

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 19th 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
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 6:03 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Liaison Reports

Mayor Smith stated she attended the training session for the Oil and Gas Board members.

Deputy Mayor Pro Tem Dixon reported that the Environmental Conservation Commission received a presentation regarding environmental sustainability.

Councilmember Wallace stated the Planning & Zoning Commission approved a request for a comprehensive sign package for The Pines of Flower Mound. The Commission also approved a change of land use and a Master Plan amendment for Terracina. The Commission questioned the need for higher fences to block balls from the soccer complex.

Councilmember Hayden stated the primary discussion was about the Parks Master Plan –Wilson Carmel Tract—at the last Parks, Arts, and Library Services Board meeting. The plan was approved with certain amendments.

2. Discuss Consent and Regular Items - no discussion

3. Discuss Future Agenda Items - no discussion

4. Discuss Council Communications

Mayor Smith stated the Council had received a Council Communication that day

regarding oil and gas regulations and program initiatives. Direction was needed by May 3.

Town Manager Harlan Jefferson stated feedback on the sign regulations was also due on May 3.

Deputy Mayor Pro Tem Dixon asked when the sign regulations item would come before the Council for consideration.

Mr. Jefferson responded that when the Council was ready to make appointments to the committee, staff would bring the item forward.

Mayor Smith stated the Council could address this matter at the May 3 meeting.

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 6:09 p.m.

E. INVOCATION

Mayor Smith gave the invocation.

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

Mayor Smith led the pledges.

G. PRESENTATIONS

- **Virginia Simonson–Flower Mound Petition Drive**

Ms. Simonson gave a presentation about the Flower Mound petition drive regarding gas drilling. The presentation is on file in the Town Secretary's Office.

H. PUBLIC PARTICIPATION

Bryan Webb, 4112 High Road, Flower Mound

Mr. Webb stated that last week a story in a local newspaper quoted him accurately. It referred to some assumptions about an email that was addressed to him and two other candidates that was forwarded to other candidates. It dealt with a change to the format for a candidate forum. He spoke to the originator of the email and then asked that his quote be retracted from the newspaper. Mr. Webb was in favor of allowing additional signage on the businesses in The Pines shopping center. He encouraged the Council to approve the request also.

Steve Lyda, 3128 Sheryl Drive, Flower Mound

Mr. Lyda reminded everyone that early voting would start on Monday. He stated his character had been challenged during the campaign. He wanted the voters to learn the truth.

Jeffrey Whittaker, 4305 Auburn Drive, Flower Mound

Mr. Whittaker stated he had been called many names during the election season, adding that the citizens would need to come together as a town after the election. He stated people needed to make suggestions on how that would happen.

Patricia Feager, 1765 Meyerwood Lane, Flower Mound

Ms. Feager asked for improvements to the Town's sign ordinance regarding real estate signs and the realtors' need to place small directional signs for open house events.

Karen Wilkerson, 3801 Post Oak, Flower Mound

Ms. Wilkerson stated she had been a realtor for 15 years, and the Town needed to appoint a task force to work on revisions to the sign ordinance regarding directional signs on the weekends.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie announced the Friends of the Flower Mound Library book sale this weekend. She noted that Virginia Simonson was a retired Lt. Colonel in the US Army. She noted that Ms. **Simonson's** husband was serving in Baghdad and she asked for prayers for his safekeeping. Ms. Kohankie addressed Item 14 on the agenda regarding a reduced speed limit on four streets. One street, Augusta, was in her neighborhood. She stated none of the other streets in the neighborhood had been lowered, and if Augusta was lowered, it would be extremely confusing to the residents. She asked who had made the request and asked that Augusta Drive be taken off the list. She noted she would like to see the speed limit on Glenwick Drive lowered.

Tony Robson, 3421 Courtney Drive, Flower Mound

Mr. Robson stated that Paul Stone once asked what happened to civility in Flower Mound. Mr. Robson distributed a few documents that were going around the Town and read excerpts from the Code of Fair Campaign Practices that each candidate had signed. He referred to a letter recently sent out on Keystone letterhead. He noted that people were not trying to halt all drilling activities.

Jennifer Rogers, 2608 Carterton Way, Flower Mound

Ms. Rogers announced a free class at the Flower Mound Library on April 26 that would go over the basics of gas drilling. An engineer would make a presentation and answer questions.

Kris Wise, 4409 Biscayne Drive, Flower Mound

Ms. Wise stated she was a realtor in Flower Mound and previously spoke at a public hearing because she cared about home values in Flower Mound. She stated she was not one of the five members of the Flower Mound Cares Petition group who had ethics complaints filed on them by Paul Stone. She felt Mr. Stone slandered her and she had not yet received an apology from Mr. Stone.

Rob Marcoe, 3416 Courtney Drive, Flower Mound

Mr. Marcoe congratulated the petition group and encouraged the Council to adopt the moratorium ordinance.

Erin Bouck, 3429 Courtney Drive, Flower Mound

Mr. Bouck stated many of the petition group members had been publishing information on Facebook. It was the outcry of the public that caused the petition to be done in the first place. He asked the Council to not wait until November for the moratorium. The Town needed an oil and gas board that would protect the interests of all. Regarding the Chinn Chapel Soccer Complex, the only facts that he knew of were from two council meetings ago.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern stated that the Flower Mound Cares Petition Group came together to protect a certain area of the Town. She challenged them today to volunteer in many other ways

and for other groups.

Ladd Biro, 3405 Veronica Drive, Flower Mound

Mr. Biro urged the Council to adopt the moratorium. In reviewing the October 15, 2009 work session, he was puzzled by some information about a centralized collection facility (CCF). He asked who had made the proposal, and he questioned several slides in the presentation from that meeting. He referred to an article written by Deputy Mayor Pro Tem Dixon. He asked if the Mayor had violated the Town Charter regarding administrative duties.

Amy Yaeger, 3701 Kentmere Court, Flower Mound

Ms. Yaeger stated that Paul Stone had filed complaints with the Texas Ethics Commission against five citizens. She stated he did not know who to file against, so he guessed. She stated he had been informed that he unjustly accused the five people. She added that she was not a member of the Flower Mound Cares Petition Group, however she did volunteer many hours.

Gerald Robinson, 6920 Hidden Valley Road, Flower Mound

Mr. Robinson stated he was a candidate for Place 2 on the Town Council. He noted that in 2006 he was a member of the Master Plan Update Steering Committee. Residents wanted a variety of developments. He also served on the Mixed Use Committee, and many residents wanted this type of zoning. He stated that a mixed-use district was approved 5-0, and Councilmember Filidoro seconded the motion. The subject district prohibited stacked apartments along major roadways. Mr. Robinson stated Councilmember Filidoro was using scare tactics.

Mark Stewart, 3932 Ridgecrest Drive, Flower Mound

Mr. Stewart stated there was much misinformation going around the Town. He read quotes from former Oil and Gas Board of Appeals member Alicia Rich and provided information about her qualifications for being on the board. He stated the public was being manipulated.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd stated that intersections that needed street lights were McKamy and Simmons, and Flower Mound Road and Skillern. He asked how long it would take to get the lights installed. He asked about the legal bills for the easement matter on the Fire Station #2 property. He asked how much the Town had spent on the Red Oak suit (River Walk).

Chris Tomlinson, 3907 Raintree Drive, Flower Mound

Mr. Tomlinson referred to the petition and the issues that had been brought up before the Texas Ethics Commission. He stated the group had been found to be a specific purpose committee, and they should have made disclosures about where the money was coming from. He stated many people who signed the petition were not given the whole truth. He requested that the petition group take the petition back and tell people exactly what they said. He supported taking the proposed ordinance to an election.

I. ANNOUNCEMENTS

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

Councilmember Filidoro stated that on April 24, the Summit Club would be working with the Highland Village Rotary at their Dog Walk. That evening, the last Battle of the Diamond would be held.

Deputy Mayor Pro Tem Dixon stated he enjoyed playing in the recent golf tournament with the Chamber of Commerce.

Councilmember Wallace recognized Assistant Town Manager/Chief Financial Officer Chuck Springer for receiving the Distinguished Budget Presentation Award for 2009 from the Government Finance Officers Association.

Mayor Smith commented that Paul Stone had to put his mother in the hospital for the third time since April 1.

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 work would begin tomorrow on Phase 1 of the Morriss/Gerault project. Tiseo will do this project and the Flower Mound Road project. The next phase of the Green Ribbon Funding would be for plantings on FM 2499 from FM 407 to the border with Grapevine. The Continuum Hospital groundbreaking would be held on Saturday, and the ribbon cutting for Texas Health Presbyterian Hospital would be held on April 30.

Mr. Jefferson stated there had been a question about drilling activity related to the land swap for the soccer complex. He noted there was a great deal of information on the **Town's** website under Election Information. He stated that the only gas drilling information the Town was aware of was that the Town once received an application on the land north of the current soccer complex. That property was known as Terracina, and the developer had withdrawn the application for a gas well. The Town did lease mineral rights in 2008. Mr. Jefferson stated that at the October 2009 work session, the proposal that staff referenced was received from Williams Company. The presentation included that a CCF would not be permitted in the Town. The ordinance contained a section related to petroleum products, and staff viewed that section to

describe a tank that might be held for a tractor, equipment maintenance, or refueling equipment on a farm or ranch. Staff's perception was that a CCF could not be allowed in the Town's ordinances at that time.

Deputy Mayor Pro Tem Dixon commented that when he prepared his letter that was mentioned previously, he made sure it was truthful and that there would be no harm to the residents. He noted it had been proofed by the Town Attorney prior to being printed.

Town Attorney Terry Welch commented on the uncertainty in Texas law about the right of eminent domain that pipeline companies had. He stated that the statements in the letter were correct.

Councilmember Wallace commented on the free class on April 26 that had been announced. He asked if the Town had any plans to do informative classes for the residents on gas drilling.

Mayor Smith stated she had contacted the group that did the presentation to the Oil and Gas Board of Appeals.

Mr. Jefferson commented on the requested street lights. He stated there had been difficulty getting electricity to the locations.

Councilmember Wallace asked how much money had been spent on the Mockingbird lawsuit.

Mr. Welch responded that it was around \$45,000, to date.

Mr. Jefferson added that the amount was around \$12,000 for the Red Oak suit.

Councilmember Hayden asked if the Town Council could do some type of temporary relief for realtor signs on the weekends.

Mr. Jefferson asked if the Council was asking staff to not enforce the current ordinance.

Councilmember Hayden asked if the Council could do a temporary amendment until the sign ordinance had a thorough review.

Mayor Smith stated the Town had an action plan to appoint a committee. Referring to the Town Charter, she asked the Town Attorney if it was a violation of the Charter if the Town Council asked the Town Manager to review the performance of a staff member.

Mr. Welch responded if he felt there was a Charter violation, he would bring it to her attention.

K. CONSENT ITEMS

Mayor Pro Tem Levenick made a motion to approve by consent Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 15. Deputy Mayor Pro Tem Dixon seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation for each, for the record.

1. Consider approval of minutes from a special meeting the Town Council held on

March 25, 2010.

RECOMMENDATION: Approve minutes from a special meeting the Town Council held on March 25, 2010.

2. **Consider approval of minutes from a regular meeting the Town Council held on April 5, 2010.**

RECOMMENDATION: Approve minutes from a regular meeting the Town Council held on April 5, 2010.

3. **Consider approval of a contract for the retrofit of Town Hall Heating, Ventilation and Air Conditioning (HVAC) Control System with Schneider Electric, through an interlocal agreement with the Texas Cooperative Purchasing Network, in the amount of \$168,426, and authorization for the Mayor to execute the same on behalf of the Town.**

RECOMMENDATION: Approve a contract for the retrofit of Town Hall Heating, Ventilation and Air Conditioning (HVAC) Control System with Schneider Electric, through an interlocal agreement with the Texas Cooperative Purchasing Network, in the amount of \$168,426, and authorize the Mayor to execute the same on behalf of the Town.

4. **Consider approval of a contract for the purchase and installation of a condensing unit for the Police and Municipal Court Building from North Texas Heating & Air Conditioning, Inc., in the amount of \$34,355, and authorization for the Mayor to execute the same on behalf of the Town.**

RECOMMENDATION: Approve a contract for the purchase and installation of a condensing unit for the Police and Municipal Court Building from North Texas Heating & Air Conditioning, Inc., in the amount of \$34,355, and authorize the Mayor to execute the same on behalf of the Town.

5. **Consider approval of the purchase of asphalt overlay services from Reynolds Asphalt and Construction Company, through the Innovations Group National Purchasing Alliance cooperative purchasing agreement, in the estimated amount of \$267,543.**

RECOMMENDATION: Approve the purchase of asphalt overlay services from Reynolds Asphalt and Construction Company, through the Innovations Group National Purchasing Alliance cooperative purchasing agreement, in the estimated amount of \$267,543.

6. **Consider approval of the award of Bid No. 37-10-B, subject to approval of funding by Denton County, Texas, for Garden Ridge Boulevard Phase III (FM 3040 to Spinks Road), to JRJ Paving, LP, in the amount of \$4,466,169.90, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Bid No. 37-10-B, subject to approval of funding by Denton County, Texas, for Garden Ridge Boulevard Phase III (FM 3040 to Spinks Road), to JRJ Paving, LP, in the amount of \$4,466,169.90, and authorize the Mayor to execute same on behalf of the Town.

7. **Consider approval of a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services, associated with the construction of the Flower Mound Road and Flower Mound Road Water Line**

projects, in the amount of \$140,000.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Professional Services Agreement with Kleinfelder Central Inc., to provide geotechnical and material testing services, associated with the construction of the Flower Mound Road and Flower Mound Road Water Line projects, in the amount of \$140,000.00, and authorize the Mayor to execute same on behalf of the Town.

- 8. Consider approval of Change Order No. 2 and final acceptance for the construction of Fire Station No. 4; amending the contract with C.R. Reynolds, Inc., for an increase in the amount of \$23,219.16; acceptance of the project; authorization for final payment to the contractor, C.R. Reynolds, Inc., in the amount of \$163,774.68; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 2 and final acceptance for the construction of Fire Station No. 4; amend the contract with C.R. Reynolds, Inc., for an increase in the amount of \$23,219.16; accept the project; authorize final payment to the contractor, C.R. Reynolds, Inc., in the amount of \$163,774.68; and authorize the Mayor to execute same on behalf of the Town.

- 9. Consider approval of Change Order No. 5 for construction of the Spinks Road Phase IV project, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$21,343.80, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve Change Order No. 5 for construction of the Spinks Road Phase IV project, amending the contract with Ed Bell Construction Company, for an increase in the amount of \$21,343.80, and authorize the Mayor to execute same on behalf of the Town.

- 10. Consider approval of an ordinance amending the Town's Code of Ordinances, Chapter 14, Article IX, Sections 14-338 through 14-340, entitled "Guidelines on Landscape and Irrigation Improvements", relative to the unlawful operation of sprinklers when temperatures are at or below freezing.**

RECOMMENDATION: Approve Ordinance No. 24-10 amending the Town's Code of Ordinances, Chapter 14, Article IX, Sections 14-338 through 14-340, entitled "Guidelines on Landscape and Irrigation Improvements", relative to the unlawful operation of sprinklers when temperatures are at or below freezing. The caption of the ordinance reads as follows:

ORDINANCE NO. 24-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, ARTICLE IX "GUIDELINES ON LANDSCAPE AND IRRIGATION IMPROVEMENTS," ADOPTING DEFINITIONS, ESTABLISHING REGULATIONS GOVERNING THE USE OF IRRIGATION SYSTEMS DURING FREEZING TEMPERATURES, ESTABLISHING PENALTIES, REPEALING ALL CONFLICTING ORDINANCES, PROVIDING A SEVERABILITY CLAUSE, AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

- 11. Consider approval of a resolution adopting a street sweeping agreement and administrative procedures for voluntary participation in the annual street sweeping program.**

RECOMMENDATION: Approve Resolution No. 07-10 adopting a street sweeping agreement and administrative procedures for voluntary participation in the annual street sweeping program . The caption of the resolution reads as follows:

RESOLUTION NO. 07-10

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING A RESIDENTIAL STREET SWEEPING AGREEMENT AND ADMINISTRATIVE PROCEDURES FOR VOLUNTARY PARTICIPATION IN THE ANNUAL STREET SWEEPING PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

12. Consider approval of a resolution adopting an asphalt overlay agreement and administrative procedures for voluntary participation in the annual asphalt overlay program.

RECOMMENDATION: Approve Resolution No. 08-10 adopting an asphalt overlay agreement and administrative procedures for voluntary participation in the annual asphalt overlay program. The caption of the resolution reads as follows:

RESOLUTION NO. 08-10

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AN ASPHALT OVERLAY AGREEMENT AND ADMINISTRATIVE PROCEDURES FOR VOLUNTARY PARTICIPATION IN THE ANNUAL ASPHALT OVERLAY PROGRAM, AND PROVIDING AN EFFECTIVE DATE.

13. Consider approval of Addendum No. 1 for the Spinks Road Phase IV (Garden Ridge to Duncan) project, amending the contract with Half Associates, Inc., for an increase of \$8,134.00 to the contract amount, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Addendum No. 1 for the Spinks Road Phase IV (Garden Ridge to Duncan) project, amending the contract with Half Associates, Inc., for an increase of \$8,134.00 to the contract amount, and authorize the Mayor to execute same on behalf of the Town.

14. 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 Hanover Drive, Hanover Court, Ingleside Drive, and Augusta Drive to 25 mph.

This item was removed from the Consent Agenda by Councilmember Wallace.

15. Consider approval of a resolution adopting a policy regarding the provision of water and/or wastewater service to entities and others outside the corporate limits of the Town of Flower Mound.

RECOMMENDATION: Approve Resolution No. 09-10 adopting a policy regarding the provision of water and/or wastewater service to entities and others outside the corporate limits of the Town of Flower Mound. The caption of the resolution reads as follows:

RESOLUTION NO. 09-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING A POLICY REGARDING THE PROVISION OF WATER AND/OR WASTEWATER SERVICE TO ENTITIES AND OTHERS OUTSIDE THE CORPORATE LIMITS OF THE TOWN OF FLOWER MOUND; MAKING FINDINGS RELATIVE THERETO; PROVIDING AN EXCEPTION TO THE POLICY; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

L. REGULAR ITEMS

- 14. 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 Hanover Drive, Hanover Court, Ingleside Drive, and Augusta Drive to 25 mph. (This item was removed from the Consent Agenda by Councilmember Wallace.)**

Mayor Smith asked for an explanation about changing the speed limit on a street to 25 mph if it was located within a ¼ mile of a school area.

Assistant Town Manager Kent Collins stated there was no requirement for a **homeowners'** association (HOA) to be involved. A resident could make the request. If funds were available and the street met all the requirements, staff would bring the request forward to the Town Council. He was not aware of who made the request for Augusta.

Mayor Smith stated none of the four streets in the item led to school property. She stated she would like staff to look into the speed limit reduction on Glenwick, and maybe evaluate the entire neighborhood.

Town Manager Harlan Jefferson stated staff did not proactively seek out the streets. That was done by the HOA or a resident. He noted that an amended policy was scheduled for the May 3 agenda. The new proposal would allow the Town to go outside the ¼ mile zone of a school.

Mayor Smith asked that staff bring feedback from the police department about monitoring the speed limits.

Councilmember Filidoro, who lives on Augusta, stated he did not know his street was on the agenda. He noted there were many children along the street. He asked which neighbor asked for the reduction.

Councilmember Wallace moved to approve Ordinance No. 25-10 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 Hanover Drive, Hanover Court, Ingleside Drive, and Augusta Drive to 25 mph. Mayor Pro Tem Levenick seconded the motion.

Councilmember Filidoro asked that August Drive be removed from the list.

Councilmember Wallace and Mayor Pro Tem Levenick agreed to the amendment to remove Augusta Drive from the list.

The caption of the ordinance reads as follows:

ORDINANCE NO. 25-10

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.

VOTE ON THE MOTION

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

16. **Receive the Town Secretary's certification of a petition that was submitted to the Town on March 31, 2010 regarding an ordinance declaring a moratorium on the issuance of permits for certain oil and gas pipelines and facilities, and give direction to Town staff regarding same.**

Mayor Smith thanked the staff in the Town **Secretary's** office for handling the petition in a timely and professional manner.

Staff Presentation

Town Secretary Paula Paschal thanked her staff for working so hard on verifying the petition signatures. She informed the Council that on March 31, 2010, she received a petition from Flower Mound Cares Petition group (regarding an ordinance declaring a moratorium on the issuance of permits for certain oil and gas pipelines and facilities). On April 1, the voter registration database from Denton County was received. The total number of registered voters in Flower Mound was 42,126. Of that number, 5,595 were on the "**suspense**" list. By state law, the 5,595 voters were subtracted from 42,126 for the purpose of calculating the 15% of registered voters, as per the Charter. The total number of valid signatures required was 5,480. Town staff verified 5,642 valid signatures. Ms. Paschal stated she prepared the certification of the petition on April 9, 2010, and presented it to them at this meeting. As per the Charter, the Town Council had to either:

- 1) Pass said ordinance without alteration within 45 days after the attachment of the **Town Secretary's certificate of sufficiency to the accompanying petition; or**
- 2) Proceed to call a special election at which the ordinance, without alteration, shall be submitted to a vote of the people.

Ms. Paschal stated that the Council had three more meetings prior to the deadline to take action (May 24, 2010). The meeting dates were May 3, May 17, and May 20.

Questions from the Governing Body and Answers None**Council Deliberation**

Mayor Smith reiterated that the Council needed to take action by May 24.

Councilmember Filidoro moved to receive the Town Secretary's certification of a petition that was submitted to the Town on March 31, 2010, regarding an ordinance declaring a moratorium on the issuance of permits for certain oil and gas pipelines and facilities. Deputy Mayor Pro Tem Dixon seconded the motion.

Mayor Smith asked that both options be placed on the May 3 agenda for consideration. She asked staff to include part of the presentation from the January 21, 2010 meeting.

VOTE ON THE MOTION

AYES: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

17. **SUP 391-10 - Love Your Pet** **Public Hearing**
Public Hearing to consider a request for a Specific Use Permit (SUP 391-10 - Love Your Pet) to permit a kennel with indoor pens, and to consider adopting an ordinance providing for said amendment. The property is located at 1900 Long Prairie Road, Suite 100. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its March 22, 2010, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the land use and master plan was appropriate for this request. He noted the Specific Use Permit had standards contained in the proposed ordinance for the use associated with a kennel with indoor pens.

Applicant's Presentation

Lynn Gabioud, Love Your Pet

Ms. Gabioud stated she and her husband desired to move their business to 1900 Long Prairie, Suite 100. They had owned their pet grooming/retail shop for 18 years and it had grown significantly. The new location would have a large grassy area in the back to walk the dogs, and provided for ample parking.

Questions from the Governing Body and Answers None

Public Comments

Tony Robson, 3421 Courtney Drive, Flower Mound

Mr. Robson spoke in favor of the request.

Mark Stewart, 3932 Ridgecrest, Flower Mound

Mr. Stewart stated the **Gabioud's** were great business owners and his dog received services at their business.

Close Public Hearing

Council Deliberation

Councilmember Wallace moved to approve Specific Use Permit SUP 391-10 - Love Your Pet - to permit a kennel with indoor pens, and adopt Ordinance No. 26-10 providing for said amendment, subject to the following conditions:

- a. The attached site plan, labeled Attachment "B(1)," an attachment to the Specific Use Permit, shall be developed as approved, except that minor changes outlined in Section 82-37 of the Land Development Regulations may be approved as set forth in that section.
- b. If a certificate of occupancy application has not been submitted to the Town's Building Inspections Division for consideration within one year of approval of the ordinance, the Specific Use Permit described herein will be a matter that will automatically be placed upon a subsequent Planning and Zoning Commission agenda for consideration as a Town-initiated zoning change under normal zoning amendment procedures.

- c. All manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance.
- d. It shall be unlawful for any owner to allow an animal to cause a disturbance by excessive barking or noise-making near the private residence of another.
- e. It shall be unlawful for any owner to allow an animal to produce odors or unclean conditions sufficient to create a public nuisance.
- f. No kennel shall be located within fifty feet of any property line unless it is completely enclosed and soundproofed so that no noise from the kennel is audible at any bounding property line.

The motion was seconded by Mayor Pro Tem Levenick. The caption of the ordinance reads as follows:

ORDINANCE NO. 26-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON LOT 2A, BLOCK R1 OF THE TOWN VIEW PLAZA ADDITION FROM PLANNED DEVELOPMENT DISTRICT NO. 60 (PD-60) WITH RETAIL DISTRICT-2 (R-2) USES TO PLANNED DEVELOPMENT DISTRICT NO. 60 (PD-60) WITH RETAIL DISTRICT-2 (R-2) USES SUBJECT TO SPECIFIC USE PERMIT NO. 391 (SUP-391) TO ALLOW FOR AN INDOOR KENNEL, IN ACCORDANCE WITH THE SPECIFIC REQUIREMENTS IN THE TOWN'S MASTER PLAN 2001 AND IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

18. **SUP/SP 381-09 - Clear Wireless Marcus High School** **Public Hearing**
Public Hearing to consider a request for a Specific Use Permit (SUP/SP 381-09 - Clear Wireless Marcus High School) to permit co-location of telecommunication antennas on the Town's existing water tower, and installation of related cables and cabinets with an exception to Section 98-977(8)(a), Landscaping and screening, of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is located at 2130 Waketon Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its March 22, 2010, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the request was for additional cabinets at the ground level, and two to three additional dish antennas. Staff had received no correspondence to date.

Questions from the Governing Body and Answers

Councilmember Wallace asked if the antenna array would be the same color as the existing arrays.

Mr. Powell responded yes.

Public Comments **None**

Close Public Hearing**Council Deliberation**

Mayor Pro Tem Levenick moved to approve a request for a Specific Use Permit SUP/SP 381-09 - Clear Wireless Marcus High School - to permit co-location of telecommunication antennas on the Town's existing water tower and the installation of related cables and cabinets, grant a waiver of Section 98-977(8)(a), Landscaping and screening, of the Land Development Regulations, and adopt Ordinance No. 27-10 providing for said amendment, subject to the following conditions:

- i. The proposed use shall be developed as approved in accordance with the attached site plan, labeled Attachment "B(1)" an attachment to the Specific Use Permit, except that minor changes outlined in Section 82-37 of the Land Development Regulations, may be approved as set forth in that section.
- ii. If a building permit application for the additional antennas and equipment has not been submitted to the Town's Building Inspection Division for consideration of a building permit within six months of approval of the ordinance, the zoning for this property, including the Specific Use Permit described herein, will be a matter that will be automatically placed upon a subsequent Planning and Zoning Commission agenda for consideration as a Town-initiated zoning change under normal zoning amendment

procedures.

- iii. A lease agreement shall be executed between the Town of Flower Mound and Clear prior to building permit application.
- iv. A waiver of Section 98-977(8)(a), Landscaping and screening, of the Land Development Regulations, be granted.

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

ORDINANCE NO. 27-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 1.22 ACRES OF LAND ON LOT 2R, BLOCK A OF EDWIN S. MARCUS HIGH SCHOOL ADDITION FROM AGRICULTURAL (A) DISTRICT USES SUBJECT TO SPECIFIC USE PERMIT NOS. 284, 298, 313, AND 330 (SUP-284, SUP-298, SUP-313, AND SUP-330) TO AGRICULTURAL (A) DISTRICT USES SUBJECT TO SPECIFIC USE PERMIT NOS. 284, 298, 313, AND 330 (SUP-284, SUP-298, SUP-313, AND SUP-330) AND BEING FURTHER SUBJECT TO SPECIFIC USE PERMIT NO. 381 (SUP-381) TO PERMIT CO-LOCATION OF TELECOMMUNICATION ANTENNAS ON THE TOWN'S EXISTING WATER TOWER AND INSTALLATION OF RELATED CABLES AND CABINETS IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Mayor Smith opened Items 19 and 20 together.

- 19. **SUP/SP 390-09 - Wonderland Montessori Academy** **Public Hearing**
Public Hearing to consider a request for a Specific Use Permit (SUP/SP 390-09 - Wonderland Montessori Academy) to permit a daycare center with an exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, and an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is located at 3701 Auburn Drive. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its March 22, 2010, meeting.)
- 20. **Tree Removal** **Public Hearing**
Public Hearing to consider a tree removal permit for the removal of five specimen trees on property proposed for development as Wonderland Montessori Academy. The property is generally located north of Peters Colony Road and west of Auburn

Drive. (The Environmental Conservation Commission recommended approval by a vote of 5 to 0 at their January 5, 2010, meeting.)

Staff Presentation

Executive Director of Development Services Doug Powell stated the land use was low-density residential and the property was master planned as agricultural, and a day care with a Specific Use Permit was allowed. The site was heavily treed. The applicant requested an exception to the driveway spacing, as the spacing between the current driveway to the east was only 100 feet. The applicant had worked with staff to place it at an appropriate location. The Town had a compatibility buffer requirement. The project met the requirements on the western border. Along the northern property line, the applicant desired to place a wooden fence to match the subdivision to the north. They would plant the trees and construct the fence, but requested to not plant the shrubs. He stated the adjoining property owner submitted a letter in support of the two exceptions. Mr. Powell stated the applicant also requested to remove five specimen trees. Mr. Powell stated staff had received emails in support and in opposition to the items.

Questions from the Governing Body and Answers

Councilmember Hayden expressed concern with traffic in the area.

Assistant Town Manager Kent Collins stated that with a school use, queuing was one of the major concerns. The Traffic Impact Analysis (TIA) showed queuing could be accommodated on the site. There was no indication in the TIA that there would be a poor level of service.

Councilmember Hayden asked how many parking spaces would be provided.

Mr. Powell responded there would be 51 spaces.

Councilmember Dixon stated he had received a comment from citizens that since Auburn was put through and there would be more houses there at some time, it might be better for Auburn to be the main drive and have Quail Run "T" into the new Auburn Drive.

Mr. Collins stated that looking at the traffic flow, Peters Colony and Quail Run should be the primary route with Auburn T-ing in. He stated there would probably always be more traffic on Peters Colony.

Applicant's Presentation

Dale Ridinger, Ridinger Associates

Mr. Ridinger stated the project would be developed with the highest quality standards. He reviewed the building setbacks and landscape buffers, and noted that the driveway configuration was carefully studied. They had worked closely with the Fire Marshal regarding the fire lane. Detention would be located on the north portion of the site. The project allowed for a large area for a playground - portioned out with wrought iron fencing for the different age groups. He stated they would be adding left and right turn lanes at Quail Run and Auburn. Mr. Ridinger stated a very large percentage of the trees on the site were Cedar Elm. There were only nine protected oak trees on the site, and they would be preserving six. One of the 11 specimen trees was on the property line; however, it would be protected. The five specimen trees to be removed were Cedar Elm. He stated the Environmental Conservation Commission unanimously voted to remove the requested trees. The applicant had received letters of support for the driveway spacing request. Regarding the compatibility buffer exception request, the abutting neighbor did not want inconsistency with fencing and agreed with the request.

Kristy Thornton, Operations Manager

Ms. Thornton stated the school would be a 13,400-square-foot facility. She reviewed several of the operations of the facility, noting they would offer extended hours.

Public Comments

Ajay Mittal, 4425 Sandra Lynn Drive, Flower Mound

Mr. Mittal spoke in favor of the request.

Jayant Bamrod, 4228 Sharondale Drive, Flower Mound

Mr. Bamrod spoke in favor of the request.

Sunita Dwivedi, 4828 Windmiller Lane, Flower Mound

Ms. Dwivedi spoke in favor of the request.

Melissa Northern, 4601 Portsmouth Court, Flower Mound

Ms. Northern spoke in favor of the request.

Ramesh Saxena, 3112 Jaclamo Street, Flower Mound

Mr. Saxena spoke in favor of the request.

Abhijit Bhattacharya, 3600 Leanne Drive, Flower Mound

Mr. Bhattacharya spoke in support of the request.

Sandeep Srivastava, 1909 Banner Court, Flower Mound

Mr. Srivastava spoke in support of the request.

Ajay Verma, 3921 Kenwood Drive, Flower Mound

Mr. Verma spoke in support of the request.

Shrirang Yawalker, 4917 Kingswood, Flower Mound

Ms. Yawalker spoke in support of the request.

Prabhakar Uniyal, 3100 Sheryl Drive, Flower Mound

Mr. Uniyal spoke in support of the request.

Narendra Joshi, 3517 Sutters Way, Flower Mound

Mr. Joshi spoke in support of the request.

Three other speakers spoke in support of the request. Their names and addresses were inaudible.

Close Public Hearing

Council Deliberation

Councilmember Filidoro thanked Mr. Ridinger for the thorough presentation.

Councilmember Hayden noted the applicant would plant 44 more trees and would give funding for 88 more trees off-site.

Deputy Mayor Pro Tem Dixon asked if the applicant had any other communication with the adjacent neighbor since the Planning and Zoning Commission meeting.

Mr. Ridinger stated he tried to visit with him, but he was not at home.

Motion on Item 19

Councilmember Filidoro moved to approve Specific Use Permit SUP/SP 390-09 - Wonderland Montessori Academy - to permit a daycare center, with an exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, and an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and to adopt Ordinance No. 28-10 providing for said amendment, subject to the following conditions:

- a. The attached site plan, labeled Attachment "C(1)," an attachment to the Specific Use Permit, shall be developed as approved, except that minor changes outlined in Section 82-37 of the Land Development Regulations, may be approved as set forth in that section.
- b. If a building permit application has not been submitted to the Town's Building Inspections Division for consideration within one year of approval of the ordinance, the Specific Use Permit described herein will be a matter that will automatically be placed upon a subsequent Planning and Zoning Commission agenda for consideration as a Town-initiated zoning change under normal zoning amendment procedures.

The motion was seconded by Mayor Pro Tem Levenick. The caption of the ordinance reads as follows:

ORDINANCE NO. 28-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 2.232 ACRES OF LAND ON LOT 1, BLOCK A OF THE WONDERLAND MONTESSORI ACADEMY ADDITION FROM AGRICULTURAL (A) DISTRICT USES TO AGRICULTURAL (A) DISTRICT USES SUBJECT

TO SPECIFIC USE PERMIT NO. 390 (SUP-390) FOR A DAY CARE CENTER 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 FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Motion on Item 20

Councilmember Wallace moved to approve a tree removal permit for the removal of five specimen trees on property proposed for development as Wonderland Montessori Academy. The property is generally located north of Peters Colony Road and west of Auburn Drive. The motion was seconded by Mayor Pro Tem Levenick.

VOTE ON THE MOTION

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

- 21. Chinn Chapel Soccer Complex Public Hearing**
Public Hearing to receive public input regarding the sale and conveyance for fair market value of an approximate 15.815-acre tract of land located on the northwest corner of FM 407 and Chinn Chapel Road (known as Chinn Chapel Soccer Complex), and purchase of an approximate 23.374-acre property located on the east side of Chinn Chapel Road between Dixon Lane and Waketon Road.

Staff Presentation

Doug Powell, Executive Director of Development Services, showed the current location of the Chinn Chapel Soccer Complex and the proposed location. He showed the comparison of the two sites regarding size, value, location, field configuration, parking, and other amenities. He stated a new facility would have to meet or be superior to what was at the current location. He showed a draft drawing of the proposed site. He stated the pond would probably be detention, not retention. He stated this public hearing met state statutes for park land going to an election.

Questions from the Governing Body and Answers

Deputy Mayor Pro Tem Dixon asked when Chinn Chapel would be improved.

Assistant Town Manager Kent Collins stated Chinn Chapel was planned to be a 4-lane undivided arterial from FM 407 to Waketon. Depending on funding, design on Chinn Chapel would begin in June/July 2010. Beyond that, the schedule would be driven by funding ability.

Public Comments

Mary Strickland, 3204 Springwood, Flower Mound

Ms. Strickland spoke with Bobby Dollock and he indicated there would be a gas well on the property north of the current soccer complex and the 1,000-setback would not be required. She asked if the swap did not pass, would it require a variance for a gas well to be drilled on this property.

Mr. Powell noted there were answers to many questions on the Town's website. He stated a gas well was proposed for the property now known as Terracina. The Town's ordinance did require a setback to park land.

Mr. Jefferson stated there would be two variances - one for the battery and one for the well.

Angie Cox, 7616 Emerson, Flower Mound

Ms. Cox spoke in favor of the land swap for the safety of the children. She stated it was dangerous trying to pull out on FM 407 after a soccer game.

Harold Callahan, 4424 Sandra Lynn, Flower Mound

Mr. Callahan was concerned about the cost for Chinn Chapel and for Waketon. He stated that one extra soccer field did not equate to the value of improving two roads.

Cathy Skinner, 4400 Sandra Lynn, Flower Mound

Ms. Skinner understood that the cost of Chinn Chapel was a little over \$3 million. The existing soccer complex was completed in 2006, and the proposed cost of the new complex was a little over \$4 million. She noted there were four different owners of the properties at Chinn Chapel and Waketon. She asked if all four property owners were in unison with the swap. She stated that Double Oak owned the land between Bridlewood and Chinn Chapel. She asked if Double Oak was going to widen their portion of the road.

Tony Robson, 3421 Courtney Drive, Flower Mound

Mr. Robson asked if there would be out-of-pocket costs to the Town. He asked who would pay for the roads. He asked if the new complex did not go in, would improvements to the roads still be made. He asked why a developer requested the land swap. He stated there was some speculation that gas wells were planned for the Terracina site. He suggested simply adding better traffic measures to the original location.

Chris Tomlinson, 3907 Raintree Drive, Flower Mound

Mr. Tomlinson was in favor of the land swap. He stated the Town would get a better facility and would locate the fields in a residential neighborhood. He stated Flower Mound would benefit from sales tax revenue.

Rob Marcoe, 3416 Courtney Drive, Flower Mound

Mr. Marcoe asked if the Town had any plans for what retail would go in on the corner of FM 407 and Chinn Chapel. He asked if the Town had received any feedback from the residents of the mobile home park east of the proposed new site.

Erin Bouck, 3429 Courtney Drive, Flower Mound

Mr. Bouck asked if retail could be put in on the new site. He asked if the value comparison was equal. He understood that gas wells were proposed north of the soccer complex. He asked if Highland Village was actually Flower Mound, would they have required variances to any well sites.

Buddy Tompkins, 6000 Chinn Chapel, Flower Mound

Mr. Tompkins stated he had lived in his home for 15 years, adding that the market was not good now but it would not stay that way for very long. He stated that the highest and best use for FM 407 and Chinn Chapel would be retail. He spoke in favor of the swap.

Dale Andrews, 3016 Chinn Chapel, Copper Canyon

Mr. Andrews stated he had seen many changes in the area. He moved his house from Flower Mound to Copper Canyon. He noted that on March 3, 2008, the Council approved the well permit unanimously. He added that he was donating several thousands of dollars of land for the improvements to Chinn Chapel.

Sue Ann Lorig, 4613 Fox Glove Court, Flower Mound

Ms. Lorig referred to the detention pond on the proposed site. She was concerned for the safety of the children if soccer balls ended up in the pond.

Dave Johnson, 3617 San Paula Drive, Flower Mound

Mr. Johnson spoke in favor, adding that the Town would get an extra field and a better facility.

Amy Yaeger, 3701 Kentmere Court, Flower Mound

Ms. Yaeger stated the swap would facilitate the building of Terracina with a gas well.

Carol Kohankie, 4312 Lauren Way, Flower Mound

Ms. Kohankie stated this was a creative use for the land and she was in favor. She asked if the development north of the existing soccer fields had been approved.

Patsy Mizeur, 1821 Castle Court, Flower Mound

Ms. Mizeur spoke in favor of the swap.

Steve Strickland, 3204 Springwood Road, Flower Mound

Mr. Strickland commented that the Town received the existing soccer complex property due to a developer cutting down large oak trees in another area of the Town. He stated there was a large area of retail already.

Close Public Hearing

Mayor Smith stated that TRIP 08 (Denton County) money would fund the improvements on Waketon. She stated that Chinn Chapel running north and south needed to be improved, and the Town was working with Denton County for funding. She thanked Mr. Andrews and Mr. Tompkins for donating land for improvements to Chinn Chapel. She stated that communication about retail on the corner of FM 407 and Chinn Chapel started about four years ago. Actually, Market Street started the discussions.

Mr. Powell stated a developer had a preliminary draft of a plan. The existing property would have to be re-zoned and a master plan amendment would be required. He commented that staff had not notified the mobile home park, to date. The proposed location would need a site plan and replatting of the property. No public hearing would be required.

Mr. Jefferson stated the Chinn Chapel Road expansion and Waketon improvements were in the Tax Increment Reinvestment Zone (TIRZ). He stated the Chinn Chapel capacity improvements were budgeted at \$3.1 million and scheduled for construction in FY 2011-2012. If the Town received funding from another source, it could be moved up on the CIP. Waketon was budgeted at \$2.9 million and construction was scheduled for FY 2013-2014. Mr. Jefferson stated the TIRZ Board was scheduled to reprioritize projects this summer. Regarding the ownership of the property at Chinn Chapel and Waketon, he had seen the contract for the largest portion of the property that was planned to be sold to the developer. They made a commitment to secure the other three lots, but they were not under contract as of yet.

Mayor Smith commented that the Town was not in the business of making land swaps. She asked Mr. Jefferson to address the issue of value.

Mr. Jefferson stated that for the Town to exchange property, it had to be done for market value. Last fall, the Town had an appraiser look at both tracts of land. The developer funded the appraisal. Because the land at Chinn Chapel and FM 407 could be used for commercial purposes, the value per acre was substantially higher than the agricultural/residential value of the land at Chinn Chapel and Dixon. The soccer complex property was valued two different ways. If it was used for commercial purposes, it was valued at \$3.1 million. If it was valued as a park, the number was \$750,000 for the land and about \$3.5 million for the improvements.

Mr. Powell stated the detention pond would not hold water. Planning staff met with Parks staff about the actual design of the fields. The Parks staff was concerned about how the fields would function. They were still working on many details regarding fencing and minimizing stray soccer balls.

Mr. Jefferson addressed the comment about if the property in Highland Village, east of Terracina, was in Flower Mound, would it need a variance. He responded that they would not need a variance, as it was outside the 1,000-foot area. Copper Canyon, to the west, would require a variance.

Mayor Smith stated that she, Mr. Jefferson, Mr. Collins, and others met with Double Oak officials regarding the road improvements.

Mr. Jefferson commented that Terracina was the only application for the property north of the existing soccer complex.

Mr. Powell stated that currently there was no application for a gas well in Terracina, however staff believed one would be made.

Mr. Jefferson stated that all documents related to the land swap were on the **Town's** website.

Deputy Mayor Pro Tem Dixon asked for the setbacks for a gas well to the west for Copper Canyon.

Mr. Jefferson stated the setback was 1,000 feet.

Deputy Mayor Pro Tem Dixon asked that if the soccer complex was moved to the Waketon location, and an application came in for the Terracina site, would that automatically wipe out the need for variance requests for a well.

Mr. Jefferson did not believe so.

Mr. Powell stated that before a house was built in Terracina, the gas company would have to seek a reduction in the setback.

Mr. Jefferson stated it could automatically move down to 500 feet and the gas company could ask for less than that.

Mr. Powell stated there was also a setback from waters of the state, as there was a stream in the open space area. The company would need an exception.

Councilmember Hayden asked who had leased the minerals.

Mr. Jefferson stated the original application was submitted by Red Oak.

Councilmember Hayden noted that in 2008, the Town granted a lease for minerals. It was good for three years.

Councilmember Wallace commented that if the proposition was approved by the voters, the swap occurred, and the new complex was built, the Town would be ahead about \$300,000. The Town could not lose money.

Mr. Jefferson stated that was correct.

Councilmember Wallace stated he would not want to live 350 feet from a gas well. He asked if the developer would be concerned about selling homes that close to a gas well. He asked for an explanation on how the new homeowners could find out that they might be buying a home near a gas well.

Mr. Jefferson stated that the Town required notice to be placed in the Denton County

records if they would be within 1,000 feet of a well.

Mr. Welch stated it also should be on the front of the plat and in Denton County records. A sign should also be posted at the home.

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- Regular meetings - May 3, May 17 (canvassing)
- Work Session - **May 20**
- Mayor Smith requested a review of RLUPA rules and temporary buildings at churches.

Deputy Mayor Pro Tem Dixon stated that several years ago, Pastor Richard Plunk made an offer to get pastors together to serve as an advisory board. He noted the Town was not going to remove temporary buildings from a church. Pastors needed to hold each other accountable.

Councilmember Wallace stated he would be absent from the May 20 work session.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:41 p.m. on April 19, 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 11:30 p.m. on April 19, 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, in association with the Morriss-Gerault Improvement project, from Flower Mound Market, LTD., not to exceed the new settlement amount, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents related to acquisition of the property on behalf of the Town. The motion was seconded by Deputy Mayor Pro Tem Dixon.

VOTE ON THE MOTION

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

Mayor Pro Tem Levenick moved to approve the purchase of right-of-way, in association with the Morriss-Gerault Improvement project, from Gator Flower Mound, LLC, BLI Flower Mound, Ltd., and JPMorgan Chase Bank National Association, not to exceed the new settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his

designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Deputy Mayor Pro Tem Dixon.

VOTE ON THE MOTION

AYES: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

Mayor Pro Tem Levenick moved to approve the purchase of the easement, in association with the US 377/UPRR Water Line Phase I project, plus closing costs; 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 in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro.

VOTE ON THE MOTION

AYES: Levenick, Dixon, Filidoro, Hayden, Wallace

NAYS: None

- c. **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.

- d. **Discuss and consider Town of Flower Mound v. Mockingbird Pipeline, L.P., Cause No. PR-2010-00050, pending in the Court of Appeals in Fort Worth.**

No action taken.

- e. **Discuss and review services rendered by Brown & Hofmeister, L.L.P., and including quarterly legal services report.**

No action taken.

- f. **Discuss Red Oak Gas LP and Red Oak Gas Operating Company LP v. Town of Flower Mound, Cause No. 2009-30345-211, pending in the 211th Judicial District Court of Denton County, Texas.**

No action taken.

S. ADJOURN REGULAR MEETING

Mayor Smith adjourned the regular meeting at 11:34 p.m. on Monday, April 19, 2010, and all were in favor.

JODY A. SMITH, MAYOR

ATTEST:

PAULA J. PASCHAL, TOWN SECRETARY

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