

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING, FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING, AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING HELD ON THE 20th DAY OF SEPTEMBER, 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:

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|------------------|---------------------------------------------|
| Melissa Northern | Mayor |
| Al Filidoro | Mayor Pro Tem |
| Tom Hayden | Deputy Mayor Pro Tem (arrived at 6:11 p.m.) |
| Steve Dixon | Councilmember Place 1 |
| Mike Wallace | Councilmember Place 3 |
| Steve Lyda | Councilmember Place 4 |

constituting a quorum with the following members of the Town Staff participating:

| | |
|------------------|------------------------------------------------|
| Harlan Jefferson | Town Manager |
| Cindi Price | Administrative Assistant |
| Terry Welch | Town Attorney |
| Chuck Springer | Assistant Town Manager/Chief Financial Officer |
| Kent Collins | Assistant Town Manager |
| Kenny Brooker | Police Chief |
| Eric Metzger | Fire Chief |
| Gary Sims | Executive Director of Community Services |
| Doug Powell | Executive Director of Development Services |

A. CALL BRIEFING SESSION TO ORDER

Mayor Northern called the briefing session to order at 6:03 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee Reports

Mayor Pro Tem Filidoro reported that he attended the September 13th P&Z meeting, at which there was a work session on urban development standards, and the First Korean Baptist Church was given another one-year extension on their temporary building.

Councilmember Wallace reported that at their September 9th meeting, the PALS Board approved the 2010-2015 Flower Mound Public Library Long-Range Plan, and also voted to recommend to the Town Council naming 2121 Cross Timbers, Building C, the temporary senior center.

2. Discuss Consent and Regular Items

Councilmember Lyda requested Item 8 be pulled from the Consent Agenda for discussion.

Councilmember Dixon requested Item 3, as well as Item 8, be pulled from the Consent Agenda for discussion.

Mayor Pro Tem Filidoro requested Item 6 be pulled from the Consent Agenda for discussion.

3. Discuss Future Agenda Items

No discussion.

4. Discuss Council Communications

Town Manager Harlan Jefferson stated there were no outstanding Council Communications.

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

Mayor Northern adjourned the briefing session and called the regular meeting to order at 6:08 p.m.

E. INVOCATION

Chaplain Phil Cook gave the invocation.

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

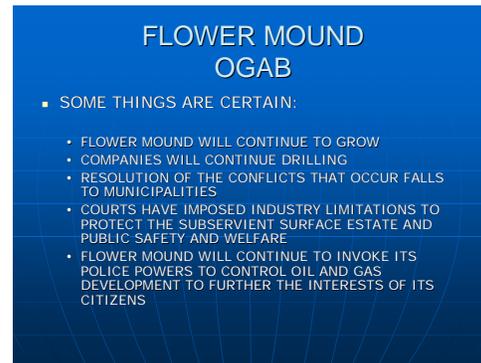
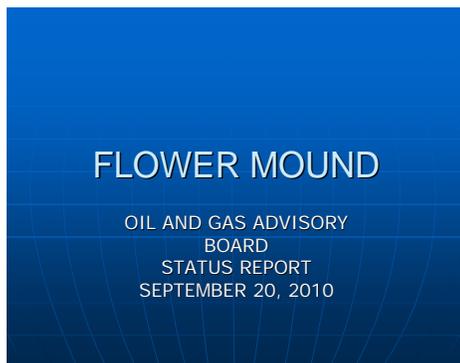
Chaplain Cook led the pledges.

G. PRESENTATIONS

- **Update from the Oil and Gas Advisory Board – Dennis McKaige**

Dennis McKaige, 3400 North Drive, Flower Mound

Mr. McKaige stated he was the Chair of the 16-member Oil and Gas Advisory Board appointed by Council on July 6, 2010, via Ordinance No. 38-10. He gave the following presentation and provided additional detail on several bullet points:



**FLOWER MOUND
OGAB**

- THE BIG PICTURE
- IDENTIFYING THE RISKS
- OUR RECOMMENDATIONS WILL CRAFT RULES THAT SPECIFICALLY ADDRESS THOSE RISKS WITHOUT UNNECESSARILY IMPINGING UPON OTHERWISE PERMISSIBLE MINERAL RESOURCE DEVELOPMENT
- RECOMMENDATIONS WILL MEET A "REASONABLENESS" STANDARD

**FLOWER MOUND
OGAB**

- APPROACH
- LARGE, DIVERSE MEMBERSHIP AND COMPLEXITY OF THE ISSUES REQUIRED AN INDEPTH EDUCATION PROCESS:
 - REVIEWED MISSION FROM COUNCIL
 - CONDUCTED LEGAL OPTIONS BRIEFINGS WITH TOWN ATTORNEYS
 - REVIEWED MECHANICAL PROCESS OF WELL DEVELOPMENT
 - CONDUCTED GAS DEVELOPMENT WALKABOUT
 - REVIEWED ORDINANCES (APPROVED AND SUSPENDED)
 - REVIEWED VARIANCE SUMMARIES/ ANALYSES
 - REVIEWED ADMINISTRATIVE APPROVAL PROCESS
 - CONDUCTED FIRST OF THREE PUBLIC COMMENT MEETINGS

**FLOWER MOUND
OGBA**

- FINDINGS TO DATE
- FLOWER MOUND RESIDENTS HAVE MANY IMPORTANT ISSUES THEY WANT ADDRESSED:
 - SETBACKS-SOME INADEQUATE AND EASILY CIRCUMVENTED
 - APPROVAL PROCESS- NOT PUBLIC ENOUGH
 - APPROVALS WITHOUT KNOWING THE FULL IMPACTS
 - BEST PRACTICES NOT ROUTINELY IMPLEMENTED
 - PROCESS IS TILTED IN INDUSTRY FAVOR
 - EMERGENCY PLANS-INADEQUATE AND NOT TIMELY
 - IDENTIFIED NEED FOR TRAFFIC IMPACT STUDIES

**FLOWER MOUND
OGAB**

OTHER THAN THOSE ISSUES, THE CITIZENS ARE HAPPY WITH THE ORDINANCES !!!

**FLOWER MOUND
OGAB**

- GOING FORWARD
- THERE ARE SEVERAL ISSUES THAT NEED NOT WAIT FOR A RECOMMENDATION FROM THE BOARD:
 - LISD/TOFM COORDINATION FOR SCHOOL SAFETY
 - INDUSTRY LOBBYING THE STATEHOUSE
 - INADEQUATE INSURANCE COVERAGE

**FLOWER MOUND
OGAB**

?? QUESTIONS ??

Councilmember Lyda thanked Mr. McKaige for sharing the information with them, and he looked forward to the rest of the Board's findings.

Mr. McKaige said it was a very interesting board to chair. They had some very dedicated citizens. They should be proud of the members and what they were doing.

Deputy Mayor Pro Tem Hayden thanked him for his work and also the work of everyone on the Board. He asked how the timing was coming, and when they thought they would be able to propose this.

Mr. McKaige said he anticipated some issues and that it was easy to lose sight of these longer timeline projects. The Board is still optimistic they were going to be able to present their recommendations to Council on November 15. He reminded them there was a requirement in the petition approved in the ordinance that gave Council a 30-day timeframe to set a public meeting once the recommendations came forward from the Board.

Mayor Northern thanked the members of the Board for their dedication, and also the residents who continued to participate and give valuable insight. With that, she wanted to make sure the Board felt they were getting adequate information and access to experts in the industry, so they would be bringing the recommendations forward with experts in the field looking at the information, as well.

Mr. McKaige said they did. Looking down the road, they saw the need to have a representative from TCEQ available to talk about the issues of testing and state-of-the-art recovery in these facilities, be it water or vapor recovery. Because the technology was moving very fast, they saw on their walkabout many different approaches to the problem. They were impressed with some of the facilities they saw, but were uncertain as to where TCEQ was on setting them as a requirement. At this point, it was their understanding they were merely Best Practices recommendations as opposed to law of the land. They needed a clearer interpretation of that.

Mayor Northern suggested they not only work with TCEQ, but also the EPA, and to make sure they had experts when looking at the setback requirements, as well, whether an explosive expert or whoever they needed. They should let them know if they needed those witnesses.

Mr. McKaige said they might be asking for assistance on a Texas Railroad Commission representative. They kept the accident reports and database which would confirm or deny anecdotal information on blast radius risks, etc., which was a very important part of what they were doing.

- **Proclamation – Fall Prevention Awareness Week**

Maggie Humphries, Continuum Rehabilitation Hospital

Ms. Humphries read the statement: “Every 18 seconds in the United States a senior is treated in the emergency room. Every 35 minutes in the United States a senior dies as a result of a fall. The Center for Disease and Control has declared this a national emergency, therefore, proclaiming this week, September 19-25, Fall Prevention Awareness Week.”

Mayor Northern read the Proclamation.

H. PUBLIC PARTICIPATION

Scott Kirkham, Executive Producer, Flower Mound Performing Arts Theatre

Mr. Kirkham announced that last week, they were voted the Best Theatre Group for Kids in DFW on Nickelodeon’s Parents Picks Awards for 2010. They were proud of their young artist training program, and felt this was a feather in their cap, as this was a national family survey, and they were up against other little theatres, such as Casa Mañana and Dallas Children’s Theatre. They thanked the Town for their continued support which allowed them to continue their high-quality program. One of their students was on “The Gates” this summer as “Emily”, the adopted daughter of one of the vampire characters. Another student was the daughter of the main character in Lone Star, which was premiering on FOX. Earlier this year, they were also voted Best Theatre Group in DFW on Pegasus.com’s Ultimate Best-of-the-Best list. This time their competition was Dallas Summer Musicals, so they were thrilled to receive that honor. Coming up, they were remounting their production of Greater Tuna, and hoped everyone would come see it. They were located at 830 Parker Square; fmpat.org was their website; and they

were on Facebook, which was a great way to find out about events and ticket deals. He then played a pre-taped video message from the "Greater Tuna" actors.

Patsy Mizeur, 1821 Castle Court, Flower Mound

Ms. Mizeur first thanked Councilmember Filidoro for calling her first for public participation at the last Council meeting. She said she was honored that he called her before a candidate for Congress. She was present that evening to take issue with Councilmember Filidoro's response in the Flower Mound Leader regarding her public comments at the Denton County Commissioners Court last Tuesday. She went to Commissioners Court to relay her concerns to her elected officials at the county level. At the last Council meeting, Council members Filidoro, Lyda, and Hayden voted to approve the funding of private fences on private property using Denton County Transportation Bond funds. Councilmember Filidoro commented to the Leader that her "trip to Denton was a political move," and "this has nothing to do with Morriss Road. Leave it to them to interject politics into something." She told Councilmember Filidoro that she took her rights as an American very seriously, and it was not just her right, but her responsibility to question her elected officials. Comments like his were what deterred citizens from taking part in their local government. Politics was when politicians gave fences to private citizens to be constructed on private property with taxpayer funds that were approved by Denton County voters for road expansions. He was a politician, a Democrat in Ohio and a Republican in Flower Mound, Texas. It made sense that he would think everyone had the same motives he did. She was not a politician; she was a housewife, a concerned citizen, and a taxpaying resident of this county. Citizens should ask hard questions without having their motives scrutinized. After all, the greater threat to freedom and liberty was not informed citizens, but an irresponsible elitist and evasive political class that refused to answer hard questions and make tough decisions.

Bryan Webb, 4112 High Road, Flower Mound

Mr. Webb said by way of their Consent Agenda, they were being asked to approve a new fee structure for gas operations. He asked that they table that item. He agreed the fees should be reviewed and increased, and should reflect the costs incurred by the Town, but what staff had given them could be improved upon with the following recommendations. First, they should front-end load the fees, when most of the activity was going on at the drill sites and when most of the inspections needed to occur. Second, they should use the new fee structure as the basis to encourage operators to update existing operations. Mr. McKaige just mentioned the extreme difficulty in having operators take a new ordinance and retrofit it to existing operations. They should offer waivers or discounts when processes important to the Town and its residents were used, items such as constant air monitoring, vapor recovery, or onsite recycling of produced water. The cost for those enhancements would be carried by those who benefited from natural gas resources beneath their town, the mineral owners and operators. The taxpayers would not have to carry any of the burdens, yet they would receive the benefits. Last, with the increased revenue, they should direct Mr. Jefferson to rehire Mike Smith, the Fire Marshal. It was ridiculous to believe that a town of 66,000 was best served without the services of a highly-trained, experienced and certified professional. Having Mr. Smith back on the job, where he belonged, would improve the safety of his family and every other family who lived, worked, shopped, or drove through their town. In closing, incentives were a proven way to drive behavior. It worked with his kids, and it worked with him at his place of employment. It would work in Flower Mound. Incentives could ensure all their residents that gas development would be safe and responsible, and it might be the only way to drive a change in behavior and activities at existing pad sites.

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd said he was not there to beat up on anybody, but he wanted an accounting of what had been spent so far on the frivolous lawsuit brought against the city by two citizens, which they would probably lose. He wanted to make sure the city made every effort to recover the legal fees the Town incurred on this lawsuit, when it all came to an end.

Virginia Simonson, 3104 Native Oak Drive, Flower Mound

Ms. Simonson said first, she agreed with Patsy Mizeur. She said a lot of things that made sense, so she thanked her for talking about things that she was going to talk about as well. She had a strong belief in the rule of law and the principle of equal protection under the law. That was what propelled her to complete the petition drive and to argue against granting the variances for gas wells on Hilliard Field on May 19, 2010. Those beliefs also led her to join Prakash in the lawsuit which questioned the validity of the Town's oil and gas ordinance. She looked forward to having a judge rule on the merits of their case, with the objective of giving all residents of Flower Mound equal protection under the law. However, last Friday the Town of Flower Mound argued vigorously against allowing them to have their day in court. Basically, the Town said they had no right to sue. If, as some Council members stated to her in the past they welcomed a lawsuit to extend the current parameters of the oil and gas ordinance, in their words "to expand the legal box," then she wondered why the Town Attorney was fighting tooth and nail to keep their case from being heard. Luckily, the judge did not throw it out Friday, but was taking two weeks to consider all of the material. She also wanted to echo John Todd. It would be interesting to know how much this was costing the Town, because there were a lot of people from the Town at that hearing on Friday. On a different note, she would like the Town to provide an update on the lawsuit Titan Operating, LLC, brought against the Town in May, after the four variances were denied for the first gas well application for Hilliard field. She noticed the other lawsuits would be discussed that evening, so she would be interested to hear what was going on with that one.

Lance Horner, 1409 Roundrock Way, Flower Mound

Mr. Horner said he lived in the Foxborough Hollow subdivision, and his children would attend Bluebonnet next spring. They moved from Carrollton for the schools. He read the article in My Flower Mound that came with the water bill with great interest. Unfortunately, it lacked detail. It stated that Town staff would vigorously monitor pad construction and drilling operations, and conduct spot checks of the site and equipment on a regular basis. He asked who would be responsible for monitoring. He said it would not be the Fire Marshal; he was let go. He asked if the Town possessed the means to measure air, water, and soil contamination. The article bothered him because it came off as if the Council's hands were tied; they wanted to do something, but all of the precedents and regulations prevented them from doing so. The citizens elected them in many instances to curtail the drilling in the middle of their neighborhoods and approximately three football fields from their middle school. He would not restate all of the carcinogens that were used in fracking, because they had already been given that info. The stories were endless coming from Pennsylvania and New York of water and air contamination. He would not recount the explosions that had taken some in North Texas. He asked if they were aware that there was a major gas line down the middle of Doubletree, headed for the adjacent area near the drilling. There were too many issues in regard to fracking in the middle of a residential area to specifically mention them all in three minutes. They were told the Town now had more stringent ordinances, but this one was allowed variances, grandfathered in. He asked why the new ordinances were written, and if it was to protect the people, why they would let red tape get in the way of the safety of their children. He said the Town would not allow a waste treatment plant that close to the school, or allow Mr. Hilliard to raise hogs, but they allowed gas drilling, which had a far greater potential for disaster. As citizens with children going to Bluebonnet and Shadow Ridge Middle School, who had become

more aware of what was going on and decided not to take the chance and send their kids to Bluebonnet and move away, he was sure they and Mr. Hilliard would enjoy the old fox community they had created. Now he was hearing that they were going ahead with construction on Hilliard, without even an evacuation plan for the kids at the schools. That really concerned him.

Jenny Rogers, 2608 Carterton Way, Flower Mound

Ms. Rogers read: "Armstrong-Huggins was one of the first applications processed after the 2007 revision. It was clear the application was processed according to the ordinance as written, based on the variances required and granted. Wouldn't that have set the precedent for how that ordinance would be applied? Once the ordinance was applied as written, what is the legal justification for changing the interpretation of the ordinance? Ordinances must be applied consistently. To apply the ordinance differently to each application is not fair to any involved, the operator or the residents it is designed to protect." Then she read: "The Town needs to be consistent with the way it applies its ordinances. From all the information I have gathered and reviewed, it appears that the Town's ordinance and variance procedure was interpreted and applied differently to the Hilliard tract than it was in previous cases. It seems obvious that the Town should be consistent in its application of all of its ordinances, if you want to be fair, not just to the applicants, but also to the citizens, who were supposed to be protected by these ordinances. She has grave issues with the way that our ordinance was applied to Armstrong-Huggins in comparison to the Hilliard site. You have a site that is way out on the edge of town, and you are more stringent on that site, asking people with mineral interest to get variances down to 510 and 534 feet. According to the Town's current interpretation, those variances are not even necessary, so how can you apply that to a site in west Flower Mound and not apply it to a site in the middle of town." She said she really hoped that would be answered in the presentation that evening, but she doubted that it could be. She did not see legally how they could explain away the fact that variances were granted on one site, and another site with the same circumstances variances were not even required.

Carolyn Horner, 1409 Roundrock Way, Flower Mound

Ms. Horner said because of her undergraduate studies in biochemistry and engineering, it caused her great alarm and anxiety over hydraulic fracturing in the town she lived in, at the very heart of residential living, and near the schools. Since 2005, gas companies had not been required to disclose what chemicals they used, or how much they used. That boggled her mind, because she was not allowed to pour paint thinner down her sewer on her property. Based on an EPA study conducted in 2002, fracturing fluids could contain hazardous and highly carcinogenic chemicals, including benzene, xylene, toluene, ethyl benzene, naphthalene, ethylene glycol, methanol, etc. The study cited those chemicals could be at a much higher concentration than what was allowed in drinking water. She read that a single well could require one to two million gallons of a mixture of water, sand, and fracturing chemicals. Gas companies said it was less than one percent, but one percent of one million gallons was 80,000 pounds of chemicals per well. Only a portion of the fracturing fluids was reclaimed and pumped into surface pits or tanks, while 20 to 40% might remain underground. Above-ground contamination had a high likelihood as well. Most of the chemicals were volatile and had been known to cause cancer. She also read countless newspaper articles where people in more than ten states were complaining of water contamination. She was asking Council to withdraw the permit for the Hilliard field until the EPA finished its investigation in 2012, until the Department of State Health Services could perform a statistical cancer study to include cancer cases identified in 2008 and 2009, and until Congress passed the FRAC Act. Another permit had been applied for by Titan on the 24-acre property immediately south of the two schools. So, she asked them to please not approve that new permit. With all that was unknown, she did not know how they could willingly allow those so close to their homes and schools. She urged them to consider everything in their power as

the Town's leadership, and gain expert advice and second opinions from those who were unbiased in the matter to understand what companies could do to reduce the risks and what the Town could do. She and her husband moved to Flower Mound with their children three years ago for all the reasons everyone wanted to live here, most importantly a great public school system. Her twins were planning to attend Bluebonnet in the fall of 2011. Knowing what she knew now, she could not even entertain the thought of dropping her children off every morning at Bluebonnet; wondering if they were going to be okay that day; hoping that when they were on the playground, there was no benzene or other chemicals in the air; and hoping there were no major catastrophes near the school.

David Carlton, 1288 Porter Road, Flower Mound

Mr. Carlton asked that the Council not consider annexing his property. He had lived at this location for 41 years. About two or three years ago, he met with Mr. Jefferson. He had three acres in Flower Mound. They worked it out where he got his acreage out of Flower Mound. He was in Bartonville's ETJ, and that had since been dumped, but he would like to remain in the county. He asked for their consideration.

Michelle Jones, 400 West Oak, Suite 300, Denton, TX

Ms. Jones said she was an attorney in Denton County speaking on behalf of Tom Kindred. They opposed the site selection for the elevated storage tank. Mr. Kindred owned the 52 acres where the site plan was proposed for the largest elevated water tank in the Town. They had three reasons why the Town should consider an alternative site. They were placing an industrial site with sand and gravel storage and lots of truck traffic on a single-family residential property with a single-family home located on it. Mr. Kindred would ask to be compensated for that impact on the value of his remaining property. It also impacted his neighbor to the west, who opposed the location and site plan, as well as additional neighbors to the south. It was not an appropriate site for this water tank. Mr. Kindred did not believe the Town adequately vetted competing sites that were available. Located along FM 1171 to the east of this site was a 10-acre property for sale with a utility box already on it. They could place the water tower there. It had the elevations necessary, and that site had not been properly considered. The neighbors to the north of that site did not oppose that location. It was located on a six-lane highway, which was a more appropriate location for an industrial facility, not tucked into a residential property. So, they asked them to consider that site, as it was a better fit from a planning standpoint, and would not incur the damage as it would on Mr. Kindred's property. Also, given the fact that the property was for sale, the opposition to it was nonexistent, and they would not have to extend a large water main from FM 1171 the distance they would on the proposed site plan, the costs would not be significantly different. They urged the Council to consider that instead of picking on Mr. Kindred's property.

Tom Kindred, 7970 Cross Timbers Road, Flower Mound

Mr. Kindred said two or three days before the August 17th meeting, a neighbor called him and said there was going to be a Council meeting where they were going to discuss a water tower, and they thought part of it was on his property. He was totally unaware of that, and had not heard from P&Z or anybody else. He went that night and was a little shaken. It was such a surprise. Lo and behold he left that meeting and they had selected his site. He had no opportunity to present his case at all in the P&Z hearings, because he did not know about it. He was a little bit up in years, and did not twitter or Facebook or the other things the Town did to technologically advise people. He knew now, and he objected. It was at the immediate entrance to his property. When he bought it, he was delighted it did not front 1171. He wanted a nice residential area off a private, quiet road to develop two-acre estate zoning. When he bought the land, it was less than that, but he was happy with the changes and the conservation

district because it enhanced what he had in mind for the property, the beautiful quiet residential they encouraged in Flower Mound. He had been in the construction business for 53 years, custom homes that were uniquely done for individuals, not stick builder homes, so he knew a little bit about how those properties could be developed and have good architecture. That had been his plan, but with this almost 20-story mass of concrete that had no redeeming architectural qualities whatsoever that anybody driving home would have to drive by, he did not think there was anyone in that room that would want to pay for that lot to have a custom home built in the shadow of that monstrosity. He showed them the top of the other site where it could be placed, and they would not have to run 1,300 feet of pipe.

Garrick Palmer, 4971 Red Rock Lane, Flower Mound

Mr. Palmer said earlier his good neighbor, Mr. Carlton, mentioned that his address was 1288 Porter Road, Flower Mound, TX. He did not live in Flower Mound. It was Mr. Carlton's 20-acre property that was just sold to Mockingbird Pipeline for the compressor station. He, like many others, was concerned about health, safety, quality of life, and the environment with regard to noise and oil and gas drilling. He heard during the last meeting and previous meetings about ways to raise revenue for Flower Mound, and also about challenges with enforcing the ordinance. Some of the things like emissions were pretty expensive and complex to manage from a violation standpoint. Something that seemed pretty easy though was to equip the police officers with sound meters, so they could deal with the noise ordinance and immediately issue citations when somebody was above the nighttime decibel limit. Taking readings at his home, which was about 900 feet from the Cummings C drill site, it was consistently above the 56 decibel nighttime limit.

Barbara Lupo, 9205 Choctaw Trail, Flower Mound

Mayor Pro Tem Filidoro stated that Ms. Lupo was not able to attend the meeting, but she completed a Public Participation Form to make sure that her concerns about the SPAN agreement would be registered in the minutes. She wrote on the form that the fees were too high, and she wanted a larger service area.

I. MAYOR AND TOWN COUNCILMEMBER ANNOUNCEMENTS

- **Announcements and brief discussion regarding recent and upcoming civic and social events, traffic issues, informational updates on Town projects, capital improvement projects, reports about contacts with other groups and/or individuals about Town issues and projects, Town legislative and regulatory issues, informational responses to questions, and information sharing.**

Mayor Northern congratulated the Flower Mound Public Library for being the recipient of a \$13,000 Lone Star Libraries grant. Flower Mound Performing Arts Theatre was putting on "Greater Tuna" September 23 through October 10. Ticket information could be found on FMPAT.org. The Carter Blood Drive for Citizens and Employees was being held Tuesday, October 5, from 2:00 to 7:00 pm at the Town's Municipal Court Building on Kirkpatrick. Tuesday, October 5, from 6:30 to 9:00 pm was "National Night Out." They needed to register on the Town's website for a block party prior to September 28. She reminded the residents of 972-539-SERV. When calling in with an issue, anything from damaged signs, street light outages, high weeds and grass, trash collection, barking dogs, tree trimming, graffiti, street repair, drainage issues, etc., their wonderful staff members would take the call, log it, track it, and resolve their issue. Also, she reminded them that Animal Services had pet adoptions. They could go to the website and see the adorable dogs and cats that needed a good home. Animal Services was located at 3950 Justin Road, and was open from 9:00 to 5:00, Monday through

Friday, and 10:00 to 3:00 on Saturdays. There was currently no charge to adopt pets, however, state and Town ordinances required that the adopter have the animal vaccinated and spayed or neutered within 15 days of the adoption. Last, she had the honor and privilege to go to Austin this past week with Mr. Jefferson and Mr. Wood to accept the Scenic City Award. This was the first year they had offered this award. Fourteen cities won, but only three won gold and Flower Mound was a gold winner. This was because of the previous Council's foresight in looking at how they were going to live as a community. She suggested Councilmember Wallace talk more about the award, since he was the one who was at TML last year and who recommended they apply.

Councilmember Wallace said the Scenic City Certification Program was first announced last October at the Texas Municipal League conference in Fort Worth. Mr. Jefferson, Paula Paschal, the former Town Secretary, and others attended. They often went to those events and heard places like Frisco, Round Rock, Sugarland, Pearland, and Pflugerville getting recognized as leaders, and it was because they took the initiative to apply for those types of awards. Often when a city was recognized for something, they thought to themselves that Flower Mound did the same thing. So, with that in mind, he went to the breakout session on the Scenic City Certification Program. They said it was the inaugural year, and they were going to officially announce it in January. There was a minimum set of criteria, such as a sign ordinance, no billboard signs, and a number of things in order to be considered, and then beyond that there were bonus points based on additional ordinances. Out of 14 cities, the Town was not only recognized, but also got gold status, so it was quite an accomplishment. It was not anything they did themselves, but years and years of past mayors, councils, and staff members that built this town and the ordinances to support it, the Master Plan especially, to allow them to be in a position to get that recognition. They should be proud to live in the Town of Flower Mound.

Councilmember Lyda said this year was the 50th anniversary of the Town, and one of the things the Town was doing to celebrate it was to roll its roads back to how they were in 1960 and turn them back into dirt. He was very excited to be a part of that plan. Honestly, he wanted to speak a moment on how staff had handled the upcoming road construction, and how he appreciated the residents' patience through all of the road projects that were going on, on almost every major artery in town, especially the west side of town. He appreciated the staff's effort in bringing out the Public Works Department to make the switchovers of the roads painless, putting good indicators and markers, moving the traffic signals, even going as far as to reprogram the traffic signals during the new peak hours. It was a really good effort. He also complimented the police department and police volunteers for helping with the switchover to make sure it was safe during school zone times. He thanked the residents one more time. He knew this was going to be a very difficult and painful thing, but they were well aware of the issues going on with the road construction around town. Hopefully, Mr. Jefferson would give them an update in his report. In the end, they would have a very nice system going out to the west.

Mayor Pro Tem Filidoro said at 4:30 pm that afternoon, he had the privilege to join the Mayor and other members of Council for a ribbon-cutting session for Fire Station No. 5. It was a first-class facility. The event was hosted by Chief Metzger. He appreciated the architect taking them around and showing them the facility. They believed it would increase response times considerably and help their ISO ratings, so they were real excited about it. He thanked the Chief. Also, the Summit Club, which was the civic and social club that benefited their youth programs, was having a fundraiser Saturday night from 7:00 to 11:00 pm at the DFW Venture Park. It was a Texas Hold'em fundraiser. They were giving away a 42-inch HD TV, a smoker, and a lot of other things. It was their first fundraiser, and it would help them improve the

services they were giving to Boy Scout troops. Also they gave out four awards per school for fifth and eighth graders in four different subjects, so they recognized them early. They were looking forward to having a successful fundraiser. They could see any of them for tickets.

Deputy Mayor Pro Tem Hayden said he wanted to address something Carolyn Horner said about hydraulic fracturing. He agreed with everything she said, and wanted to remind the residents of this town that this Council had joined the growing ranks of towns across the country that had asked for a repeal of the Halliburton loophole. This was a good opportunity to reinforce something Mr. McKaige said during his presentation. There had been correspondence with U.S. Senator John Cornyn about the Halliburton loophole. His response was that was something the states should pick up. There had been correspondence with the state that it was something the federal government should pick up. It had been a ping-pong back and forth, and no one could figure out what to do. There was a lot of energy being expended in Flower Mound about their oil and gas ordinance, and that was great, but where it would have the most impact was in Austin. They needed to pick up that ball and the residents, with all the talent they had in town, needed to descend on Austin during the next legislative session. He also wanted to make a clarification about something another resident said that evening. They said that this Council approved taxpayer funding to pay for fences along private property. That was not entirely correct. The Morriss Road project was embraced, promoted, and endorsed not by this Council, but by the previous Council. The previous Council endorsed all aspects of the Morriss Road project, including all aspects of the landscaping package. At that time last year, there was no disagreement with any aspects of the landscaping package. This Council had not changed the specifics of the Morriss Road project, only the timing until they had adequate funding due to cost overruns that occurred during Phase 1. Again, the specifics of the project had not changed, just the timing due to cost overruns. Last year, when the landscaping package was brought forward, there were no objections.

Councilmember Dixon said one thing that Mr. Jefferson put out this past week to Council was a hope that the Flower Mound Road reconstruction would go quicker than they put out to the citizens. He wanted to make sure Mr. Jefferson touched on that in his report.

Mr. Jefferson said now that they changed the standards to dirt roads, they could go much faster.

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 gave a brief presentation on the Scenic City program, and provided some additional comments. He stated it was interesting that they put all of the emphasis on the ordinances rather than the appearance of the communities, because they thought that dictated what the communities would look like long term. Seven of the fourteen cities on the list were in the Metroplex. Flower Mound and Westlake came out with the same number of points, so they were the top two in the ranking. He appreciated Mark Wood's work on the application. It ended up being much more extensive than first imagined. He also thanked other staff for their support.

2010 Texas Scenic City
Certification Program
September 20, 2010



Scenic City – Mission Statement

The mission of the Scenic City Certification Program is to support and recognize Texas municipalities that implement high-quality scenic standards for public roadways and public spaces, with the long-term goal of improving the image of all cities.

 The logo for the Scenic City Certification Program, featuring a stylized house with a green roof and a blue sky, with the text "Scenic City CERTIFICATION PROGRAM" below it.

- Scenic City – Inaugural 14
- Gold
 - Flower Mound, Westlake, Georgetown, Belton
 - Silver
 - Keller, Mesquite, Granbury, Sugar Land
 - Bronze
 - Irving, University Park, Bastrop, Missouri City
 - Recognized
 - Horseshoe Bay, South Padre Island
-
- The Scenic City logo with the text "PROUD TO BE A Certified Scenic City" below it.

Mr. Jefferson gave a brief presentation on the road projects, and provided some additional comments. He said the reason so many road projects were under construction at the same time was the favorable construction pricing climate. The Flower Mound Road reconstruction project was originally a 12-month project, but had been reduced down to a five to six-month timeframe. When adding the construction prices plus the other costs associated with construction, they came up with over \$4 million in savings. If they looked at all of the capacity improvement projects, they were not really inconveniencing the residents, because they did not take away capacity. The other things they tried to take advantage of during a down economy was to get more bids whenever they went out to market and get a lower interest rate whenever they had to issue debt. They had not issued debt on any of these projects. The primary debt issued in terms of the general fund consisted of Fire Station 4 and Fire Station 5. The construction timeframe was shorter because the contractors wanted to get the equipment working and keep their staff intact, so they were willing to move as rapidly as possible in certain cases. It also contributed to the overall economy by keeping people working during this timeframe. Hopefully, the money trickled down throughout the community. The \$4 million savings would help to move up other construction projects.

Mr. Jefferson said they realized the Flower Mound Road reconstruction was having a negative impact on commuter traffic. Staff members in engineering and the police department compared it to school traffic at the beginning of every year. When school started they saw congestion around the schools as new parents tried to figure out the best routes to school, the best places to pick up and drop off kids, etc. Then about 10 to 14 days, things settled down. This year was challenging with the new school start times, particularly for the high school, so now the high school traffic was on the road at the same time as the commuter traffic. They had a great contractor with the Flower Mound Road reconstruction, the same as for Morriss-Gerault, and they had received a lot of comments about how fast they moved on that project. The poor condition of the original Flower Mound Road helped with the ease of ripping out the concrete. They developed a strategy to shorten the construction timeframe, which involved short term

closures of some intersections in the area, so the contractor could pour more concrete at one time. They put notices on the website and door hangers in those areas. The police department geared up to help students cross at three of those intersections during the morning and evening hours, since there were no designated cross walks. Within two weeks, they were going to complete the construction at Old Settlers and Flower Mound Road, and that would allow them to open up the intersection again. That was where the primary bottleneck was, so that would provide some immediate relief.

Mr. Jefferson said FM 1171 was a completely different story. The construction was more than a year behind schedule. When the traffic shifted to the new lanes, there was not more capacity than what was available before the construction. There were only a few lanes, so that started the bottleneck and it went all the way up. The contractor was trying to change the configuration in that area to address the traffic. They also had a problem with the intersections because of the lack of turn lanes. When appropriate, police officers were manning those intersections and changing the lights to adjust to conditions on the scene.

Active Roadway Projects

| Project | Scope | Estimated Completion Date | Project Budget | Construction Bid Price | Other Costs | Project Savings |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------|------------------------|-------------|-----------------|
| Spinks Road Phase IV | Construction of a four-lane divided roadway from Garden Ridge to Duncan + Bakersfield Park Entry | 10/28/2010 | \$5,646,052 | \$4,875,011 | \$501,041 | \$270,000 |
| Garden Ridge Blvd. Ph III | Construction of a four-lane divided roadway from FM 3040 to Spinks | 04/01/2011 | \$6,900,000 | \$4,466,170 | \$1,233,830 | \$1,200,000 |
| Flower Mound Rd Recon | Reconstruction of FM 3040 from FM 2499 to Old Settlers | 04/01/2011 | \$2,638,000 | \$1,844,800 | \$399,200 | \$393,000 |
| Flower Mound Road | Construction of a four-lane divided roadway from FM 1171 to Skillern | 05/01/2011 | \$6,412,000 | \$3,670,762 | \$941,218 | \$1,800,000 |
| Morris/Serault Improvement Phase 1 | Capacity improvement on Serault from FM 2499 to FM 3040 to six lanes with fly-over at FM 2499, and intersection safety improvements on Morris from FM 3040 to FM 407 | 02/28/2012 | \$19,019,197 | \$14,011,110 | \$5,008,087 | \$0 |
| Dixon Lane (East of 2499) | Construction of new four lane divided roadway - FM 2499 to Crestside | 03/01/2012 | \$3,407,812 | \$2,638,112 | \$429,700 | \$340,000 |

Projects Impacted by Savings

| | | |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Chinn Chapel Road | Construct 4-lane undivided arterial from FM 407 to Waketon | Design underway |
| Wichita Trail | Construct 2-lane undivided collector from Simmons to Skillern | Design in progress, next on list of projects to move forward with savings |
| Flower Mound Road Landscaping | Under Review | Not started |
| College Parkway Recon | College Parkway Reconstruction (Kingsrock to 373 N. West of Colony Street) | Design underway |
| Hamlett Dr. Recon | Reconstruction of Hamlett Dr. from Churchill Dr to East end of Hamlett Dr. | Begin Construction Flower Mound Rd Recon. Savings |
| Sagebrush Drive Recon | Reconstruction and improvements of existing streets (Public Works and Engineering identified improvement sections only) | Design underway |

Councilmember Lyda mentioned the eastbound side of Spinks was open in Lewisville. It was not a town project, but if someone wanted to leave Bakersfield Park and head over to the QT, they could now do that by way of Spinks.

Mr. Jefferson said once Spinks was open, they would be able to drive from 2499 all the way to 121. Lewisville had been great in that area, and had worked well with the Town. It was a great looking road with the landscape improvements.

Councilmember Lyda said that was mainly for the Town's residents, especially with the soccer and baseball traffic from Bakersfield. It provided another exit.

Mr. Jefferson said with the school project on Duncan Road, they were also putting in a couple of lanes, so eventually that would open up to a four-lane facility, as well.

Mayor Northern reminded everyone that FM 1171 was a TxDOT road.

- **Hilliard gas well and tank battery setback issues**

Mr. Jefferson, Terry Welch, Town Attorney, Matthew Woods, Director of Environmental Services, and Brandon Bammel, Oil and Gas Inspector, gave the following presentation in reply to a packet of material that was handed to the Council at their September 7th meeting, and provided a few additional comments.

Town Council Meeting September 20, 2010

Natural Gas Drilling Permit Applications
and Setbacks

1

History of Oil and Gas Ordinance

- May 19, 2003: Town Council adopts ordinance amending Chapter 34 "Environment" of the Code of Ordinances and establishing Article VII entitled "Oil and Natural Gas Well Drilling and Operations"
- December 15, 2003: Ordinance amended to clarify floodplain definition and delineation
- March 7, 2005: Ordinance amended by including language relative to floodplain and Environmentally Sensitive Area variance requests, site plan criteria, and "outer boundary line" setback and "building used for human occupancy" clarification
- March 15, 2007: Ordinance amended following stakeholder group formation, meetings, and recommendation, and additional public input meetings, Town Council Work Sessions, and a Town Council Public Hearing

2

History of Oil and Gas Ordinance

- September 15, 2008: Ordinance amended to set new gas well permitting fees within Appendix A of the Code of Ordinances
- December 7, 2009: Ordinance amended to address seismic survey activity within Town ROW and Town property

3

2007 Amendment Timeline

- March-May of 2005: Stakeholder group identified
- June 8, 2005: Group's first meeting to identify issues; total of 8 meetings held to develop proposal
- June 29, 2006: First public comment meeting, dedicated email account created
- August 17, 2006: First Town Council Work Session
- November 2006: Two additional public comment meetings
- January 25, 2007: Second Town Council Work Session
- March 15, 2007: Town Council adopted amended regulations

4

2007 Ordinance Amendment Summary

- January 25, 2007, and March 15, 2007, Town Council meetings
- Tank battery/well facility setback recommendations and discussion at public meetings resulted in well bore setback requirements matching the tank battery setback requirements
- Variance process for tank battery/well facility recommended and adopted; thus complying with the applicable well bore setback requirements

5

2007 Ordinance Amendment Summary

- Noise/Compressor Requirements
- Fees
- Public Information
- Screening/Fencing
- Appeal Process
- Setbacks

6

Setback Distance Comparison

| | |
|----------------------------|--|
| ■ 1,000 feet = 72.12 acres | |
| ■ 750 feet = 40.57 acres | |
| ■ 500 feet = 18.03 acres | |
| ■ 300 feet = 6.50 acres | |
| ■ 200 feet = 2.88 acres | |

7

2007 Amendments Regarding Tank Battery Setback

January 25, 2007 Town Council Meeting

At page 5-5 of Agenda Item No. 5, the following information was included relative to proposed amendments to the Town's oil and gas ordinance:

Tank Batteries, Well Facilities, and Equipment

Staff recommends adopting the same regulation for a setback as for a residence and floodplain. At minimum, a variance process through the Oil and Gas Board of Appeals is recommended.

8

2007 Amendments Regarding Tank Battery Setback
 January 25, 2007 Town Council Meeting

Power point presentation confirmed this understanding:

9

Setbacks
 Tank Batteries, Well Facilities, and Equipment

- **Current Regulation:** 1,000 feet from any public park, residence, church, public building, hospital, school, or human occupied building; 500 feet from public right-of-way or property line; 500 feet from the fully developed 100 year floodplain; No variance process available.
- **Stakeholder Proposal:**
 - Require facilities to be placed on pad site
 - Centralized facilities will comply with well bore setback requirements

10

Setbacks
 Tank Batteries, Well Facilities, and Equipment

- **Staff Recommendation:**
 - Change setback to match recommended setbacks for:
 - Residence – 1,000 feet, 500 feet, never less than 300 feet
 - Floodplain – 300 feet
 - Human Occupied Building – 500 feet, never less than 300 feet
 - Centralized facilities shall comply with the well bore requirements.
 - Allow for a variance process from the OGBOA.

11

2007 Amendments Regarding Tank Battery Setback
 January 25, 2007 Town Council Meeting

Minutes from Meeting regarding tank battery setbacks:

Staff Recommendation:

- Change setback to match recommended setbacks for:
 - Residence – 1,000 feet, 500 feet, never less than 300 feet
 - Floodplain – 300 feet
 - Human Occupied Building – 500 feet, never less than 300 feet
- Centralized facilities shall comply with the well bore requirements.
- Allow for a variance process from the OGBOA.

The Council concurred with staff's recommendation.

12

2007 Amendments Regarding Tank Battery Setback
 March 15, 2007, Council Public Hearing

At page 16-4 of Agenda Item No. 16:

Tank Batteries, Well Facilities, and Equipment

The proposed ordinance adopts the same regulation for a tank battery, well facility, and equipment setback as for the proposed residence and floodplain setback changes. Compression facilities, centralized tank batteries, and associated facilities are included in the setbacks. . . .

13

2007 Amendments Regarding Tank Battery Setback
 March 15, 2007, Council Public Hearing

Power point presentation at this meeting confirmed that the tank battery setback matched the residence and floodplain setbacks as proposed:

Proposed amendment was to "change setback to match recommended setbacks for: Residence— 1,000 feet, 500 feet, never less than 300 feet. . . Centralized facilities shall comply with the well bore requirements."

14

2007 Amendments Regarding Tank Battery Setback
 March 15, 2007 Council Public Hearing

Minutes from that meeting:

Ms. Hattan referred to the setback requirements for compressor stations. She asked if the compressor facilities were meeting the noise requirements why was the Town requiring the facilities to meet the same setbacks as wells.

Mr. Compton stated typically the compressor stations were associated with the gas well activity, so it was considered a type of production equipment. Variances to the setbacks were available through the Board.

15

2007 Amendments Regarding Tank Battery Setback
 Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the Comparison Chart presented at the March 15, 2007, public hearing:

1,000 foot setback from public park, church, public building, hospital and school; Residence owner with mineral interest: 500 foot setback with a possible variance from the OGBOA down to 300 feet, Mineral and residence owner not the same; 1,000 foot setback with a possible variance from the OGBOA down to 500 feet; Change setback to 300 feet from the floodplain; measured from the tank batteries, well facilities, or equipment. Centralized facilities shall comply with the well bore requirements Allow variance process from the OGBOA.

16

2007 Amendments Regarding Tank Battery Setback

Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the pre-August 2010 on-line Comparison Chart contained an error, as noted:

1,000 foot setback from public park, church, public building, hospital and school – variance down to 500 feet; 1,000 foot setback from residence whose owner is without mineral interest in the application – variance down to 500 feet; 1,000 foot setback from residence whose owner is with mineral interest in the application – variance down to 300 feet; 500 foot setback from human occupied building – variance down to 300 feet; All measured from nearest tank, facility, equipment, etc.

17

2007 Amendments Regarding Tank Battery Setback

Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the current on-line Comparison Chart was corrected to comply with the 2007 version and the adopted 2007 amendments, as noted:

1,000 foot setback from public park, church, public building, hospital and school – variance down to 500 feet; 1,000 foot setback from residence whose owner **does not have** mineral interest in the application – variance down to 500 feet; 500 foot setback from residence whose owner **does have** mineral interest in the application – variance down to 300 feet; 500 foot setback from human occupied building – variance down to 300 feet; All measured from nearest tank, facility, equipment, etc.

18

2007 Amendments Regarding Tank Battery Setback

To conclude that the Titan/Hilliard permit should not have been administratively approved because a variance was needed for tank batteries located within 1,000 feet of residences, one would be required to overlook:

- the express words used in Section 34-422(d)(2) of the Code of Ordinances and completely ignore the last sentence of that section;
- the Town Council's consideration in 2007 of amendments to the oil and gas ordinance specifically addressed this issue and the Town Council, at its January 25, 2007, meeting specifically "concurred with staff's recommendation"

19

- the agenda packet at the January 25, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with residential applicable setbacks
- the staff presentation at the January 25, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with applicable residential setbacks
- the Town Council, at its March 15, 2007, meeting, approved the tank battery setback amendment that previously was approved by the Town Council
- the agenda packet at the March 15, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with residential applicable setbacks

20

- the legislative history and legislative intent behind Section 34-422(d)(2) are clear
- basic tenets of statutory construction support the Town's interpretation of its ordinance
- the Texas Code Construction Act, and specific principles contained therein, support the Town's interpretation
- entire amendments to ordinances and statutes are intended to be effective, and accepting some residents' interpretation of the tank battery setback would result in the last sentence of that section being of no import and surplus language with no meaning
- administrative construction of a legislative enactment by the administrative agency charged with its enforcement is given great weight

21

- the Town has consistently applied the tank battery setback at other locations in the Town, and the treatment of the Titan/Hilliard site was no different
- at no time at any public hearing before the OGBOA has any applicant, any member of the public, the Town Council or the OGBOA suggested the Town's interpretation of Section 34-422(d)(2) was incorrect relative to tank battery setbacks
- practical reasons support such interpretation since, if some residents' contention is correct, well bores could be 500 feet from residences but tank batteries and related equipment would have to be 1,000 feet away, thus leading to larger pad sites
- to the best of the Town's knowledge, such an interpretation is not an accepted drilling practice nor has any other local government in the area adopted such an interpretation

22

Mr. Jefferson explained that staff normally did not reply to citizen participation, but they did reply to Council. At that meeting council members characterized the packet as startling and said they looked forward to discussing it. There were subsequent conversations about it, so staff prepared a written comment which was placed on the website and distributed to Council, and they scheduled this presentation. He also noted that the moratorium which was approved and extended at least twice prior to the adoption of the oil and natural gas well ordinance in 2003 was not included in the history.

Mr. Woods noted the Armstrong-Huggins Pad Site was unique in that it involved one multi-use structure that fell within two definitions. That was not accounted for in the Code, so it had two variances applied to it, one for a human-occupied caretakers' residence at the eastern end separated by an interior wall.

Mr. Bammel also explained the application process. After an application is submitted, staff has 10 days to review the plans and provide comments. If it did not meet the ordinance, they sent out a denial letter. The denial letter served to notify the applicant that they had a few

choices with their application: 1) they could withdraw the application; 2) they could amend the application and try to come into compliance with code; or 3) they could go to the Oil and Gas Board of Appeals.

Councilmember Lyda asked Mr. Jefferson to put the presentation on the website.

Mr. Jefferson said they would do that the next morning.

K. CONSENT ITEMS

Councilmember Wallace made a motion to approve by consent Items 1, 2, 4, 5, 7, 9, 10, and 11. Councilmember 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 of the Town Council, special meeting of the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District, and special meeting of the Town of Flower Mound Crime Control and Prevention District held on August 26, 2010.**

RECOMMENDATION: Approve the minutes from a special meeting of the Town Council, special meeting of the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District, and special meeting of the Town of Flower Mound Crime Control and Prevention District held on August 26, 2010.

- 2. Consider approval of minutes from a special meeting of the Town Council held on September 7, 2010.**

RECOMMENDATION: Approve the minutes from a special meeting of the Town Council held on September 7, 2010.

- 3. Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process, extending the Rate Review Mechanism process for two cycles, and ratifying a settlement agreement that includes cost recovery for a steel service line replacement program.**

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

- 4. Consider approval of the purchase of two dump trucks with bodies from Southwest International Trucks Inc. Arlington, through the Texas Local Government Purchasing Cooperative, in the amount of \$199,897.82.**

RECOMMENDATION: Approve the purchase of two dump trucks with bodies from Southwest International Trucks Inc. Arlington, through the Texas Local Government Purchasing Cooperative, in the amount of \$199,897.82.

- 5. Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide traffic signal design services associated with signal designs for the Garden Ridge Boulevard Phase III project, in the amount of \$22,600.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide traffic signal design services associated with signal designs for the Garden Ridge Boulevard Phase III project, in the amount of \$22,600.00, and authorization for the Mayor to execute same on behalf of the Town.

6. **Consider approval of naming the wildflower area located in Wilkerson Park, as the John Thomas Wildflower Preserve in memory of former Parks, Arts, and Library Services Board member John Thomas. (The Parks, Arts and Library Services Board recommended approval by a vote of 6 to 0 at its July 29, 2010, meeting.)**

This item was removed from the Consent Agenda by Mayor Pro Tem Filidoro.

7. **Consider approval of the award of Competitive Sealed Bid No. 81-10-B for FM 1171 to HWY 377 Water Line Phase 1 Project (Tour 18 to Roanoke Hills), to Quality Excavation, Ltd., in the amount of \$694,375.000, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Bid No. 81-10-B for FM 1171 to HWY 377 Water Line Phase I project (Tour 18 to Roanoke Hills), to Quality Excavation, Ltd., in the amount of \$694,375.00, and authorize the Mayor to execute same on behalf of the Town.

8. **Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule" by amending Section 34-421(c) relative to the charges for oil and gas well inspection fees.**

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

9. **Consider approval of an ordinance amending Chapter 34 of the Code of Ordinances by repealing existing Article VI, "On-Site Sewage Disposal," and adopting a new Article VI, "On-Site Sewage Disposal."**

RECOMMENDATION: Approve an ordinance amending Chapter 34 of the Code of Ordinances by repealing existing Article VI, "On-Site Sewage Disposal," and adopting a new Article VI, "On-Site Sewage Disposal." The caption of the ordinance reads as follows:

ORDINANCE NO. 56-10

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 CHAPTER 34 ENVIRONMENT BY ESTABLISHING ARTICLE VI ENTITLED "ON-SITE SEWAGE DISPOSAL" RELATIVE TO REGULATING THE CONSTRUCTION AND OPERATION OF ON-SITE SEWAGE FACILITIES; ADOPTING CHAPTER 366 OF THE TEXAS HEALTH AND SAFETY CODE; ADOPTING THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES, TEXAS ADMINISTRATIVE RULES 30 TAC 285.1 – 285.91 RELATIVE TO REGULATING THE PROPER PLANNING OF THE LOCATION, DESIGN, CONSTRUCTION, INSTALLATION, ALTERATION, EXTENSION, REPAIR, OPERATION, AND MAINTENANCE OF ON-SITE SEWAGE FACILITIES; ESTABLISHING MORE STRINGENT RULES FOR ON-SITE SEWAGE FACILITIES; ESTABLISHING DUTIES AND POWERS AND PROVIDING FOR ENFORCEMENT; PROVIDING FOR COLLECTION OF FEES; PROVIDING FOR AN APPEAL; ESTABLISHING PENALTIES; PROVIDING FOR RELINQUISHMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND SPECIFYING AN EFFECTIVE DATE.

10. **Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.**

RECOMMENDATION: Approve a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act. The caption of the resolution reads as follows:

RESOLUTION NO. 21-10

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS (“TOWN”), ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE TOWN AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT; AND PROVIDING AN EFFECTIVE DATE.

11. **Consider approval of a Service Agreement for Demand Response Transit Service with Special Programs for Aging Needs, Inc., in an amount not-to-exceed \$25,000.00 to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving, and authorization of the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Service Agreement for Demand Response Transit Service with Special Programs for Aging Needs, Inc., in an amount not-to-exceed \$25,000.00, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Lyda, Wallace
NAYS: None
ABSENT: Filidoro

L. REGULAR ITEMS

3. **Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division’s rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process, extending the Rate Review Mechanism process for two cycles, and ratifying a settlement agreement that includes cost recovery for a steel service line replacement program. (This item was removed from the Consent Agenda by Councilmember Dixon.)**

Chuck Springer, Assistant Town Manager/CFO, said the basic process was that when they filed a rate case, numerous cities within their service area grouped together, known as the Atmos City Steering Committee, and negotiated directly with Atmos to bring together a settlement.

Councilmember Dixon said he was sure the citizens looked through the packet extensively any time they saw an Atmos/Mid-Tex RRM filing which sought a \$72 million increase and authorized the supplemental revenue of \$3.4 million in customer charges. A lot of

the information talked about higher rates and the difference between going in and using the ACSC's recommendation. He just wanted some additional explanation, since the Atmos representative was there.

Randy Beard, Atmos Energy, said he had been a resident of Flower Mound for 18 years. He would answer their questions.

Councilmember Dixon asked him to explain the steel service line replacement program.

Mr. Beard said they set up a risk management model, and were working with the safety department of the Railroad Commission to look at all of the steel service lines that were introduced primarily between the 1940s and 1960s. The majority were in Dallas and Fort Worth; not too many were in Flower Mound. If residents had questions or concerns about their particular line, they could call the call center, and they would be happy to check it out.

Councilmember Dixon said over the last three or four years, they had heard about the connection failures. He asked him to talk about that.

Mr. Beard said as part of the steel service line replacement, if there was a compression coupling involved, they would replace it at the same time.

Councilmember Dixon asked him to talk about the \$70.2 million rate increase.

Mr. Beard said they were incorporated in 439 cities. Three years ago they came up with the Rate Review Mechanism (RRM). The majority of the cities had joined one of two coalitions, basically giving them the authority to negotiate, look at their books, and come up with a win-win solution for not only the cities and towns, but also Atmos Energy. The process had worked great, because they did not have to wait several years and then file a controversial rate increase, where Atmos spent millions of dollars and the cities spent millions of dollars fighting it. With this program everything was transparent to the coalitions, so they could agree upon a rate amount.

Deputy Mayor Pro Tem Hayden asked what it would mean to the average Flower Mound resident, and where they would see it.

Mr. Beard said for a typical residence, it was about \$1.40 per month, which encompassed about \$.15 for the replacement of the steel service lines, as well as keeping the infrastructure safe and reliable.

Councilmember Dixon said that equated to about a 3.15% increase.

Deputy Mayor Pro Tem Hayden asked if a resident could feel the safety of the lines was being improved, and the possibility for things that had happened in other parts of the area was being reduced.

Mr. Beard said correct. They had identified roughly 100,000 service line replacements in 41 cities, of which they would do 50,000 over the next year. To the best of his knowledge, there were not any in Flower Mound. They periodically did sweeps to look for gas leaks. The majority of the Town was completed in May, June, and July, during which no leaks were found.

Mayor Northern asked how often they did those tests.

Mr. Beard answered annually.

Mayor Northern asked what timeframe the couplings were laid in the Metroplex.

Mr. Beard said he believed most were installed in the '70s and '80s.

Mayor Northern asked if they also maintained the large Atmos line that went through the community.

Mr. Beard said that was another division, Atmos Pipeline. They were totally different from the Mid-Tex distribution company, but part of the overall umbrella.

Councilmember Wallace moved to approve Ordinance No. 57-10 adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process, extending the Rate Review Mechanism process for two cycles, and ratifying a settlement agreement that includes cost recovery for a steel service line replacement program. Councilmember Dixon seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 57-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ("TOWN") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S THIRD RATE REVIEW MECHANISM ("RRM") FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS MID-TEX'S PROOF OF REVENUES; EXTENDING THE RRM PROCESS FOR TWO CYCLES AND ADOPTING A NEW RRM TARIFF; RATIFYING THE SETTLEMENT AGREEMENT, INCLUDING COST RECOVERY FOR A STEEL SERVICE LINE REPLACEMENT PROGRAM; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

VOTE ON THE MOTION

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

- 6. Consider approval of naming the wildflower area located in Wilkerson Park, as the John Thomas Wildflower Preserve in memory of former Parks, Arts, and Library Services Board member John Thomas. (The Parks, Arts and Library Services Board recommended approval by a vote of 6 to 0 at its July 29, 2010, meeting.)**
(This item was removed from the Consent Agenda by Mayor Pro Tem Filidoro.)

Chuck Jennings, Recreation Superintendent, gave the following presentation and provided additional comments. He said the naming of the Wildflower Preserve was brought to their attention by several of the PALS board members back in February of 2010. In keeping with the ordinance, the Chair named a committee to discuss the different areas. The area they recommended was by Wilkerson Park off Garden Road. That was an area Mr. Thomas really enjoyed.

John Thomas
Wildflower Preserve



John Thomas

- Born – March 9, 1951 in Denison, TX
- Graduated Sherman High School
- B.S. from Southeastern College in Durant, OK
- Married to Donna Lee Thomas
- Daughter – Erin Michelle Thomas
- In Flower Mound John Thomas was active in the Flower Mound Jaycees and Summit Club where he was known as the “King of the hotdog cookers”

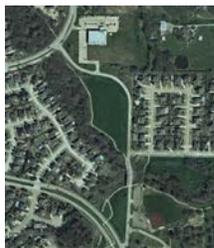
John Thomas

- Served on the Parks/PALS Board for over 12 years
 - Devoted countless hours to making Flower Mound parks, trails, and recreational facilities the best they could be for the residents
 - Worked the PALS booth promoting parks and trails at many Town special events
 - Instrumental in designating many wildflower areas in Flower Mound

John Thomas

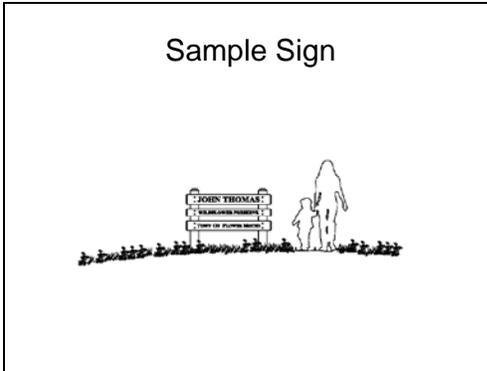
- Died suddenly at his home on August 9, 2009
- Honored with a Resolution from State Representative, Tan Parker as a tribute to his life
- Summit Club has a Memorial Fund set-up in his honor
- Town will hold a Dedication in May at the wildflower area

Aerial of the Wildflower Area



Photos of the Wildflower Area





Mayor Pro Tem Filidoro said he pulled the item because they were all touched by John Thomas. He succeeded Mr. Thomas as President of the Summit Club when he died suddenly. He had a lot of plans for that organization, as well as for Parks and Recreation. He was always on the trails. In fact, when he was serving on the CDC as a member of Council, many times the only guy in the audience at their meetings would be John Thomas. He was watching every dime and making sure it was directed the right way. He was sorely missed. He was dedicated. He had a vision for the trails, and worked on that vision back when it first started. This was the least they could do for someone who had dedicated his life. He sometimes liked to believe he was still out there walking the trails. This was a fitting tribute and he supported it, but he just wanted to take a moment and make sure they let the family know how much they missed him.

Councilmember Wallace added for those who were current and past members of the Summit Club, he was their President. He could remember getting multiple emails from him when the wildflowers were in bloom off Garden Road. He was also interested in Bluebonnet Park and the fact there were no bluebonnets there. They attempted to plant seeds there that never took, but maybe someday they could get the bluebonnets to grow. He was a good man. He thanked Mayor Pro Tem Filidoro for the tribute.

Mayor Pro Tem Filidoro moved to approve naming the wildflower area located in Wilkerson Park, as the John Thomas Wildflower Preserve in memory of former Parks, Arts, and Library Services Board member John Thomas. Councilmember Dixon seconded the motion.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda, Wallace

NAYS: None

8. **Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule" by amending Section 34-421(c) relative to the charges for oil and gas well inspection fees. (This item was removed from the Consent Agenda by Councilmember Lyda.)**

Chuck Springer, Assistant Town Manager/CFO, gave the following presentation:



Gas Well Inspection Fee

- Proposed Change: \$500/yr to \$4,250/yr
- Additional Costs:
 - Additional FTE with vehicle- \$94,000 average cost
 - Conducting monthly or more frequent inspection of wells
 - Monthly ambient air evaluations - \$165,600
 - Purchase of a photoionization detector (PID)
 - Purchase of a toxic vapor analyzer
- Total Estimated Revenue:
 - \$280,500
 - Revenue recovers annual costs

Checklist: Annual Inspection

1. Signs visible on entrance into pad site
2. Signs on gate are correct and meet ordinance requirements
3. There are no spills, leaks, or malfunctions of any gas well equipment
4. Containment areas are properly maintained and in good working condition
5. Air quality evaluation (see attached air monitoring form)
6. Site complies with all applicable noise regulations
7. Erosion control plan utilized with mulch berm, hay balls, or other approved mechanism
8. Screening is installed around all permanent structures related to mineral production
9. Screening is properly installed within forty-five (45) days of production
10. Screening is properly installed with approved vegetation
11. Vegetation is in good condition and in compliance with the approved plans
12. Fence screening is installed properly and maintained
13. Pad site is properly maintained and meets the necessary technical and site plan requirements
14. All remaining production equipment is enclosed by chain link fence twenty (20) days after production
15. Flammable/combustible liquids are stored in approved occupancies and containers/cabinets
16. The immediate site is free of pools of any liquid, contaminated soil, weeds, brush, or trash
17. All surface equipment is free from debris by at least a one hundred (100) foot radius
18. All production equipment is painted properly and maintained at all times
19. Onsite Sewage Facility with proper storage
20. Emergency Response Plan for the site is current

Checklist: Air Monitoring

Air Monitoring Inspection

Site Name: _____ Date: _____/_____/_____

Address/Location: _____ Wind Direction: _____

Inspector: _____ Site Operations: _____

Perimeter Screening:

North: _____ East: _____ South: _____ West: _____

Comments: _____

Point Screening:

ASTs: _____

Well Head: _____

Separator: _____

Other: _____

Screening Equipment: _____ (Manufacturer/Model)

Calibration: _____ (Date/Time/Span Gas)

Other Observations: _____

Mayor Northern asked when staff expected the new inspections to take place.

Mr. Springer said at the beginning of the upcoming fiscal year. It might take time to add the new employee, but current staff would try to bring it up to that inspection level.

Councilmember Lyda said one resident brought up the collection of upfront fees. This was an annual fee. He asked for confirmation they still collected the initial permit fee, which helped to defray some of the cost.

Mr. Springer said there was an application fee of \$10,000 per well, which took them through the application process and initial installation. This was once the well was in and active. It was an annual fee for the life of the well, which occurred on the anniversary date of the installation of the well.

Councilmember Lyda said there was another comment about incentivization. There was a lot of concern in the neighborhoods about getting the most independent studies done on air quality, water quality, etc. With incentivization, it seemed like they would trust the oil and gas operators to do the job. So, he wanted to just go ahead and do the actions in-house as proposed. This gave them the means to hire additional staff and get additional equipment they needed. That was the reason they proposed this fee increase.

Mayor Pro Tem Filidoro said he received calls from residents who lived off Shiloh Road, asking if what they were trying to do was something that was actually punitive, and there was really no reason for inspections. Things were fine out there, and all they were trying to do was harass these people and be over-exuberant in their charging. He asked if that was part of the rationale.

Mr. Springer said the fee was set based on the level of service the Council wanted from the inspection program, and he thought they heard a level of service of monthly ambient air inspections and monthly or more frequent inspections of each site, so they set the fee to match the expenditures.

Mayor Pro Tem Filidoro asked if they felt the revenue they were going to raise was going to be at least revenue neutral, or if they would still be behind.

Mr. Springer said this was set to be revenue neutral for the additional expenses they were putting into the budget.

Mayor Pro Tem Filidoro said, so they were not looking to profit from this; they were just looking to safeguard the community.

Mr. Springer said correct.

Mayor Northern asked if the full-time employee would fall under Environmental Services.

Mr. Springer said yes, that person would report to Mr. Woods.

Councilmember Dixon asked if it was next fiscal year or calendar year.

Mr. Springer said fiscal year, beginning October 1.

Councilmember Dixon said at the last meeting, they talked about the three options on levels of service, and one of the items he was going to check into was if there was anything else staff might want or need that was not included on the list. He asked if anything was brought to the table after that analysis.

Mr. Springer said he was not made aware of anything.

Matt Woods, Director of Environmental Resources, said with the covered equipment and more frequent inspections, staff felt that was sufficient at this time.

Councilmember Dixon said he would like to see additional berming on the pad sites. Hopefully, they would have no more spills, but if they did, berming might help. On the incentivization Mr. Webb talked about, one consideration that not only the Council could be thinking about, but also the Oil and Gas Advisory Board, would be to do a possible incentive on something that they as the Council, or the Town in its ordinances, did not have the ability to force someone to do, but they might really want them to do to go over and above what they legally could put in place. They could somehow dangle that carrot out there to say if they did that, they might get a reduction in some fees. That might be something for a different day, but something to consider.

Mayor Northern asked that Mr. Woods present the recommendation about berming to the Oil and Gas Advisory Board.

Town Manager Harlan Williams mentioned that staff was asked to invite Williams to a future Town Council meeting to discuss the spills. They accepted their invitation for the first meeting in October, so their presentation would be on that agenda.

Mayor Pro Tem Filidoro moved to approve Ordinance No. 58-10 amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule" by amending Section 34-421(c) relative to the charges for oil and gas well annual inspection fees. Deputy Mayor Pro Tem Hayden seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 58-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND BY AMENDING APPENDIX A "FEE SCHEDULE" BY AMENDING SECTION 34-421(C) RELATIVE TO THE CHARGES FOR OIL AND GAS WELL ANNUAL INSPECTION FEES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Mayor Northern opened Items 12-15 together.

12. Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011, and making appropriations for each fund and department.
13. Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.4497 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2010.
14. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.
15. Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

Chuck Springer, Assistant Town Manager/CFO, gave the following presentation:



Proposed FY 2010-2011 Budget & Property Tax Rate

September 20, 2010

General Fund Proposed Budget & Reserve Levels

| | Actual 09/30/09 | Projected 09/30/10 | Proposed 09/30/11 |
|-----------------------------------|---------------------|-----------------------|----------------------|
| Beginning Unreserved Fund Balance | \$ 7,590,337 | \$ 7,995,930 | \$ 7,256,155 |
| Revenues | 40,479,456 | 40,167,136 | 40,873,221 |
| Expenditures | 40,073,863 | 40,906,911 | 40,756,746 |
| Ending Unreserved Fund Balance | <u>\$ 7,995,930</u> | <u>\$ 7,256,155</u> | <u>\$ 7,372,630</u> |
| | | | |
| % of Total Expenditures | 19.95% | 17.74% | 18.09% |

General Fund Changes

| | |
|-----------------------------------|----------------------|
| Proposed Revenues | \$ 40,393,323 |
| County Contribution-Library | (3,800) |
| Certified Tax/Debt Sale | 28,198 |
| Oil & Gas Inspection Fees | 280,500 |
| Alarm Permits | 175,000 |
| Adopted Budget | <u>\$ 40,873,221</u> |
| | |
| Proposed Expenditures | \$ 40,393,263 |
| Community Support | (16,935) |
| Alarm Permits | 75,000 |
| Environmental Services- Oil & Gas | 280,418 |
| Hours Worked Calculation | 25,000 |
| Adopted Budget | <u>\$ 40,756,746</u> |

3-Year General Fund Projections

| | FY 10-11 Proposed | FY 11-12 Projected | FY 12-13 Projected | FY 13-14 Projected |
|------------------------------|----------------------|-----------------------|-----------------------|-----------------------|
| Beginning Fund Balance | \$ 7,256,155 | \$ 7,372,630 | \$ 7,372,630 | \$ 7,372,630 |
| Revenues (Ex P-Tax) | 19,300,374 | 19,658,771 | 20,054,006 | 20,741,789 |
| Property Tax | 21,572,847 | 21,545,741 | 22,342,891 | 22,952,149 |
| Total Revenues | <u>40,873,221</u> | <u>41,204,512</u> | <u>42,398,897</u> | <u>43,693,938</u> |
| Expenditures | | | | |
| Salaries & Benefits | 28,659,034 | 28,938,413 | 29,575,555 | 30,215,883 |
| Other Recurring | 11,962,305 | 12,321,174 | 12,162,087 | 12,691,127 |
| Absorbing Fire District Exp. | - | 350,000 | 350,000 | 350,000 |
| Market Adjustment | 135,407 | 140,000 | 140,000 | 140,000 |
| (Shortfall)/Available | - | (545,075) | 169,255 | 296,928 |
| Total Expenditures | <u>40,756,746</u> | <u>41,204,512</u> | <u>42,398,897</u> | <u>43,693,938</u> |
| Ending Fund Balance | <u>\$ 7,372,630</u> | <u>\$ 7,372,630</u> | <u>\$ 7,372,630</u> | <u>\$ 7,372,630</u> |
| Fund Reserve Level | 18.09% | 17.89% | 17.39% | 16.87% |

Debt Service & Tax Rates

Annual Debt Service Requirements

| | |
|----------------------|-------------|
| General Debt Service | \$8,411,870 |
|----------------------|-------------|

Proposed Tax Rate

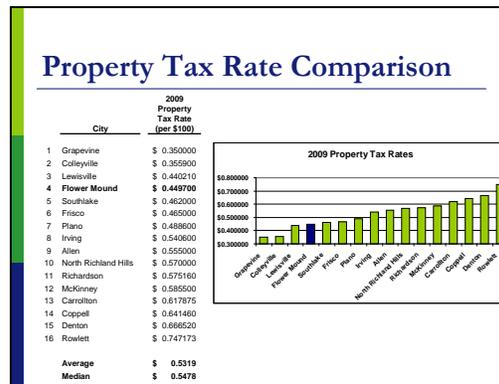
| | |
|-------------------------|------------------|
| Maintenance & Operation | \$0.3231 / \$100 |
| Debt Service | \$0.1266 / \$100 |
| Total Proposed Tax Rate | \$0.4497 / \$100 |

Effective Tax Rate

\$0.464341 / \$100

Rollback Tax Rate

\$0.491413 / \$100



Utility Fund Proposed Budget & Reserve Levels

| | Actual 09/30/09 | Projected ¹ 09/30/10 | Proposed 09/30/11 |
|---------------------------|---------------------|------------------------------------|----------------------|
| Beginning Working Capital | \$ 2,759,829 | \$ 3,865,779 | \$ 3,101,318 |
| Revenues | 29,165,846 | 27,676,305 | 31,048,090 |
| Expenditures | 28,059,896 | 28,440,766 | 30,994,976 |
| Ending Working Capital | <u>\$ 3,865,779</u> | <u>\$ 3,101,318</u> | <u>\$ 3,154,432</u> |
| | | | |
| % of Total Expenditures | 13.78% | 10.90% | 10.18% |

(1) Without VERF and administrative transfer.

Stormwater Utility Fund Proposed Budget & Reserve Levels

| | Actual 09/30/09 | Projected 09/30/10 | Proposed 09/30/11 |
|---------------------------|--------------------|-----------------------|----------------------|
| Beginning Working Capital | \$ 184,741 | \$ 128,214 | \$ 86,329 |
| Revenues | 1,078,734 | 1,136,346 | 1,149,224 |
| Expenditures | 1,135,261 | 1,178,231 | 1,113,762 |
| Ending Working Capital | <u>\$ 128,214</u> | <u>\$ 86,329</u> | <u>\$ 121,791</u> |
| | | | |
| % of Total Expenditures | 11.29% | 7.33% | 10.94% |

Crime District Fund

| | Actual 09/30/09 | Projected 09/30/10 | Proposed 09/30/11 |
|------------------------|--------------------|-----------------------|----------------------|
| Beginning Fund Balance | \$ 263,646 | \$ 371,606 | \$ 385,512 |
| Revenues | 1,384,698 | 1,520,502 | 1,631,522 |
| Expenditures | 1,276,738 | 1,506,596 | 1,600,444 |
| Ending Fund Balance | <u>\$ 371,606</u> | <u>\$ 385,512</u> | <u>\$ 416,590</u> |

Fire District Fund

| | Actual 09/30/09 | Projected 09/30/10 | Proposed 09/30/11 |
|------------------------|---------------------|-----------------------|----------------------|
| Beginning Fund Balance | \$ 755,519 | \$ 1,769,389 | \$ 1,878,459 |
| Revenues | 1,389,139 | 2,518,672 | 2,419,138 |
| Expenditures | 375,269 | 2,409,602 | 2,802,294 |
| Ending Fund Balance | <u>\$ 1,769,389</u> | <u>\$ 1,878,459</u> | <u>\$ 1,495,303</u> |

All Other Funds (Expenditures)

| | |
|----------------------------------------------|-----------------------------|
| Health Insurance/Flex Accounts Fund | \$ 6,225,825 |
| TIRZ Fund | 2,840,446 |
| SAFER Grant | 1,997,580 |
| Street Maintenance - Sales Tax | 1,761,640 |
| Vehicle, Equipment, & Technology Replacement | 1,713,600 |
| 4B Parks - Sales Tax | 1,670,308 |
| CDBG - HUD Grant | 241,498 |
| Park Development Fund | 220,000 |
| Neighborhood Improvement Fund | 155,000 |
| Park & Rec Special Activities Fund | 95,900 |
| Municipal Court Security Fund | 57,780 |
| Municipal Court Technology Fund | 50,470 |
| Library Development Fund | 31,282 |
| Tree Preservation Fund | 30,313 |
| Animal Care Fund | 20,000 |
| Loan Star Libraries Fund | 16,500 |
| IRS Equitable Sharing Fund | 7,074 |
| Police Seizure Fund | 4,508 |
| S.T.E.P. Grant Fund | 3,000 |
| TOTAL EXPENDITURES | <u>\$ 17,142,724</u> |

FY 2010-2011 CIP

| FY 2010-2011 CIP Cost | Prior FY | Proposed | Difference |
|--------------------------|----------------|----------------|------------------|
| General Fund | \$36.5M | \$10.8M | (\$25.7M) |
| Utility Fund | \$3.3M | \$14.6M | \$11.3M |

Total FY 2010-2011 impact \$14.4M decrease

Required Budget and Tax Rate Adoption Language

- All language for adoption is set by State law
- Tax rate adoption is stated as a decrease since the rate (\$0.4497) is below the effective rate (\$0.4643)
- Budget adoption is only one motion this year due to absolute reduction in property tax revenues

Deputy Mayor Pro Tem Hayden asked whether the intention of the alarm permit revenue was to help offset some of the SAFER grants that were coming off.

Mr. Springer said those revenues would go into the general fund. The intention was to help offset cost of police services in the general fund. About 9% of total police service calls were related to alarm calls.

Mayor Pro Tem Filidoro explained this was not their first meeting on the budget. For the casual observer, it might look like they were not that engaged, but they had been doing this for a long time, and all of them were dreaming the numbers. The fact that they might have few questions clearly demonstrated the work that Mr. Springer, Mr. Jefferson, and their staff had done. To start with a potential \$1 million deficit and to get to where they were now, it was hard to do any last-minute tweaking. He thanked them for the work they had done.

Deputy Mayor Pro Tem Hayden said over the weekend he looked at the budget, and thought the headline in the newspaper was going to say that Council approved a balanced budget and their tax rate remained the same. Every year, in so many words, they gave the Town Manager direction. They told him to present them with a balanced budget, to not raise their taxes, and to improve their services. It had happened for so many years in Flower Mound with such consistency that they had begun to take it for granted. This was one of the most challenging years due to the scope of the budget, as well as the economic climate. The most available option would have been to raise taxes. As a matter of fact, over the last three years, almost half of their survey cities had raised property taxes. Dallas was proposing a 6.5% increase of property taxes this year. Flower Mound was going to have a balanced budget this year, and their services were going to improve as related to transportation and utility projects. Crime continued to fall. He read a national article that said Flower Mound was one of the safest places to live in Texas. Not only did they have one of the friendliest fire departments in the area, but also their response times continued to improve. Parks were being built. Flower Mound continued to move forward even in a very difficult time. He thought they could arguably say that Flower Mound was in one of the best shapes in the Metroplex to prosper when the economy improved. So, while the headline might read that Council approved the budget, in truth the credit really belonged to Harlan Jefferson, Chuck Springer, Kent Collins, and the rest of the staff. This had not been an easy year for the Town Manager. He had to make many difficult decisions, but they needed not to skip over the successes of the Town, as well as the successes of the Town Manager. A balanced budget, a steady tax rate, and an increase in services in an economic climate that many had described as the most challenging since the Great Depression was truly impressive. This did not happen by accident. It was due to innovation, hard work, and a commitment not to take the easy route. This budget was a success that many municipalities would envy. They needed to take a moment to thank their Town Manager and other managers for a job well done this year.

Mayor Pro Tem Filidoro moved to approve Ordinance No. 59-10 adopting the budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011, and making appropriations for each fund and department. Councilmember Wallace seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 59-10

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AND APPROVING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2010, AND ENDING SEPTEMBER 30, 2011, AND MAKING APPROPRIATIONS FOR EACH FUND AND DEPARTMENT; ESTABLISHING A SINKING FUND FOR EXISTING TOWN FINANCIAL OBLIGATIONS; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE INTEREST ON SUCH SINKING FUND OBLIGATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda, Wallace

NAYS: None

Councilmember Wallace moved to approve Ordinance No. 60-10 adopting a tax rate of \$0.4497 per \$100, which is effectively a 3.15 percent decrease in the tax rate. Councilmember Lyda seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 60-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2010, AND ENDING ON SEPTEMBER 30, 2011, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.4497 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN AS OF JANUARY 1, 2010; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE TOWN; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Councilmember Dixon moved that the Town Council, acting as the Board of Directors for the Fire Control, Prevention, and Emergency Medical Services District, approve Resolution No. 22-10 adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011. Deputy Mayor Pro Tem Hayden seconded the motion. The caption of the resolution reads as follows:

RESOLUTION NO. 22-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2010, AND ENDING SEPTEMBER 30, 2011; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON THE MOTION

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

Mayor Pro Tem Filidoro moved that the Town Council, acting as the Board of Directors for the Crime Control and Prevention District, approve Resolution No. 23-10 adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011. Deputy Mayor Pro Tem Hayden seconded the motion. The caption of the resolution reads as follows:

RESOLUTION NO. 23-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, ADOPTING AND APPROVING THE BUDGET

FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2010, AND ENDING SEPTEMBER 30, 2011; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

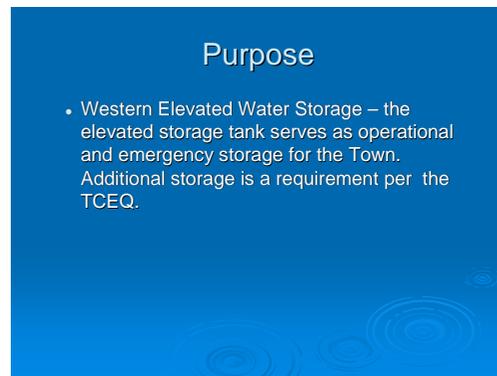
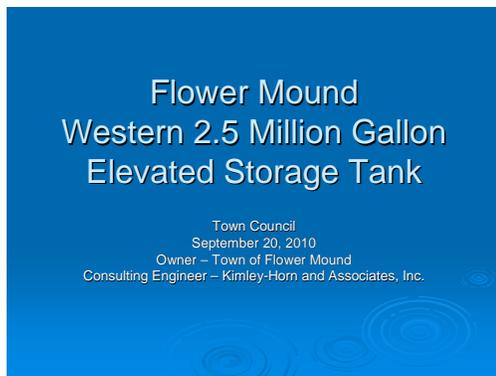
VOTE ON THE MOTION

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

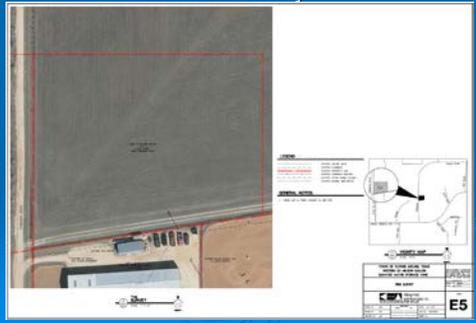
- 16. SP 04-10 – Western Elevated Storage Tank**
Consider a request for a Site Plan (SP 04-10 - Western Elevated Storage Tank) to construct an elevated storage tank. The property is located at 4400 Freeman Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 12, 2010, meeting.)

Edith Marvin, Town Engineer, said this was a Town-initiated item. They were near completion of the design of the tank and in the process of property and easement acquisition. They hoped to complete that process by the end of this year, and to begin construction at the beginning of the New Year. It would take about 18 months to complete construction of the tank. It was certainly needed by the Town.

Glenn Gary, Kimley-Horn and Associates, Inc., gave the following presentation, and provided some additional comments. He noted that the tank was to serve the greater area of western Flower Mound.



Tree Survey



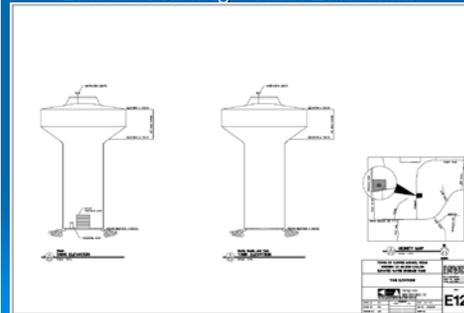
Landscaping Plan



Elevated Storage Tank

- Elevations
- Rendering
- Existing Bruton-Orand 2.0 MG Tank

Elevated Storage Tank Elevations



Elevated Storage Tank Rendering



Bruton-Orand 2.0 MG Tank



Example Photos

- Decorative Screen Wall
- Steel Tube Fence with Decorative Columns
- Entrance
- Sand Storage Facility
- Traffic Building

Decorative Screen Wall



Steel Tube Fence with Decorative Columns



Entrance



Sand Storage Facility



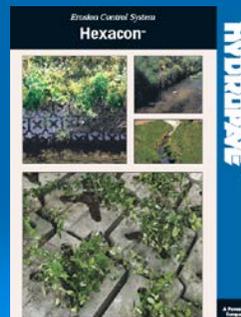
Traffic Building



Flower Mound Western 2.5 Million Gallon Elevated Storage Tank Questions

Town Council
September 20, 2010
Owner - Town of Flower Mound
Consulting Engineer - Kimley-Horn and Associates, Inc.

Pavestone



Councilmember Wallace asked him to talk about the purpose of the sand storage, and whether it was temporary.

Mr. Gary said it was storage for when they needed to sand the roads during wintertime events.

Councilmember Wallace asked if it would look like that the whole time.

Mr. Gary said the base would be concrete, but the hood would be the same. It allowed them to get under it, but covered the material being stored there.

Mayor Northern said as a parent who had driven down that road during a snowstorm, it was wonderful to have the sand storage there, but she agreed with Mr. Wallace that this was an interesting-looking building. She had seen some with metal tarps, which did not look nearly as nice as this one.

Councilmember Lyda asked for confirmation that the traffic building and sand storage had absolutely nothing to do with the functional operation of the water tower. They were just other Town facilities being located on this property.

Mr. Gary said correct.

Mayor Northern asked if they had notified the residents surrounding this area.

Ms. Marvin said they spoke with them a lot during the master planning process as far as the site selection, but for this meeting, it was not a public hearing, so no notices were sent out.

Mayor Northern said, but they had let the surrounding residents know that this was proposed.

Edith Marvin said yes, they had met with lots of them.

Town Manager Harlan Jefferson said during the water master plan update, they started the process of meeting with residents, primarily the Chimney Rock subdivision. Then there was a big discussion about three different sites in the general area, and a lot of the residents were involved. Other than meeting with the Chimney Rock HOA, they really did not discuss the issue with individual residents or contact them. They just had public meetings, advertised it, and encouraged them to comment and meet with them throughout the master plan process, either at P&Z or eventually at the Town Council. Through all that public process and evaluation of the three sites, they selected this one. There was mention earlier about one 10-acre site on FM 1171. He asked Mr. Gary to discuss the merit of that site.

Mr. Gary said the site was about 40 feet lower than the proposed site, so hydraulically it would require the tank to be much higher. That would push it into a new FAA regulation zone, and there would be additional requirements.

Mr. Jefferson asked for confirmation there was a cost differential between every foot they went higher versus every foot they moved away from a transmission line.

Mr. Gary said yes, there was the distance of the transmission line itself, which would still have to be extended to the east further, even though it was closer to the road. There was a transmission line nearby, but there was a sizing issue as it went back to the western pump station, which was where the eventual primary feed would be from. The other issue was the cost difference on a per-foot basis of height. He thought it was around \$4,000 per vertical foot, so it was a substantial cost. And, the bigger the tank, the larger the pedestal, so that meant more concrete with the taller structure. There was also additional cost with the FAA requirements once it went over 200 feet, with the blinking white strobe, backup emergency power, and other requirements.

Councilmember Dixon said if memory served him correctly, they looked at three locations, one south of 1171 near Chimney Rock, one on Pierre Lane, and one on Freeman Road. At that meeting, they were given elevations and distances from residences for all three, and they determined that Freeman Road was the best overall.

Mr. Jefferson said yes. They had a distance from residences, and the Chimney Rock site was certainly close to that subdivision. The other site on Pierre was closer to Tour 18, so this one had the least impact.

Councilmember Dixon said that was what he recalled. They quickly took out the one south of 1171, and then were debating back and forth between Pierre and Freeman. He asked if they had the elevations of those two sites at that meeting.

Mr. Jefferson said he thought they did.

Councilmember Dixon asked for confirmation that the 10-acre site which was for sale was outside the gray marked area.

Kent Collins, Assistant Town Manager, nodded yes.

Councilmember Dixon asked Mr. Kindred to point out where his house was.

Mr. Kindred pointed it out with help from Ms. Marvin. He said he measured it with his wheel on Sunday, and it was 572 feet from his front porch.

Councilmember Lyda moved to approve Site Plan SP 04-10 – Western Elevated Storage Tank to construct an elevated storage tank. Mayor Pro Tem Filidoro seconded the motion.

Discussion on the Motion

Deputy Mayor Pro Tem Hayden said it was difficult to do something that was going to negatively impact someone's way of life. Unfortunately, this was something they had looked at for many years. There was always going to be a problem with whatever location they came up with. This was a necessity for the Town, and he thought Mr. Collins had tried diligently to find a location that had the least impact on the least number of people as possible. He was not sure they would ever find a good location.

Councilmember Lyda said he empathized with the landowner also. He lived very close to an elevated storage tank. He could see it from his backyard. It was a very well-maintained facility by the Town. He did not even notice the surface of it, only the Flower Mound logo outside his backyard. He thought this would be a very important addition to their town. They had to have the infrastructure, not only by state law, but also to maintain services out there that were kind of patched together. This would also help them make better use of their elevated storage tank by Marcus High School, once they refurbished that.

VOTE ON THE MOTION

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

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- Their next meeting was a special meeting on September 21 to interview Town Secretary candidates. Deputy Mayor Pro Tem Hayden was not available for that meeting or the October 18th meeting. Councilmember Lyda would be a little late for the September 23rd meeting.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:35 p.m. on September 20, 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, pending litigation, real property, personnel, and economic development negotiations and reconvened into an open meeting at 11:33 p.m. on September 20, 2010, to take action on the items as follows:

- a. **Discuss and consider economic development incentives.**

No action taken.

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

Deputy Mayor Pro Tem Hayden moved to approve the purchase of a water line easement, in association with the Waketon Road 16-inch Water Line project, from Raymond G. Kessler, not to exceed the settlement amounts, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. Mayor Pro Tem Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Wallace, Lyda, Filidoro, Hayden, Dixon

NAYS: None

Deputy Mayor Pro Tem Hayden moved to approve the purchase of right-of-way in association with the Dixon Lane (East of FM 2499 to Crestside Drive) project, from Justin/Dixon Properties, not to exceed the new 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 the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. Mayor Pro Tem Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda, Wallace

NAYS: None

- c. **Consultation with Town Attorney regarding legal issues associated with contract between the Town and the Flower Mound Chamber of Commerce.**

No action taken.

- d. **Consultation with Town Attorney regarding legal issues associated with acquisition and/or release of extraterritorial jurisdiction areas located between the Town of Flower Mound and the Town of Bartonville, and all matters incident and related thereto.**

No action taken.

- e. **Discuss Town of Flower Mound v. Mockingbird Pipeline, L.P., No. 02-10-00069-CV, pending in the Texas Court of Appeals at Fort Worth, and all matters incident and related thereto.**

No action taken.

- f. **Discuss and consider Virginia Simonson and Prakash Parameswaran v. Town of Flower Mound, et al., Cause No. 2010-50955-367, pending in the 367th Judicial District Court of Denton County, Texas, and all matters incident and related thereto.**

No action taken.

- g. **Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission, TIRZ #1 Board, and Transportation Commission.**

No action taken.

- h. **Discuss and consider appointment of a Presiding Municipal Judge for the Municipal Court of Record No. 1 in the Town of Flower Mound, Texas.**

No action taken.

- i. **Discuss selection of and applications for Town Secretary position, and all matters incident and related thereto.**

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Northern adjourned the regular meeting at 11:39 p.m. on Monday, September 20, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

MELISSA D. NORTHERN, MAYOR

ATTEST:

TRACY KNIERIM, INTERIM TOWN SECRETARY