

CITY OF DENTON CITY COUNCIL MINUTES

October 5, 2010

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, October 5, 2010 at 4:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Council Member Watts, Council Member King, Council Member Heggins, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, and Mayor Burroughs.

ABSENT: None.

1. Requests for clarification of agenda items listed on the agenda for October 5, 2010.

Council Member Watts questioned Consent Agenda Item B which was the reallocation of CIP funds to Hickory Street. He asked why staff was asking for this transfer.

Linda Ratliff, Director of Economic Development, stated that the request was for funds from all three surrounding streets including Austin Street for \$2.7 million. This was a rough estimate for the construction of Hickory with the intention that any remaining funds to go back to one of the three streets.

Mayor Burroughs asked about Consent Agenda Item D, uniform purchase. File 4584 was not about uniforms.

Karen Smith, Purchasing, stated that there was a different numbering system not relative to the bid number for Exhibit A.

Mayor Burroughs clarified that the item was just for uniforms and nothing else.

Smith replied correct.

Mayor Burroughs asked about Consent Agenda Item E and using a local preference for awarding the bid. Item 14A showed that a Dallas company was awarded the bid but the lowest bid was a Denton bidder. He questioned why the local preference consideration was not used.

Smith stated that the local preference was used for a total contract and not on individual items.

Council Member Gregory asked about a time frame for construction for Consent Agenda Item A.

Jim Coulter, General Manager-Water Administration, stated that the actual construction of the project would probably start after school was out for the summer.

Council adjourned into Closed Session at 4:15 p.m. to consider Item 1A1.

1. Closed Meeting:

- A. Consultation with Attorney - Under Texas Government Code Section 551.071.

1. Receive a briefing from City's attorneys and hold a discussion, pursuant to Section 551.071 of the Texas Government Code, of legal issues associated with the expiration of the City's agreement with Charter Communications regarding a public, educational, or governmental (PEG) cable television channel and the potential award of an agreement for the operation of a PEG channel to a new operator where public discussion of this legal matter would clearly conflict with the duty of the city's attorneys to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Council returned to Open Session at 5:40 p.m. to consider the remaining Work Session Items.

2. Receive a report, hold a discussion and give staff direction regarding the operation of the public access channel beginning January 1, 2011.

Billy Matthews, Cable TV Manager, stated that the Overview and Purpose of his presentation would be to present information on (1) the history and timeline of the cable franchise in Denton, (2) the history and timeline of PEG subscriber fees, (3) the history and financials of the PEG fund, (4) public access in other cities, (5) outline the staff process, (6) discuss the proposals, and (7) next steps needed.

The term PEG stood for public access channels, educational access channels, and governmental access channels. PEG channels were not mandated by federal law with the right for the channels given to the franchise authority. The requirement for the channels must be set out in the franchise agreement. The City had five PEG channels which included the Denton DTV channel, the Access channel, TWU channel, NTTV channel and the DISD channel. He reviewed the history and timeline for the creation of the access channels and the associated wording from the franchise agreement. Currently all three cable providers collected the PEG subscriber fee. The City's fee was \$.50 per subscriber per month. The FCC restricted the use of the PEG subscriber fee to only be used to acquire additional PEG production equipment, capital and other PEG purposes.

Matthews reviewed the PEG revenues and expenses since 2004 to present. He noted that the PEG subscriber fee revenue average over the last two fiscal years was \$137,748. Some of the uses of the fees included the DTV Control Room, fiber optics, broadcast equipment, studio, cameras, monitors, recorders, audio, lighting, editing stations and maintenance. The ten year PEG revenue forecast was reviewed versus the cost of each proposal.

The City's options included (1) allowing the public access channel to go "dark" and cease operations at the end of the current local franchise agreement on January 1, 2011. Once the City vacated a PEG channel, cable operators would no longer be required to provide a public access channel at a later date. (2) Assuming the responsibility for the public access channel. This option would not include building a studio or producing any programs for the public. It would be an automated playback channel only. (3) Entering into an agreement with a third party to operate the City's public access channel. While the City could assist with the capital and equipment associated with the PEG channel, this option would not include additional general funds or staff.

Staff began working on this issue in March and had received proposals from the Texas Filmmakers and Mayborn School of Journalism at UNT. Staff criteria for evaluation of the proposals included legal consideration, economic consideration, facility, accessibility, and processes. Staff was recommending the Mayborn School of Journalism to operate the Denton public access channel effective January 1, 2011. The City would use PEG funds for capital expenditures including equipment, and the Mayborn School would handle the operations. No city General Fund money would be needed, and the channel would be preserved. Staff was requesting direction on how to proceed with a target date for an agreement no later than the first Council meeting in November. He indicated that if the Mayborn proposal was selected, they would finish a studio at their expense and the City could provide equipment, a fiber optic line, studio cameras and prompters. An individual would call to schedule a time produce a show, tape the program, edit it down as needed and get it ready for automated playback.

Mayor Pro Tem Kamp asked what would happen to left over peg funds.

Matthews indicated that it could be used to purchase equipment and/or provide grant funds.

Mayor Pro Tem Kamp stated that the First United Methodist Church was the only entity with a live feed. She asked how that would work with both proposals.

Matthews indicated that programming was secured in both proposals. Charter had an automated switch for the programming which would be in place regardless of who was running the channel.

Council Member Gregory stated that one proposal called for using 92% of annual PEG funds and the other only 12% but use funds to upgrade equipment, to broadcast council meetings, Planning and Zoning Commission meetings, etc. He questioned what percentage would be needed for anticipated upgrades, replacement of equipment.

Matthews stated that if more than 90% of the funds were granted, money would be needed from the General Fund for city business.

Council Member Gregory asked about the legal limitations for use of the PEG funds.

Matthews stated that they could be used for any type of television equipment. They could not be spent on such things as people, operational costs, or utilities.

Council Member Gregory stated that with either proposal, if PEG funds were used for a building or equipment, that building or equipment could only be used for PEG purposes. He questioned how that would be ensured.

Matthews stated that in the case of the Mayborn proposal, the City would buy the equipment and the vendor would install it on site. The City would have overview in that process. The Texas Filmmakers proposal called for granting of funds to them which would be harder to oversee.

Council Member Gregory asked about a building funded with PEG funds or a studio with PEG funds and possible use for non-PEG activities.

City Attorney Burgess stated that PEG funds must be used for PEG purposes. The money must be spent on capital expenditures or costs. If not for those purposes, then there would be a dollar for dollar offset penalty from the 5% franchise fee. Capital costs did not include salaries. It was for equipment but not operational issues.

Council Member Watts stated that the Mayborn proposal included building a studio for the public to use and also talked about equipment in the studio with PEG funds available to the public and UNT students associated with the school.

Matthews stated that the Mayborn proposal would allow UNT to produce a newscast for the public access channel which would give an outlet for their news.

Council Member Watts verified that a newscast by UNT on the channel was permissible.

Matthews replied correct.

Council Member Gregory asked about a situation where an individual in the city made his own show and in the course of filming, made liable comments about his neighbors. According to the two proposals would both providers just take film and run it or what would happen.

Matthews stated that one proposal had checks and balances for reviewing materials while the other did not. Council would have to weigh in as a gatekeeper. The FCC was very clear on what was acceptable.

Mayor Burroughs asked about projected uses for the PEG fees for the next ten years.

Matthews stated that in the current budget there was equipment scheduled to be purchased. Unused PEG fees could be granted to other PEG entities in the city.

Mayor Burroughs stated that in one proposal, all the PEG funds would be obligated for a 10 year period but not so with the other proposal. He questioned if there were already intended uses for the PEG funds and would the higher obligation interfere with any projected uses going forward.

Matthews replied that the proposal with 90% usage of the PEG fees would affect future plans for the funds. There was ongoing maintenance, an editing of the system this year and a recommendation for grants to other PEG channels in the future.

Mayor Burroughs asked about the control for the look of the channel. One concern he had heard was that if the Mayborn School's proposal was accepted, the channel would look like a university channel and would lose the identity of an access channel.

Matthews replied that it would be the city's channel and only operated by the Mayborn School.

Mayor Burroughs asked if the Mayborn School were chosen as the primary operator, would there be a limitation to Council to consider other proposals for a remote access production facility to produce shows and provide them to the Mayborn School.

Matthews stated that it would be the City's channel and that could be done.

Mayor Burroughs asked about the contract length of the Mayborn School as the other proposal was a ten year proposal.

Matthews stated that the Mayborn School proposal was for three years with a six month out clause if needed.

Council Member Engelbrecht asked about video production issues. He questioned how to keep a handle on people who became frustrated with the system and walked away. He asked if there would be a structure to find out how many people might not be satisfied with the provider.

Matthews stated that Mayborn School had a board with citizen stakeholders plus also other checks and balances.

Mayor Burroughs asked if it could be built into the contract that all complaints about the PEG channel would be forwarded to the city.

Matthews replied it could be done.

Council Member Engelbrecht asked if there could be some type of required notification to anyone into the studio, that this was a city channel and to call the city with a problem.

Matthews stated that could be done.

Mayor Burroughs asked what type of direction staff needed.

City Manager Campbell stated that staff would proceed with the proposed recommendation and bring back the appropriate documents for council consideration. They would take into consideration the comments made at this meeting

Council returned to the Closed Session at 4:55 p.m. to consider the following:

- A. Consultation with Attorney - Under Texas Government Code Section 551.071.
 2. Consultation, discussion, deliberation, and receipt of information from the City's attorneys regarding contemplated litigation with Denton County Electric Cooperative, Inc. d/b/a CoServ Electric and CoServ Gas, Ltd. relating to disputes concerning franchise issues, where public discussion of these legal matters would clearly conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.
 3. Receive a status report regarding the litigation entitled: The University of North Texas, Appellant v. The City of Denton, Texas, Appellee, Cause No. 02-09-00395-CV, now pending before the Fort Worth Court of Appeals; and discuss, deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matter. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

- B. Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071; Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086.

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded that this item was appropriate for a Closed Session discussion under the Public Power Utilities Competitive Matter exception. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

- 1. Discuss, deliberate, and receive information from Staff and provide Staff with direction pertaining to the acquisition or the condemnation of permanent and temporary construction easement tracts for the Jim Christal Double Circuit and Combined Heat and Power projects, the location of which being north and west of the Denton Municipal Airport area in the City of Denton, Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the tracts referenced above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the Denton City Council under the Texas Rules of Disciplinary Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceedings or potential litigation.

Regular Meeting of the City of Denton City Council at 6:30 p.m. in the Council Chambers at City Hall.

1. PLEDGE OF ALLEGIANCE

The Council and members of the audience recited the Pledge of Allegiance to the U. S. and Texas flags.

2. PROCLAMATIONS/PRESENTATIONS

A. Proclamations/Awards

- 1. United Way Proclamation

Mayor Burroughs presented a proclamation for United Way.

- 2. Fire Prevention Week

Mayor Burroughs presented a proclamation for Fire Prevention Week.

- 3. White Cane Day

Mayor Burroughs presented a proclamation for White Cane Day.

3. CONSENT AGENDA

Speaker cards were submitted by Bob Clifton, 1800 Morse, Denton, 76205 for Consent Agenda Items B, C, L and M.

Mayor Pro Tem Kamp motioned, Council Member King seconded to approve the Consent Agenda and accompanying ordinances and resolution including the amended ordinance provided during the Work Session. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Resolution No. R2010-036

- A. Consider approval of a resolution of the City Council of the City of Denton, Texas accepting the recommendations made by the Citizens Advisory Oversight Committee appointed by the City Council on April 19, 2005, regarding the five-year capital improvements program, respecting the reallocation of funding of street improvements from the FY 2007-2008 miscellaneous roadways, the FY 2008-2009 miscellaneous roadways, and from the 2008-2009 sidewalk installations funds to the Paisley Street extension project; and providing an effective date.

Resolution No. R2010-037

- B. Consider approval of a resolution of the City Council of the City of Denton, Texas accepting the recommendations made by the Citizens Advisory Oversight Committee appointed by the City Council on April 19, 2005, regarding the five-year Capital Improvements Program, respecting the reallocation of funding of street improvements from Walnut Street and Pecan Street to the Hickory Street Grand Project; and providing an effective date (\$1,777,970).

Ordinance No. 2010-243

- C. Consider adoption of an ordinance authorizing the City Manager to execute Amendment No. 1 to amended lease agreement between the City of Denton ("City") and the Denton County Transportation Authority ("DCTA"), amending that certain amended lease agreement, dated on or about September 18, 2007, by and between the City and DCTA, related to the lease of parking spaces located at the Williams Trade Square; and providing for an effective date. The Mobility Committee recommends approval (3-0).

Ordinance No. 2010-044

- D. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a purchase order through the Buy Board Cooperative Purchasing Network (Contract# 340-10) for the acquisition of uniform purchase and rental for City employees by way of an Interlocal Agreement with the City of Denton; and providing an effective date (File 4584-Employee Uniform Rental and Purchase awarded to G&K Services in the annual estimated amount of \$200,000).

Ordinance No. 2010-245

- E. Consider adoption of an ordinance accepting competitive bids and awarding an annual contract for the purchase of soil, sand, aggregate and lime for various City departments; providing for the expenditure of funds therefor; and providing an effective date (Bid 4564-Annual Contract for Soil, Sand, Aggregate and Lime awarded to the lowest responsible bidder meeting specification for each item in the annual estimated amount of \$2,000,000).

Resolution No. R2010-038

- F. Consider approval of a resolution appointing members to the Board of Directors of the North Texas Higher Education Authority; and declaring an effective date.

Ordinance No. 2010-246

- G. Consider adoption of an ordinance of the City Council of the City of Denton, Texas authorizing the City Manager to execute a Second Amendment to Agreement for Professional Legal Services with Michael J. Whitten & Associates formerly known as The Whitten Law Firm, P.C. for professional legal services relating to litigation entitled: The University of North Texas, Appellant v The City of Denton, Texas, Appellee, Cause No. 02-09-00395-CV, now pending before the Fort Worth Court of Appeals; authorizing the expenditure of funds therefor; providing for retroactive approval thereof; and providing an effective date.

Ordinance No. 2010-247

- H. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute an agreement between the City and Fred Moore Day Nursery School to provide Community Development Block Grant funds for improvements to the facility at 821 Cross Timber Street, Denton, Texas; authorizing the expenditure of funds therefor, not to exceed \$120,400; and providing for an effective date.

Ordinance No. 2010-248

- I. Consider adoption of an ordinance of the City Council of the City of Denton, Texas, approving a funding agreement between the City of Denton and the Denton Affordable Housing Corporation; providing for the terms of said contract; authorizing the City Manager to execute the agreement and to expend Home Investment Partnership Program funds with respect to the agreement; and providing for an effective date.

Ordinance No. 2010-249

- J. Consider adoption of an ordinance finding that a public purpose and necessity exists and finding that public welfare and convenience requires the acquisition through agreement or eminent domain of an approximate 0.787 acre utility easement, and a 1.431 acre temporary construction easement for the relocation and installation of municipal utilities relating to the Jim Christal Double Circuit, and the Combined Heat and Power utility projects situated in the John Scott Survey, Abstract Number 1222, City of Denton, Denton County, Texas; authorizing the expenditure of funds therefor; and providing an effective date. The Public Utilities Board recommends approval (6-0).

Approved the minutes listed below.

- K. Consider approval of the minutes of: August 10, 2010 August 17, 2010 September 7, 2010 September 14, 2010 September 21, 2010

Ordinance No. 2010-250

- L. Consider adoption of an ordinance approving an employment agreement for the City Manager and authorizing the Mayor to execute said agreement setting the compensation and terms of that employment; authorizing expenditures and actions; and providing an effective date.

Ordinance No. 2010-251

- M. Consider adoption of an ordinance approving an employment agreement for the City Attorney and authorizing the Mayor to execute said agreement setting the compensation and terms of that employment; authorizing expenditures and actions; and providing an effective date.

Ordinance No. 2010-252

- N. Consider adoption of an ordinance approving an amendment to the easement agreement for joint driveway access by and between the City of Denton, Denton Independent School District and Teasley Commons, LTD. related to the appropriation of additional easement area for driveway widening purposes; and providing an effective date. (South Branch Library, Fire Station No. 6, and Sam Houston Elementary bus loop - 3200 block Teasley Lane)

4. PUBLIC HEARINGS

Ordinance No. 2010-253

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Detailed Plan to allow a public park located on 15.378 acres within the Preserve Planned Development District (PD 132), generally located south of Lakeview Boulevard and north of the existing Denton Branch Rail Trail; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability and an effective date (Z10-0008). The Planning and Zoning Commission recommends approval (7-0).

Mark Cunningham, Director of Planning and Development, stated that this proposal was a detailed plan associated with the Preserve at Pecan Creek Planned Development to permit the transfer of ownership of an existing 15.38 acre park from the Homeowners Association to the City of Denton. The property was located in the Preserve Planned Development with a future land use of Neighborhood Center. The Planning and Zoning Commission and the Development Review Committee both recommended approval.

Mayor Burroughs noted that some opposition was due to late mailing notices.

Ron Menguita, Planning Supervisor, stated that the Planning staff had received information that two notices were received late by the homeowners. He indicated that there was a sign up for three to four weeks about the proposal. Staff had notified the community in the appropriate time.

Mayor Burroughs stated that there were complaints that the sign was not placed in a prominent location.

Menguita stated that the sign was posted in the best possible location due to the ongoing construction on the Rail Trail.

Council Member Gregory asked if the land being transferred to the City was part of the park dedication process.

Menguita stated that it was above and beyond what the developer would be required to dedicate.

Bob Tickner, Parks Planning Administrator, stated that a site with 1700 homes would have been required to dedicate 10 acres. This development was not completely built out and the City had already received over 10 acres. This portion had long been planned for as a dedication to the City and was above the required acres of the developer.

Council Member Gregory asked who would be paying for the pedestrian access bridge.

Tickner stated that it would be funded from Park Development fees that had been collected from the two multi-family portions of the development and the lots on the south side.

Council Member Gregory asked if there would be any other improvements or amenities to the park.

Tickner stated that the property was located in the flood plain and the developer had built trails throughout the area.

Mayor Burroughs asked if there were plans for parking in the area.

Tickner stated that there was no parking planned for the park. Citizens could park at the nearby school. He indicated that the park would connect to the Denton branch of the Rail Trail.

Mayor Burroughs asked if there would be any facilities such as a playground at the park.

Tickner stated this was a passive park for trails only with no facilities included.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

Council Member Gregory motioned, Mayor Pro Tem Kamp seconded to adopt the ordinance. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member

Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Ordinance No. 2010-254

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas regarding a Concept Plan amendment and a Detailed Plan amendment (Ordinance No. 2009-302) within the Wheeler Ridge Planned Development District (PD-176). The Concept Plan contains approximately 9.08 acres and the Detailed Plan contains approximately 4.05 acres located within the boundaries of the Concept Plan. The subject site is located at the southeast corner of Teasley Lane (FM 2181) and Robinson Road; and providing for a penalty in the maximum amount of \$2,000.00 for violations, thereof, severability and an effective date. (PDA10-0003) The Planning and Zoning Commission recommends approval (5-0).

Chuck Russell, Planning Manager, stated that this was a request for an amendment to the concept and detailed plans in the Wheeler Ridge Planned Development. The specific purpose of the proposal was to amend Condition #4 in Ordinance 2009-302 regarding limited access from the site to Robinson Road. Ordinance No. 2009-302 amended Tract 1 of the concept plan and approved a detailed plan for a portion of Tract 1 for a storage facility on 4.05 acres. The previous concept plan/detailed plan was for a proposed self-storage facility. The issue in 2009 was access into and out of the site. The proposed retail development would be comprised of a convenience store, a fuel station with four fuel dispensers and two underground fuel storage tanks. Ordinance No. 2009-302 approved two driveway access points onto Robinson Road with a condition that the western-most access would be prohibited until the City Engineer verified that the total traffic count exceeded ten thousand trips per day for the development. That condition was the one the applicant was requesting be changed without providing the traffic count required to warrant such access. The Planning and Zoning Commission recommended approval subject to the condition that the western-most access on Robinson Road be granted with the installation of a traffic signal at the corner of Teasley Lane and Robinson Road.

Council Member Watts questioned whether the western driveway was to be a right-in and right-out but the presentation did not address that.

Russell indicated that might have involved the Teasley Lane drive and did not involve Robinson Road.

Council Member Watts questioned if submitted or built, would there be a right-in, right-out only at that location.

PS Arora, Division Manager-Wastewater Administration, stated that a future median would not allow a left turn at the site. However, at this time, there was no median.

Council Member Watts questioned if the detailed plan did not show a right-in, right-out and the plan was approved without it, how could that be required later.

Arora stated that Council could make that a condition for approval.

Council Member Watts stated that the plan was to install a suspended signal light at the site.

Arora stated that the suspended signal would probably be installed early next year. A span wire signal would be used until the expansion of Teasley Lane was completed. The warrants were there for the signal to be installed.

Mayor Burroughs stated that if the convenience store was not built, the access would already be there.

Russell stated that the condition, as it currently read, was not specific for development of the corner but was tied to getting the traffic signal constructed. If the convenience store was not built, once the signal was installed, access to a driveway would be allowed. The developer would still have to comply with the detailed plan requirement.

Mayor Burroughs stated that if the convenience store was not built and the detailed plan was already approved, then anything else would have to come back to Council unless it met the detailed plan requirements.

Russell stated if the store was not built and a plan submitted for another tract, the developer would still have to come back to Council.

Mayor Burroughs stated if the detailed plan were approved, the convenience store would have to be built or Council would see the proposal again whether or not the traffic counts justified the driveway.

Russell stated that if a substantial change was made to the layout of the detailed plan, it would have to come back to Council.

Council Member Engelbrecht stated that the western most driveway was a right-in, right-out.

Russell stated that was not a condition but a function of how Robinson Road would be developed.

Arora stated that the road would be designed with a split for restricted movement. He suggested that be included as a condition of approval.

Council Member Watts stated that if there was a median at that location there could not be a left turn but that was a way off until the reconstruction was completed. He questioned if in the meantime was Robinson Road wide enough put a strip in the middle so there couldn't be a left turn. He questioned if that could be done now.

Arora stated that there would only be a right-in, right-out.

Russell presented information on 4C. The proposed amendment to the detailed plan would allow a convenience store with four fuel dispensers and two underground storage tanks. The Planning and Zoning Commission recommended approval with conditions.

The Mayor opened the public hearing for Items B and C.

The following individuals spoke during the public hearing:

James Massey, applicant, spoke in favor. He questioned if development would have to wait for the completion of the signal before starting construction.

Mayor Pro Tem Kamp asked if the condition of the signal was acceptable to Mr. Massey.

Massey replied it was.

Council Member Watts questioned if the western drive was a right-in, right-out, where would be the connecting street.

Massey stated that in the future there would be a hard median at the location but felt it was easier to not put anything in at this point.

Jeremy Yee, Civil Engineer for the project, indicated he would answer any questions from Council.

Greg Johnson, 3813 Granada Trail, Denton, 76205 – in support

Council Member Heggins questioned the 10,000 trips for the proposed retail in the area.

Johnson stated that not everything in the development would be retail on Robinson Road. They were also targeting neighborhood services.

Bob Clifton, 1800 Morse, Denton, 76201- in opposition

The Mayor closed the public hearings

City Attorney Burgess recommended that the Council consider Items B and C together.

Council Member Engelbrecht stated that the recommendation was to allow the curb cut with the installation of the traffic light and the traffic light would be installed by the first of the year.

Russell replied correct.

Council Member Engelbrecht suggested approving the items as presented. In the event an accident problem started to occur at the western entrance and there was room to install a median, it should be done as soon as possible.

Arora stated that as part of the platting approval process, an intersection analysis of Robinson Road and Teasley Lane would be done on the traffic on each lane. That would determine if there was a need to add additional lanes for traffic.

Council Member King motioned, Mayor Pro Tem Kamp seconded to adopt the ordinances for Items B and C as recommended by the Planning and Zoning Commission.

Council Member Watts requested clarification of the motion which was to recommend 4B and C which included tying the western access point to the traffic signal.

Council Member King and Mayor Pro Tem Kamp agreed that was the motion and second.

Council Member Watts stated that the plan showed the storage facility had an eastern driveway which would be there when the facility was built. However, it was not there now and there was no requirement for the storage facility to construct a connection between the eastern and western most parts of the development.

Arora stated that was correct.

Mayor Burroughs stated that there was already a turning lane on Robinson to go north. He questioned if there was enough space to extend a turning lane farther to make a stacking lane for a left turn into the western most driveway.

Arora stated that there was room to add a lane at this time. The eastern most driveway already had a left turn lane.

Mayor Burroughs stated that the developer had questioned the starting of construction in connection with the timing of the installation of the signal light.

Arora replied that it would depend on their time table for submission. The light would be completed in the early part of January.

Mayor Burroughs asked if construction could be initiated before the light was installed.

Arora stated that the signal light should not have an impact on the development.

Council Member Gregory wanted to make sure there was plenty of access in a way that did not create more traffic problems. He stated that this proposal did not include the provision of constructing the eastern-most driveway off Robinson Road. He questioned if there was a connection to the eastern most driveway from the proposed convenience store.

Russell indicated that the final plan approved for the storage facility had a permit issued for that. The driveway was under construction now but that did not guarantee connectivity to the convenience store.

Johnson stated that the applicant would not be in favor of a requirement to connect the southeast corner of the convenience store lot to the eastern driveway.

Mayor Burroughs stated that the properties which it crossed were not controlled by the convenience store. Council would be imposing conditions on the seller which would no longer be the buyer with control over it.

Johnson stated that the storage facility would be required to have the access go all the way across.

Council Member King motioned, Mayor Pro Tem Kamp seconded to adopt the ordinances for Items 4B and 4C. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas regarding creation of a Detailed Plan to allow a convenience store with fuel dispensers on property located within the Wheeler Ridge Planned Development District (PD-176). The proposed retail development is comprised of a 2,940 square-foot building, a fuel station with four (4) fuel dispensers and two (2) underground fuel storage tanks. The subject site is located at the southeast corner of Teasley Lane (FM 2181) and Robinson Road; and providing for a penalty in the maximum amount of \$2,000.00 for violations, thereof, severability and an effective date. (Z10-0006) The Planning and Zoning Commission recommends approval (5-0).

This item was considered with Public Hearing B and the ordinance was combined with the ordinance for 4B.

Ordinance No. 2010-255

- D. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 3 (NR-3) zoning district classification and use designation to a Neighborhood Residential 1 (NR-1) zoning district classification and use designation on approximately 40.37 acres of land located on the west and east sides of Ector Street, between Emery Street to the north and Sena Street to the south; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability and an effective date. (SI10-0002) The Planning and Zoning Commission recommends approval (7-0).

Mark Cunningham, Director of Planning and Development, presented the details of the proposal. This was a staff initiated rezoning request of 40.37 acres containing 39 single family residential lots. The rezoning request and establishment of the Ector Street Neighborhood Association directly resulted from opposition to a 2009 variance request to allow two driveways at 805 Ector Street to Panhandle and replat the lot. A second request for the property proposed to subdivide via a residential replat, the lot into three lots in excess of 10,000 square feet each that would share one driveway. Both of those proposals were denied by the Planning and Zoning Commission. In June, 2009 residents of the Ector Street Neighborhood Association presented a Citizen's Report petitioning the city to rezone the Roberts Addition from NR-3 to NR-1 to allow an increase in the minimum lot size from 10,000 square feet to 32,000 square feet, which would have the effect of preventing the future subdivision of lots along Ector Street. He presented the general regulations for minimum lot size, minimum lot width, minimum lot depth, and front yard setbacks. The Planning and Zoning Commission recommended approval.

Mayor Burroughs stated that NR-1 had a minimum lot size of 32,000 square feet. He found that one of the lots was less than 32,000 square feet. He asked if that lot would be a legal non-conforming lot.

Cunningham stated that was correct.

Mayor Burroughs asked about circumstances where that might be a problem.

Cunningham stated that would put limitations on an expansion. If the home were destroyed by fire, there would be a limit on how long the owner could wait to rebuild. The lot would be a non conforming lot but not a non conforming use.

Council Member Watts questioned as this was a city initiated request, could a condition be put in the ordinance regarding the non-conforming lot so that if something happened to the home on that lot, an exception would be made.

City Attorney Burgess stated that staff would research it for Council.

Mayor Burroughs stated that if the house burned down, the owner would not be able to rebuild because the lot would be too small.

Cunningham stated that there would still be plenty of buildable area to rebuild but he was not sure about the lot size.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

Jerry Clark, 1121 Ector, Denton, 76201 – in favor
Jake Hendricks, 1014 Hillcrest, Denton, 76201 - in favor

Comment cards in favor of the proposal were received from:

Lindsay and Marsha Keffer, 815 Ector, Denton, 76201
Catherine Dawson, 1015 Ector, Denton, 76201

The Mayor closed the public hearing.

City Attorney Burgess indicated that the Zoning Board of Adjustment could grant a variance for rebuilding on the lot should the need ever arise.

Council Member Engelbrecht asked that staff speak to the landowner and recognize the issue of the lot size being too small.

Council Member Gregory stated that he was in support of the proposal and hoped something could be worked out with the one lot. He suggested the minutes reflect that the Council was concerned that the home could be rebuilt if something ever happened to the home on the lot that was under the minimum size.

City Manager Campbell stated that he would write a letter to the homeowner and note that the Council would work on the building lines if necessary.

Council Member Engelbrecht motioned, Mayor Pro Tem Kamp seconded to adopt the ordinance. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Ordinance No. 2010-256

- E. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas designating a certain area within the city limits of Denton as Target Corporation Reinvestment Zone IX for commercial/industrial tax abatement; establishing the boundaries of such Zone; making findings required in accordance with Chapters 311 and 312 of the Texas Tax Code; ordaining other matters relating thereto; providing a severability clause; providing for repeal; and providing an effective date.

Linda Ratliff, Director of Economic Development, stated that she would be speaking on this item and on Item 5A. The Tax Code required that businesses that receive tax abatements must be located within a reinvestment zone, a designated area where economic development was encouraged. City Council's adoption of the ordinance establishing the reinvestment zone would allow Council to consider a tax abatement agreement with Target Corporation. The company planned to construct a distribution center at the site.

The Mayor opened the public hearing.

Bob Clifton, 1800 Morse, Denton, 76201, spoke in opposition.

The Mayor closed the public hearing.

Mayor Pro Tem Kamp motioned, Council Member King seconded to adopt the ordinance. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

5. ITEMS FOR INDIVIDUAL CONSIDERATION

Ordinance No. 2010-257

- A. Consider adoption of an ordinance authorizing the Mayor to execute a Tax Abatement Agreement with Target Corporation, a Minnesota corporation; setting forth all the required terms of the Tax Abatement Agreement in accordance with the terms of Chapter 312 of the Texas Tax Code; setting forth the various conditions precedent to Target Corporation receiving the Tax Abatement; providing for a severability clause; and providing an effective date. The Economic Development Partnership Board recommends approval (6-0).

Linda Ratliff, Director of Economic Development, stated that a revised document had been provided Council with three minor changes that did not change the incentive. Target Corporation would be constructing a 400,000 square foot distribution center on the corner of

Airport and Corbin Roads. The tax abatement represented five-year abatement at 65% each year for a total estimated incentive of \$1.7 million.

Council Member Heggins motioned, Council Member King seconded to adopt the ordinance with the updated language changes in the agreement. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

- B. Continue consideration of adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 3 (NR-3) zoning district classification and use designation to a Neighborhood Residential Mixed Use (NRMU) zoning district classification and use designation on tracts 256, 257, 258, 260 and 261 of the E. Puchalski survey, with an overlay district on those same tracts, plus tract 263, containing additional restrictions as noted; the area for the zoning change encompasses approximately 4.678 acres of land located at the northeast corner of North Bonnie Brae Street and West Oak Street, in the City of Denton, Denton County, Texas (Z09-0013) The Planning and Zoning Commission recommended approval of the rezoning of six (6) of the seven lots from Neighborhood Residential 3 (NR-4) to Neighborhood Residential Mixed Use (NRMU) subject to overlay conditions (5-1).

Chuck Russell, Planning Supervisor, stated that this request was a zoning change from RN-3 to NRMU with consideration being given to a restrictive overlay. The property located at 2286 West Oak was not included in the request. The conditions for approval indicated that prior to obtaining a final plat, a site plan must be submitted to and approved by City Council. The site plan must address architecture of the structures, buffering of adjacent single family property and prohibition of access from Houston Place. The only permitted use on the property was professional services and offices and would be limited to no more than 25,000 square feet of gross floor area per use. Building heights would be limited to 40 feet and/or two stories. A six foot high solid screen fence would be installed per the requirements of the Denton Development Code, constructed with steel posts and decorative caps, in the location specified within Exhibit C of the ordinance. Access to the property would be from Bonnie Brae Street and West Oak Street. No access would be allowed from Houston Place and Houston Place would not be extended to become a thru street to Bonnie Brae Street. Architectural standards were listed in the proposed ordinance.

Council Member Engelbrecht expressed a concern regarding the restrictions on Houston Place. He questioned if at some later date a developer could request a variance and force Houston Place to go through to Bonnie Brae.

Russell stated that the normal procedure for a subdivision variance would go to the Planning and Zoning Commission for the variance to not put the road through. That condition would prohibit access to the area. If a plat or site plan came in with a through street, it would be in violation of that condition.

Council Member Watts stated that in terms of the fence at Houston Place, if the City required a cul-de-sac or a hammerhead turn around, there could be no ingress/egress to Houston Place into the development.

Russell stated correct that the draft ordinance addressed that situation.

Speaker cards were submitted by the following individuals:

Larry Reichhart, 2405 Mustang Drive, Grapevine, - indicated that their only remaining issue was site plan approval prior to obtaining a building permit. Currently the site plan had to be in conjunction with the plat.

Willie Hudspeth, 623 Newton, Denton – in support
Joann Nunnely, 2215 Houston Place, Denton – in opposition
Bob Clifton, 1800 Morse, Denton, 76205 – in support
Eugene Hargrove, 2025 Houston Place, Denton, 76201 – in opposition
Rahna Raney, 2316 Houston Place, Denton, 76201 – in opposition
Jake Hendricks, 1014 Hillcrest, Denton, 76201 – in opposition
Steve Friedson, 2044 W. Oak, Denton, 76201 – in opposition
Elise Ridenour, 2044 W. Oak, Denton, 76201 – in opposition
Dave Lynn, 2120 Houston Place, Denton, 76201 – in opposition

Comment cards were received from the following:

Mike and Lynda Nolen, 2280 West Oak, Denton, 76201 – in support
Jeff and Terri Talbot, 324 Bonnie Brae, Denton, 76201 – in support
Peter Hulstrand, 320 Bonnie Brae, Denton, 76205 - in support
Catherine Dawson, 1015 Ector, Denton, 76201 – in support
Marsha and Lindsay Keffer, 815 Ector, Denton, 76201 – in opposition
Brian Besier, 2224 Houston Place, Denton, 76201 – in opposition
Cecil Atkins, Houston Place, Denton, - in opposition
Dora Sloan, 2207 Houston Place, Denton, - in opposition
Leona Langford, 2219 Houston Place, Denton - in opposition
Mrs. Tom Harpool, 2222 Houston Place, Denton – in opposition
Michelle Lynn, 2120 Houston Place, Denton, 76201 – in opposition
Jerry Clark, 1121 Ector, Denton, 76201 – in opposition
Kevin Roden, 322 Texas Street, Denton, 76201 – in opposition
Elizabeth Gunter, 225 Jagoe, Denton, 76201 – not certain based on current proposal

Council Member Engelbrecht asked Ms. Ridenour about the issue of the fence at the end of Houston Place. The proposed fence would be open and he had a great deal of concern about the spill-over from the potential medical site. He questioned if the neighborhood would want a solid fence instead of an open structure.

Ms. Ridenour stated that the neighborhood had requested a solid fence of stone or brick for the entire length of the Houston Place neighborhood.

Council Member Engelbrecht stated they would like a solid fence instead of open fence.

Ms. Ridenour stated that a solid fence would provide a demarcation between the residential and commercial areas.

Mayor Burroughs asked about landscaping that would block the view between the two.

Ridenour stated they would like both so that there was a substantial barrier between residential and commercial.

Council Member Watts questioned the change from the site plan being approved prior to obtaining a final plat versus before obtaining a building permit. The Planning and Zoning Commission recommendation did not have that as a condition.

Russell stated that was a change from the last meeting. Staff changed the requirement back to the plat stage. The previous version of the ordinance considered by the Commission had the site plan approval at the building permit stage. Staff was concerned that if the plat was approved late it might encourage permit issues and their hands would be tied once the plat was approved. They felt the site plan should happen before platting.

Council Member Watts stated that once the applicant agreed at the last meeting to restrict the proposal to offices, this meeting was to bring back the proposal in a clean form. He did not want to draft an ordinance during a meeting. He questioned if the applicant was informed of the change.

Russell stated that he assumed that the applicant had a copy of the changes but he did not tell the applicant of the change.

Council Member Watts stated that the reasoning for staff to have the site plan approval at the platting was to provide more opportunity to have input on how the site would be developed.

Deputy City Attorney Drake stated that it was his suggestion to make the change. He was trying to find ways around the Denton Development Code requirement for the transportation requirement to extend the street through. He had a concern that if the applicant or someone who bought the property came forward to the Planning and Zoning Commission with a plat application that met all of the requirements of the Denton Development Code, that the Commission would have little choice but to accept and approve the plat. A site plan approved by the City Council would be associated with the ultimate development. The idea was to give more control by the Council to approve the site plan. By the time a plat was approved and taken to Council for site plan approval, it might be too late for Council to make a configuration different from the approved plat.

Mayor Burroughs questioned if Drake was saying that if the Planning and Zoning Commission saw a condition that a street was not go through, the Commission would still be obligated to approve the plat with a through street. The Council would be putting a specific condition identifying what was required and what was prohibited, and the Planning and Zoning Commission would not consider that.

Drake stated that the legal standard was if a plat went before the Planning and Zoning Commission and met the development standards, ordinarily the Commission must approve it.

Mayor Burroughs and Drake debated the opinion on whether or not the Planning and Zoning Commission could disregard conditions placed on a proposal by the Council.

Mayor Burroughs suggested making the language clearer in the conditions that there was to be no access to Houston Place for the site.

City Attorney Burgess stated that language was already in place.

Mayor Burroughs stated that there was no vote by Council at the last meeting in order to clean up the language in the ordinance. That had been done with additional language added. He felt the issues were not straight forward. The Denton Development Code provided for the protection of neighborhoods and for development. Residential development was not compatible with Bonnie Brae. This proposal had come a long way with the changes made and which had limited the scope of the development. Bonnie Brae was not a single-family residential street in the long term future. How to transition in the area was critical and by excluding the home site on Oak Street a demarcation line was provided. A transition was between heavy commercial and residential was very well done with office. A proposed site plan for the area would come to Council to make sure the transition was correct.

Council Member Gregory stated that he did not like speculative zoning. Staff, Council, and the Planning and Zoning Commission had placed restrictions on the proposal to try and accommodate and protect the neighborhood. But he did not know if the restrictions would be enough to protect the neighborhood and did not know if the restrictions would be too much to hamper development. He was afraid that if this type of speculative zoning were approved, it would encourage more in the future. He found it hard to support this type of zoning.

Council Member Heggins questioned if the proposal should be tabled again as new information had been presented and in order to clarify the proposal.

Council Member Watts talked about the approval process and equity in the process. When the proposal was first before Council with the requirement of a supermajority vote of approval, he struggled with the applicant buying property in the neighborhood. He understood buying the property for a change in the opposition but it was the integrity of the process that was important. He struggled with the fact that money could change the process. He was in favor keeping the site plan in the platting process.

Council Member King motioned to approve the ordinance with the conditions as presented.

Russell indicated that the applicant was not in favor of the motion as it currently stood. He questioned if a simple majority vote was still needed or if it changed to a supermajority vote.

Drake stated that if a proposed rezoning of property was protested in writing by owners of at least 20% of the area within 200 feet, an amendment could not be effective except by a three-fourths vote of all members of Council qualified to vote.

Mayor Burroughs asked if the site plan approval provision was the same as the last time the proposal was considered.

Russell stated that it was worded differently. The first proposal was prior to obtaining a building permit; the site plan would have to be approved by the Planning and Zoning Commission. The current proposal was prior to obtaining a final plat; a site plan had to be approved by the City Council.

Mr. Reichhart presented a written protest by the applicant of the amendment regarding the site plan. That protest represented 20% of the area within 200 feet.

City Attorney Burgess stated that the supermajority vote involved the issue in the ordinance dealing with the timing of the site plan approval and whether that would be at the time of building permitting or at the time of platting. If council pursued the proposal in accordance with the last council meeting discussion with placing the overlay condition in Section 7 for the site plan, the applicant was opposed so a supermajority vote would be required.

Council Member King's motioned died for lack of a second.

Council Member Engelbrecht asked if a supermajority vote would be needed to deny the rezoning request.

City Attorney Burgess stated that a simple majority vote would be required for denial.

Council Member Watts motioned, Council Member Engelbrecht seconded to deny the ordinance. On roll call vote, Council Member Watts "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", Mayor Burroughs "aye" and Council Member King "nay". Motion carried with a 6-1 vote.

C. Citizen Reports

1. Review of procedures for addressing the City Council.
2. Receive citizen reports from the following:
 - a. Bob Clifton regarding a Fry Street and Bonnie Brae update.

Mr. Clifton felt that Council was doing things at dais that they did not need to be doing. They had not paid any attention to Fry Street but spent all this time on Bonnie Brae. They were taking up time and were of no benefit to citizens.

b. Ashley Oates regarding a smoke free ordinance.

Ms. Oates presented information for 100% smoke free environment in terms of municipal buildings, private worksites, bars and restaurants. She presented a handout on effects of smoking and health concerns.

Mayor Burroughs suggested coordinating an approach with representatives at the state government level such as Myra Crownover.

Ms. Oates stated that she had already been in conversations with them at a recent cardiovascular summit. This was a first step to bolster the movement.

Council Member Heggins stated that she was in support of Ms. Oates and her proposal.

- c. Donna Woodfork regarding lack of customer service from the City Council.

Ms. Woodfork was not at the meeting.

- D. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Council Member Heggins asked that staff look into moving citizen reports earlier in the agenda as she did not feel that they should have to wait through the entire meeting.

Mayor Burroughs requested a summary of the 2005 CIP bond projects and the use of those funds.

Council Member Gregory requested staff research the bill that Rep. Myra Crownover presented in the legislature last session regarding smoking and possibly consider it at the local level.

- E. Possible Continuation of Closed Meeting under Sections 551.071-551.086 of the Texas Open Meetings Act.

There was no continuation of the Close Meeting.

- F. Official Action on Closed Meeting Item(s) under Sections 551.071-551.086 of the Texas Open Meetings Act.

There was no official action on Closed Meeting items.

With no further business, the meeting was adjourned 11:15 p.m.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS