan Jefferson stated that was planned for the agenda of the first meeting in May.

4. Discuss Council Communications

Deputy Mayor Pro Tem Dixon asked about the Council Communication regarding sign regulations.

Town Manager Harlan Jefferson stated staff needed feedback about the makeup of a proposed sign regulations committee. Each member of the Council needed to decide on their appointment. Additionally the committee would include someone from the Chamber of Commerce and the Chair and Vice Chair of the Planning & Zoning Commission.

Deputy Mayor Pro Tem Dixon stated he had spoken to Andy Eads, Chairman of the Board, about the Chamber appointment.

Mr. Jefferson stated staff needed Council feedback by April 19.

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 6:06 p.m.

E. INVOCATION

Pastor Richard Plunk gave the invocation.

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

Pastor Plunk led the pledges.

G. PRESENTATIONS

There were no presentations.

H. PUBLIC PARTICIPATION

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone stated he respected the Town Council. He read an extensive list of various Town committees, political action and specific purpose committees that had operated in the Town. He stated that on April 1, he filed a 16-point complaint with the Texas Ethics Commission against five citizens. He stated the public must know where funds came from for these types of committees.

Chris Tomlinson, 3907 Raintree, Flower Mound

Mr. Tomlinson asked the Council to consider dropping the lawsuit against Mockingbird Pipeline, as he believed it was not necessary. He stated the Council was keeping gas from going to the market. He added that the proposed pipeline was a gas pipeline, not a wastewater line.

Gerald Robinson, 6920 Hidden Valley Road, Flower Mound

Mr. Robinson stated he was running for Town Council, Place 2. He stated he would like to see the expansion of the Town's efforts to become more environmentally conscious, including working toward achieving a goal of 35% tree canopy. He asked the Council to establish a steering committee to look at energy conservation and other areas of environmental sensitivity and sustainability.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern congratulated the Flower Mound Cares petition group. She stated a former councilmember was waging an attack on members of the group. She stated that the next opportunity for the proposed ordinance to be on a ballot was November. She asked who the Council trusted to appoint to the new board that was a part of the petition/ordinance.

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated he was running for Town Council, Place 4. He noted that the Williams Company contacted all the candidates, and the makeup of Council should not be influenced.

Steve Strickland, 3204 Springwood, Flower Mound

Mr. Strickland heard there was a health inspection at McDonald's on a Saturday. He stated he had never heard of health inspections being performed on Saturdays. He stated it was entirely irregular to him and asked if this was a new program.

Bryan Webb, 4112 High Road, Flower Mound

Mr. Webb commented that all the candidates received a questionnaire from the Dallas Morning News, and the last question asked the candidates to tell a dirty little secret about the community. Mr. Webb stated the Town was divided regarding drilling, however the vast majority of residents were in the middle. He commented that at the last meeting, the Council took another step to address the concerns, and the Town needed the Council to stay focused.

Virginia Simonson, 3104 Native Oak, Flower Mound

Ms. Simonson stated that on March 31, she submitted almost 6,000 signatures asking for a moratorium and accepting the Town to accept no applications for a centralized collection facility. She stated that her group felt they followed all the rules for legislation by the people. She felt the Town Council made a mistake on January 21. Ms. Simonson had enormous pride for all the volunteers and all those who signed the petition. She stated Easter Sunday represented a rebirth, and she asked the Council to address the concerns of the signers of the petitions.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd asked for the basis for the lawsuit concerning the pipeline across the Fire Station #2 property. He asked how much the Town had paid in legal fees. He stated the Town would probably lose the lawsuit, and the Town Council members who voted against this should pay for it.

Renee Doyle, 1920 Widgon Way, Flower Mound

Ms. Doyle asked about Consent Item 2 that dealt with a professional services agreement with Kleinfelder Central Inc., regarding the Morriss/Gerault Phase I expansion project. She asked if it had anything to do with the River Walk addition. She asked the Council to remove the item from the Consent Agenda. She wanted to make sure that the transparency was clear on the money that was going to Morriss Road. She still had many questions about the development, and she stated the project was not supposed to cost the residents any money.

She asked the Council to reevaluate the project, and stop spending money until the Town knew the true status of the River Walk project.

I. ANNOUNCEMENTS

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

Deputy Mayor Pro Tem Dixon commented that the Chamber of Commerce Golf Tournament would be held on Wednesday, April 7.

Councilmember Filidoro commended the Summit Club, Women of Flower Mound, and The Mound Foundation on the sunrise service on Easter Sunday, noting that between 1,000 and 1,200 people attended. He added that the Summit Club would be cooking hot dogs at the KFMB Trash Off, the Highland Village Dog Walk, and the Battle of the Diamond Baseball Game.

J. TOWN MANAGER'S REPORT

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

Harlan Jefferson, Town Manager, addressed the question about the Saturday health inspection at a McDonald's. He stated the health division staff had been talking about how to get caught up on inspections, and the resolution included weekend and evening inspections. The previous week was the first week it was implemented. He noted there were other facilities inspected on the Saturday mentioned by Mr. Strickland.

Town Attorney Terry Welch commented that he would speak to John Todd privately.

K. CONSENT ITEMS

Councilmember Wallace made a motion to approve by consent Items 1, 3, 4, 5, 6, 7, 8, 9, 10, and 11. 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 the purchase of two trailer-mounted vacuum excavators/potholers for Utility Services from EKA, Inc., through the Houston-Galveston Area Council of Governments (HGAC) cooperative purchasing program, in the total amount of \$91,688.66.**

RECOMMENDATION: Approve the purchase of two trailer-mounted vacuum excavators/potholers for Utility Services from EKA, Inc., through the Houston-Galveston Area Council of Governments (HGAC) cooperative purchasing program, in the total amount of \$91,688.66.

2. **Consider approval of a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services associated with the construction of Phase I of the Morriss/Gerault Improvement project, in the amount of \$250,000.00, and authorization for the Mayor to execute same on behalf of the Town.**

Deputy Mayor Pro Tem Dixon asked for this item to be removed from the Consent Agenda.

RECOMMENDATION: Approve a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services associated with the construction of Phase I of the Morriss/Gerault Improvement project, in the amount of \$250,000.00, and authorize the Mayor to execute same on behalf of the Town.

3. **Consider approval of the award of Bid No. 27-10-B, to Mario Sinacola & Sons Excavating, Inc., for the construction of the Flower Mound Road and Flower Mound Road Water Line projects, in the amount of \$3,670,781.84, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Bid No. 27-10-B, to Mario Sinacola & Sons Excavating, Inc., for the construction of the Flower Mound Road and Flower Mound Road Water Line projects, in the amount of \$3,670,781.84, and authorize the Mayor to execute same on behalf of the Town.

4. **Consider approval of a Professional Services Agreement with Fugro Consultant's Inc., to provide geotechnical and material testing services associated with the Kirkpatrick Force Main project, in the amount of \$18,097.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Professional Services Agreement with Fugro Consultant's Inc., to provide geotechnical and material testing services associated with the Kirkpatrick Force Main project, in the amount of \$18,097.00, and authorize the Mayor to execute same on behalf of the Town.

5. **Consider approval of Amendment No. 1 to the Advance Funding Agreement with the State of Texas, acting by and through the Texas Department of Transportation, for the use of surplus tolling revenue from the SH 121 Subaccount to construct portions of Flower Mound Road, Garden Ridge Boulevard, Morriss/Gerault Phase I, and Spinks Road; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Amendment No. 1 to the Advance Funding Agreement with the State of Texas, acting by and through the Texas Department of Transportation, for the use of surplus tolling revenue from the SH 121 Subaccount to construct portions of Flower Mound Road, Garden Ridge Boulevard, Morriss/Gerault Phase I, and Spinks Road; and authorize the Mayor to execute same on behalf of the Town.

6. **Consider approval of a resolution adopting the Public Arts Policy. (The PALS Board recommended approval by a vote of 6 to 0 at its March 11, 2010, meeting.)**

RECOMMENDATION: Approve Resolution 06-10 adopting the Public Arts Policy. The caption of the resolution reads as follows:

RESOLUTION NO. 06-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING A PUBLIC ARTS POLICY AND PROVIDING AN EFFECTIVE DATE.

7. **Consider approval of an ordinance vacating and abandoning the western 4 feet of the existing 10-foot utility easement located in the back yard of Lot 23, Block C, Oak Park Addition. Oak Park Addition is generally located east of Morriss Road, south of**

Cross Timbers.

RECOMMENDATION: Approve Ordinance No. 19-10 vacating and abandoning the western 4 feet of the existing 10-foot utility easement located in the back yard of Lot 23, Block C, Oak Park Addition. Oak Park Addition is generally located east of Morriss Road, south of Cross Timbers. The caption of the ordinance reads as follows:

ORDINANCE NO. 19-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE WESTERN 4 FEET OF THE EXISTING 10-FOOT UTILITY EASEMENT LOCATED WITHIN THE BACK YARD OF LOT 23, BLOCK C, OAK PARK ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS; DETERMINING THAT THERE IS NO CURRENT NOR PROJECTED FUTURE NEED FOR PORTION OF SAID EASEMENT DEPICTED IN EXHIBIT "A"; REQUIRING A HOLD HARMLESS AGREEMENT; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

8. Consider approval of an ordinance amending the Code of Ordinances, Chapter 70 "Utilities," by repealing Article VI, "Water Conservation" in its entirety and adopting a new Article VI, to be entitled "Water Conservation."

RECOMMENDATION: Approve Ordinance No. 20-10 amending the Code of Ordinances, Chapter 70 "Utilities," by repealing Article VI, "Water Conservation" in its entirety and adopting a new Article VI, to be entitled "Water Conservation." The caption of the ordinance reads as follows:

ORDINANCE NO. 20-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 70 "UTILITIES," BY REPEALING ARTICLE VI, "WATER CONSERVATION," IN ITS ENTIRETY AND ADOPTING A NEW ARTICLE VI, TO BE ENTITLED "WATER CONSERVATION;" PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

9. Consider approval of the purchase and installation of playground equipment at Thrush Park from Recreation Consultants of Texas, LLC, and Custom Swings of Texas, Inc., for the Thrush Park Playground project in the total amount of \$137,206.00, through the Texas Local Government Purchasing Cooperative.

RECOMMENDATION: Approve the purchase and installation of playground equipment at Thrush Park from Recreation Consultants of Texas, LLC, and Custom Swings of Texas, Inc., for the Thrush Park Playground project in the total amount of \$137,206.00, through the Texas Local Government Purchasing Cooperative.

10. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2009, and ending on September 30, 2010, as adopted by Ordinance No. 36-09 and amended by Ordinance Nos. 47-09 and 01-10, for adjustments to the General Fund.

RECOMMENDATION: Approve Ordinance No. 21-10 amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2009, and ending on September 30, 2010, as adopted by Ordinance No. 36-09 and amended by Ordinance Nos. 47-09 and 01-10, for adjustments to the General Fund. The caption of the ordinance reads as follows:

ORDINANCE NO. 21-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2009, AND ENDING ON SEPTEMBER 30, 2010, AS ADOPTED BY ORDINANCE NO. 36-09 AND AMENDED BY ORDINANCE NOS. 47-09 AND 01-10; FOR ADJUSTMENTS TO THE GENERAL FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

11. **Consider approval of a Professional Services Agreement for ambient air monitoring by Kleinfelder Central, Inc., in the amount of \$41,400; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Professional Services Agreement for ambient air monitoring by Kleinfelder Central, Inc., in the amount of \$41,400; 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

2. **Consider approval of a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services associated with the construction of Phase I of the Morriss/Gerault Improvement project, in the amount of \$250,000.00, and authorization for the Mayor to execute same on behalf of the Town. (Deputy Mayor Pro Tem Dixon asked for this item to be removed from the Consent Agenda.)**

Town Manager Harlan Jefferson stated it was customary to award a project at one Council meeting and at the subsequent meeting to have an agenda item regarding the soil testing. The soil testing would insure that the project was properly constructed. Mr. Jefferson stated that Phase 1 of the Morriss/Gerault project had already been awarded and the work was about ready to begin. He stated that the River Walk project had implications for Phase 2 of the project (Morriss). Items were added to the project after discussion with the Transportation Commission and the Town Council.

Assistant Town Manager Kent Collins stated it was important to do soil sampling, and this was a typical type of contract. He stated Kleinfelder would test the soil and concrete to insure the materials met the plan specifications. The funding sources were the same as discussed last June.

Councilmember Hayden asked how the Town was looking from a budget perspective on the project.

Mr. Jefferson anticipated there would be developer funding on Phase 2 of the project. The flyover at FM 2499 and Gerault was a component that was added last year, and it was not yet fully funded. The Town had requested additional funding from the Regional Transportation Commission. He noted that when the regional toll revenue funding was put in place, a reserve was established.

Deputy Mayor Pro Tem Dixon moved to approve a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services associated with the construction of Phase I of the Morriss/Gerault Improvement project, in the amount of \$250,000.00, and authorize the Mayor to execute same on behalf of the Town. Councilmember Wallace seconded the motion.

VOTE ON THE MOTION

AYES: Wallace, Levenick, Dixon, Filidoro

NAYS: Hayden

12. Public Hearing

Public Hearing to consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound, Texas, by amending "Sec. 32-1. NCTCOG's Standard Specifications for Public Works Construction and Flower Mound Engineering Design Criteria and Construction Standards Manual," "Sec. 32-2. Town Engineer Authorized to Modify Standards," and "Sec. 32-3. Engineering Design Criteria and Construction Standards—Amendments" to revise certain provisions of such ordinances and to update and replace the existing single-volume Town of Flower Mound Engineering Design Criteria and Construction Standards with a two-volume set of engineering design criteria and construction standards that is intended to improve formatting clarity and separate the standard drawings from the design criteria. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its March 8, 2010, meeting.)

Staff Presentation

Town Engineer Edith Marvin gave the following presentation.

Questions from the Governing Body and Answers

Deputy Mayor Pro Tem Dixon stated that the members of the Council were made aware of discussions about entering the floodplain. He asked if any of those discussions were pertinent in the new document.

Assistant Town Manager Kent Collins stated they were included in the proposed document.

Deputy Mayor Pro Tem Dixon stated that when the Town was making updates in 2007, one of the requests from developers was to build columns in the floodplain so that it would not be so expensive. He noted that one of the stipulations was that the developer would have to clad the structure with stone. One of the other criteria was that the top of the culvert under the bridge would have an arched top. Now, when a developer wanted to build a bridge over a floodplain, instead of putting in a box culvert and cladding it with stone, the standards were requiring a culvert with an arch.

Town Manager Harlan Jefferson responded that the previous standards did not allow building in the floodplain. In the beginning, the concern was that it was difficult to develop in Flower Mound. Staff met with construction professionals in the summer of 2007. Spanning the floodplain was a hindrance. Staff gave them examples of how they could make the culvert look nice. The box culvert would have more maintenance problems than the arched culvert. Also, there was a cost difference of about \$4,000. He stated staff would provide the Council with the cost received from the **Town's** estimator. He recommended that Council finish the process at this meeting, and it could be amended at a later date.

Councilmember Filidoro was interested in seeing a scale of the scope of the project. He asked about previous projects (bridges) that had been checked several years ago.

Mr. Jefferson stated they were the bridges on Wichita Trail and Garden Ridge.

Ms. Marvin stated the that length of the bridges on Garden Ridge were 80 feet and 100 feet, and the one on Wichita Trail was 50-60 feet (as was the Whisper Trail bridge).

Councilmember Hayden asked for the difference in functionality for the two types of culverts.

Mr. Jefferson stated they just had to be designed to carry the appropriate amount of water.

Councilmember Hayden asked if a steel culvert was acceptable.

Mr. Collins responded no.

Ms. Marvin stated there was not a steel option to consider.

Public Comments

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie asked about the arched top or the box culvert and if there was a difference between the two if hit by a huge wall of water. She encouraged the Town to look at a 200-year

event.

Close Public Hearing

Council Deliberation

Councilmember Wallace moved to approve Ordinance No. 22-10 amending the Code of Ordinances of the Town of Flower Mound, Texas, by amending “Sec. 32-1. NCTCOG’s Standard Specifications for Public Works Construction and Flower Mound Engineering Design Criteria and Construction Standards Manual,” “Sec. 32-2. Town Engineer Authorized to Modify Standards,” and “Sec. 32-3. Engineering Design Criteria and Construction Standards--Amendments” to revise certain provisions of such ordinances and to update and replace the existing single-volume Town of Flower Mound Engineering Design Criteria and Construction Standards with a two-volume set of engineering design criteria and construction standards that is intended to improve formatting clarity and separate the standard drawings from the design criteria. The motion was seconded by Mayor Pro Tem Levenick. The caption of the ordinance reads as follows:

ORDINANCE NO. 22-10

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 A, CHAPTER 32 OF THE CODE OF ORDINANCES, ENTITLED “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS,” THROUGH THE AMENDMENT OF SECTION 32-1, ENTITLED “NCTCOG’S STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION AND FLOWER MOUND ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS MANUAL ADOPTED,” SECTION 32-2, ENTITLED “TOWN ENGINEER AUTHORIZED TO MODIFY STANDARDS,” AND SECTION 32-3, ENTITLED “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS--AMENDMENTS,” TO REVISE CERTAIN PROVISIONS OF SUCH SECTIONS AND TO UPDATE AND REPLACE THE EXISTING SINGLE-VOLUME TOWN OF FLOWER MOUND SEPTEMBER 2002 DESIGN CRITERIA AND CONSTRUCTION STANDARDS MANUAL WITH A NEW TWO-VOLUME SET OF “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS,” THE VOLUMES OF WHICH ARE ENTITLED “DESIGN CRITERIA (VOLUME I OF II)” AND “CONSTRUCTION STANDARDS (VOLUME II OF II),” RESPECTIVELY; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

Mayor Smith opened Items 13 and 14 together.

13. **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.) (This item was postponed at the March 25, 2010, Special Town Council meeting.)

14. 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.) (This item was postponed at the March 25, 2010, Special Town Council meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the land use was Specific Plan Area (SPA) 10 and the zoning was Central Business District. He showed the concept plan for Phase 1. He compared the original and revised concept plans (revised fall 2008). Mr. Powell stated there had been a big building at the terminus of Central Park Drive. The size and width had been reduced. Retail would still be located on the ground floor (100,000 square feet). The original plan called for 800,000 square feet, with a maximum of eight stories. The building south of it contained ground floor retail. The significant change was that the apartments were units that had a wrapped affect designed around a central parking structure. The number of units did not change, just the configuration. A small park had been added, and the parking would be behind the buildings and some on-street parking.

Mr. Powell read the portion of the zoning text that would change if the item was approved: "Notwithstanding the fifteen percent (15%) limitation set forth herein-above, the multi-family buildings identified in the first phase of The River Walk CBD may have more than fifteen percent (15%) of the dwelling units within a single multi-family building contain less than 700 square feet of floor area provided that no more than fifteen percent of all multi-family dwelling units within the first phase of said development contain less than 700 square feet of floor area." He stated the proposed buildings had a great deal of architectural detail. Staff had not received any written correspondence; however, one person spoke in opposition at the Planning & Zoning Commission meeting.

Applicant's Presentation

Monte Wendler, Price Development Group

Mr. Wendler stated they had designed a special product for this site in The River Walk. Originally the applicant asked for 1,800 residential units, and he showed the original rendition of the buildings for residential. In 2008, the Town approved a revised concept plan. The size of the large park was increased and a smaller park was added to the south of the multi-family units. There would now be 12 buildings. He felt the site addressed all the things that were important to the Town (keep it friendly, great landscaping, a grid pattern for the streets, on-street parking, and setbacks that were only 13 feet from the curb). They planned to screen the parking areas that were internal to the site. The amenity center had a spa and large pool. There would be 8,000 square feet of common space in this phase. Mr. Wendler stated the buildings were three stories in height. About one-half of the buildings had one-car garages on

the first floor. Many of the units had front porches. They planned to have many more trees with the proposed plan (35% over what the ordinance required). The plan provided for three-story buildings along Morriss Road. There were five different elevations among the 12 buildings on this site. They planned to use four different colors of brick and different paint schemes. There were eight different unit types in this phase. The rent ranged from \$825 to about \$1,500 per month. The small units were interior units spread over six different buildings. The premium units were located on the outsides of the streets. He noted there was a substantial impact fee due at the onset of each building. They planned to build all the buildings in a single phase. He compared the River Walk unit sizes and percentages with two other complexes in Flower Mound. Mr. Wendler stated they had followed Flower Mound's process regarding building. He requested approval of the zoning and the site plan.

Questions from the Governing Body and Answers

Councilmember Hayden stated he liked the proposal even if it did contain apartments. He asked why the plan did **not fit the Town's standards** (regarding the 15%).

Mr. Wendler stated the revised site plan in 2008 made the difference. The original apartment plan had three buildings and about 180 units in a big building. The revised plan now contains 12 smaller buildings with 25 units in each. They had difficulty meeting the 15% rule on a per building basis with the previous plan.

Councilmember Wallace asked about the timing of the approval of the River Walk project.

Mr. Jefferson stated it was originally approved in August 2008.

Councilmember Wallace recalled discussion that there would be 1,800 units in all of the River Walk, and now there was 1,250.

Mr. Wendler stated that the Town Council, in October 2008, approved a new concept plan. His company acquired the subject site in January 2009 from Flower Mound CBD.

Public Comments

Paul Stone, 709 Lake Bluff Drive, Flower Mound

Mr. Stone supported the zoning change. He asked if the project was in foreclosure or bankruptcy. He asked if the mixed-use building with retail below was part of the subject property.

Chris Tomlinson, 3907 Raintree, Flower Mound

Mr. Tomlinson supported the project. He stated there would be many young professionals working at the hospital that would need placed to reside.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie asked if the applicant allowed Section 8 units in their Kansas City properties, and if they were going to allow Section 8 units in this project. She asked if they still owned the first properties that they developed. She asked for the monthly rental rates, and asked if there would be HOA dues.

Renee Doyle, 1920 Widgon Way, Flower Mound

Ms. Doyle asked if this development had an agreement with the original owners of the River Walk property. She asked why they moved the development closer to the street and had

buildings with front porches facing Morriss Road, knowing that the road was going to be widened. She asked if traffic studies were done since the new plan came forth, and if a traffic impact analysis was conducted. She asked if any of the townhomes were going to be for sale. She asked if the occupants could put signs in their front yards.

Pierce Cauvin, 909 Wood Duck Way, Flower Mound

Mr. Cauvin asked what portions of the project were in foreclosure.

Renee Doyle, 1920 Widgon, Flower Mound

Ms. Doyle asked who would build the retail portion. She asked if the developer would pay anything towards the widening of Morriss Road.

Melissa Northern, 4601 Portsmouth, Flower Mound

Ms. Northern asked where the retail portion was expected to be located. She asked where the stairwells in the apartments would be located. She asked if this would be a good location for the senior community.

Gerald Robinson, 6920 Hidden Valley Road, Flower Mound

Mr. Robinson was in support of the items. He felt that it fit what the original intent and purpose was to be. Mr. Robinson stated that almost two years ago, when he was Chair of the Environmental Conservation Commission, he sent the Town Council and the Planning & Zoning Commission a letter where he reversed his opinion of the River Walk project. He was pleased to see that the developer would be saving trees and adding trails and landscaping.

Dave Johnson, 3617 San Paula Drive, Flower Mound

Mr. Johnson expressed support for the two items.

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda stated a central business district was a place for people to live, work, play, and shop. He did not think that the proposed development in this item transitioned well.

Sammy (last name undecipherable)

Sammy stated it looked like there might be 4,000 people living in this area.

Mayor Smith responded that this request was only for 307 units. The maximum for the entire project was 1,250.

Bryan Webb, 4112 High Road, Flower Mound

Mr. Webb stated the development met the intent of what the Town wanted for the River Walk, and it was a great first step.

Close Public Hearing

Mr. Powell was asked to answer the questions that were asked during the public hearing. He reviewed the plan for the entire project. The bottom floors of many of the buildings would have retail. The retail area would be mostly west of the residential area. Mr. Powell showed the three areas that were platted: the hospital (owned by the hospital), the area along Morriss Road (owned by the applicant), and the balance of the area that had been posted for foreclosure, then not posted, on which there were probably some ongoing financial difficulties. He stated the subject area was controlled by the applicant. The applicant had the ability to build the roads and improvements without the approval of Five Star.

Mayor Smith clarified that the same development agreement would apply to the entire area, and the ownership did not change the components of the development agreement.

Mr. Powell stated the development agreement that was originally approved ran with the land, so if the property ever changed hands, it was assigned to the new owners. This development was required to meet all provisions of the zoning code and regulations. Mr. Powell stated Phases 1 and 2 were done with the initial Traffic Impact Analysis (TIA). The development agreement stated that further developments would have to revise the TIA. Mr. Powell stated that the fees in the development agreement included the initial fee paid by the River Walk. With the submittal of the subject application, the applicant paid the next set of fees. Each time a permit is issued for a unit, there will be impact fees. He did not know how much would go to transportation versus water and sewer.

Mayor Smith understood that the original developer was up to date as of today on paying the appropriate fees.

Mr. Wendler stated there were no projects in Kansas City that were under Section 8 housing, and his company still owned several of their projects. He stated that the minimum rent would be \$825, with a maximum of \$1,500-\$1,600. There would be no HOA dues. He stated he would be paying his portion of the HOA fees due to the entire River Walk project to pay for maintenance of the parks, etc. Mr. Wendler stated all first floor units would comply with Fair Housing requirements. He stated there were very stringent egress and ingress requirements by the Fire Department and Building Codes. Each building had two sets of stairs, no elevators, and four ways in and out of each building. He hoped to attract empty nesters. There were three tracts of land left in the River Walk. His land was not in bankruptcy or foreclosure. His land could be developed independently no matter what happens to the River Walk. No retail was involved on his property at this time.

Deputy Mayor Pro Tem Dixon asked Mr. Wendler if he budgeted for maintenance and major renovations.

Mr. Wendler responded that the initial budget was for a 20-year ownership. They budgeted annual funding for maintenance. In years 7-8 they will update the common area (\$300,000-\$500,000). In years 12-15 they might have to replace appliances and countertops (approximately \$1.8 million). In years 18-20 they would budget for replacement of the roofs (\$300,000). He stated the key to the project was to maintain its value.

Deputy Mayor Pro Tem Dixon asked how he would police residents from putting certain things on their balconies.

Mr. Wendler stated that requirements for what can be placed on the balconies would be part of the lease. There was a long list of things that were not allowed.

Deputy Mayor Pro Tem Dixon asked if the garages had internal access to the units, and if the garages were dedicated to specific units.

Mr. Wendler stated the tenants would park in the garage and enter a breezeway to go to the units. He commented that the garages were not dedicated to specific units except for the ones for handicap accessibility.

Councilmember Filidoro asked what type of clients would most likely live on the second and third floors.

Mr. Wendler anticipated a mix of singles and couples with no children.

Council Deliberation

Deputy Mayor Pro Tem Dixon stated he was in agreement with the 15% threshold on the ratio. He noted the original parking structures were not pretty and would have been visible from Morriss Road. He felt it made sense to have the on-street parking within the complex, as it would maintain the pedestrian feel. He was in support of both items.

Mayor Pro Tem Levenick stated she liked the proposed concept better than the original, and looked forward to the buildings coming to the River Walk.

Mayor Smith stated when the financial viability of the River Walk was questioned several months ago, she called the financial person on the project. She was comforted by the conversation. She stated this was a viable product and project. She stated she had knowledge that tomorrow was a big date financially. She was encouraged by her discussion she had earlier in the day with the financial people. Mayor Smith stated she had a discussion with the CEO of Market Street and they were still confident that the best place in Flower Mound was the southwest corner of the River Walk development. Mayor Smith stated that the ribbon cutting for the hospital was scheduled for April 30. Flower Mound was now on the map as a medical community.

Councilmember Wallace was in support of the project. He stated it still met the vision of the River Walk project and would support the zoning and the site plan.

Motion on Item 13

Mayor Pro Tem Levenick moved to approve to approve 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 adopt Ordinance No. 23-10 providing for said amendment. The motion was seconded by Deputy Mayor Pro Tem Dixon. The caption of the ordinance reads as follows:

ORDINANCE NO. 23-10

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 AMENDING SECTION 2.3, ENTITLED "RESIDENTIAL DENSITY," OF THE DEVELOPMENT STANDARDS ATTACHED AS EXHIBIT B TO AND MADE A PART OF ORDINANCE NO. 46-08, ON APPROXIMATELY 10.306 ACRES OF LOT 2 OF THE RIVER WALK AT CENTRAL PARK ADDITION 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: Dixon, Wallace, Levenick
NAYS: Filidoro, Hayden

Motion on Item 14

Councilmember Wallace moved to approve Site Plan SP 14-09 - The River Walk at Central Park, Apartments to construct an apartment complex, and acceptance of Park Development Fees in the amount of \$426,116, and cash in lieu of land in the amount of \$1,089,681 to satisfy the requirements of the Park Land Dedication Ordinance as outlined within the development agreement for The River Walk at Central Park Development. The motion was seconded by Deputy Mayor Pro Tem Dixon.

VOTE ON THE MOTION

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

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

No discussion

The Council took a break between 9:04 p.m. and 9:23 p.m.

N. RECESS REGULAR MEETING AND CALL WORK SESSION TO ORDER

Mayor Smith recessed the regular meeting and called the work session to order at 9:23 p.m.

O. WORK SESSION ITEM**15. Receive a presentation and hold a discussion regarding a proposed mixed use development within the Canyon Falls project.**

Executive Director of Development Services Doug Powell informed the Council that themixed-use ordinance contemplated having a pre-application process before embarking on the application stage. The applicant would then have a good understanding about the Town's side of the process.

Mark Baker, Planner for the Canyon Falls project

Mr. Baker explained that there was some new property (240 acres) purchased and added to the Canyon Falls project. The mixed-use component allowed for the shifting of the market. He stated that the Canyon Falls team started meeting with Mr. Powell in the fall of 2008 regarding the mixed-use ordinance. He gave an overview of the project. Regarding the overall master plan for the project, Mr. Baker stated they had sold a 108-acre parcel to the Argyle Independent School District for an elementary school. Additionally, a parcel for a Denton County Commissioner's building was located in the project. Mr. Baker stated they were working with a variety of homebuilders. The Town's sixth fire station would be located at the corner of the Canyon Falls collector road and SH 377. The plan called for 2,800 residential units (with the new property) in three jurisdictions (Flower Mound, Northlake, and Argyle). The estimated build

out population was 7,000-12,000 people. The larger residential lots would back up to the creek areas. An internal frontage road along I-35 W was planned and would help to attract commercial anchors. Waterways were an important component in the design of the development.

Mr. Baker stated they took a parcel map and did detailed site planning. They defined how much square footage would fit on a site in order to plan for the infrastructure. He noted there was a series of water falls on the property. Parking structures were internal to a block and the buildings would wrap around the parking. Regarding the land use analysis, there would be 357,193 square feet for Commercial-2, non-residential mixed-use at 1.27 million square feet to 2.337 million square feet, and typical residential would contain 1,597-2,005 units. They hoped to have roadway linkages for circulation. The project was very pedestrian-oriented, and they would have specific standards for intersections and crosswalks.

Councilmember Wallace asked if the Town would need another police station in the future.

Town Manager Harlan Jefferson stated there were rooms at each fire station where the police officers could stop in and do their paperwork.

Deputy Mayor Pro Tem Dixon asked about the intersection treatments.

Mr. Baker stated they might use pavers or stamped concrete in different colors.

Deputy Mayor Pro Tem Dixon stated he liked color as opposed to texture.

Regarding parks and open space, Mr. Baker stated that the plan called for a proposed amphitheater and neighborhood parks, and within the mixed-use core area they would have open spaces for public art, gathering places, and plazas. They were looking for a European country look and feel. They had created a signage master plan, and were looking for a billboard opportunity on I-35 W.

Mayor Smith reminded Mr. Baker that billboards were not allowed in Flower Mound.

Mr. Baker stated the Flower Mound location along I-35 W offered the best topography for better visibility. He reviewed the phasing timeline: Phase I, 2-5 years; Phase II, 5-7 years; Phase III, 7-10 years; Phase IV, 10 years; and Phase V, 10-15 years.

Eugene Middleton, Civil Engineer

Mr. Middleton stated that parts of the major roadway system were under design, including a new rail crossing at SH 377. He stated their conversations with TxDOT had been good. Mr. Middleton stated that Denton County appropriated funds for a corridor study along I-35 W in the 2008 bond program. Studies had been updated for the water/wastewater needs. They had conducted a major drainage study, and had updated the environmental protection plan.

Deputy Mayor Pro Tem Dixon asked if they needed a water tower.

Mr. Middleton responded no.

Deputy Mayor Pro Tem Dixon asked if there had been any preplanning on where the cell towers might be located.

Casey McGinnis, developer, responded no.

Mr. Powell stated this would be a long process before it gets to the Planning & Zoning Commission and the Town Council. He invited the Council to send their questions to him or to the applicant.

Deputy Mayor Pro Tem Dixon stated it would be good to forecast places for cell towers and a water tower, and perhaps incorporate that into the application process.

Mr. Jefferson stated that all the water towers for the Town had been programmed out.

Deputy Mayor Pro Tem Dixon stated a good location for a cell tower would be by the fire station.

Mr. Powell noted that the majority of the Canyon Falls students would be in the Argyle Independent School District. Some would be in the Northwest Independent School District.

P. ADJOURN WORK SESSION AND RECONVENE REGULAR MEETING

Mayor Smith adjourned the work session and reconvened the regular meeting to order at 10:12 p.m.

Q./R. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:14 p.m. on April 5, 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 11:13 p.m. on April 5, 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 remove the Michael and Lisa McBride property from the list of approved purchases, approve the purchase of a drainage easement from Clyde B. Carter III, and add to the Deacon Investment Company right-of-way purchase, in association with the Wichita Trail Phase II (Simmons to Skillern) project, west of Simmons and east of Skillern, 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 this designee filing condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Councilmember Wallace seconded the motion.

VOTE ON THE MOTION

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

c. Discuss and consider appointments to the SMARTGrowth Commission.

Councilmember Wallace moved to appoint Mark Glover to the SMARTGrowth Commission, term to expire December 31, 2010. Mayor Pro Tem Levenick seconded the motion.

VOTE ON THE MOTION

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

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

No action taken.

e. Consultation with the Town Attorney regarding legal issues associated with the interpretation of the provisions of Article 7 of the Town Charter and the initiative petition submitted to the Town on or about March 31, 2010.

No action taken.

S. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 11:15 p.m. on Monday, April 5, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY