

CITY OF DENTON CITY COUNCIL MINUTES

October 11, 2011

After determining that a quorum was present, the City Council convened in 2nd Tuesday Session on Tuesday, October 11, 2011 at 4:00 p.m. in the City Council Work Session Room at City Hall.

PRESENT: Council Member King, Council Member Roden, Council Member Engelbrecht, Mayor Burroughs, Council Member Watts

ABSENT: Council Member Gregory, Mayor Pro Tem Kamp

1. Receive a report, hold a discussion and give staff direction regarding drafting a new Planned Development (PD) ordinance for inclusion within the Denton Development Code (DDC), with associated development standards. The discussion will include a general overview of the outline of the draft PD ordinance that will be included in the DDC.

Mark Cunningham, Director of Planning and Development, stated that this presentation was the completion of one started at a prior meeting.

The steps for a PD Detail Plan process involved the submission of a PD Concept Plan that was non-binding; a community input meeting; a Council work session; PD Development Plan with Council approval; and the PD Detail Plan with Planning and Zoning Commission approval.

General PD Regulations - to avoid the identified short comings of the City's former PD regulations, the new PD regulations would address 28 specific areas. The adoption of the PD Development Plan was required by the Council and established the PD District. He noted that Item 4 which stated "include a master transportation, water, wastewater, and drainage study for the entire PD area that is of such detail that identify the major public infrastructure facilities needed by each phase, the connection of these facilities to the existing public infrastructure, and any off-site improvements required" had raised questions from Council at the last presentation.

Council Member Watts noted that last time concerns from Council were on how to do a long range plan. He questioned if that portion was not being included or did staff need direction on #4.

Cunningham stated that staff still needed direction from Council on how to proceed with the item or if Council still had questions.

Mayor Burroughs indicated he was worried about not having adequate public infrastructure if a development was started and was not provided for a number of years. The proposal read that the developer would have to come up with that up front but the time frame might be many years out. He suggested putting in a time frame that would trigger an element for phasing.

PS Arora, Division Manager-Wastewater Administration, stated that a development would do a master plan for the entire project which would show how the development fit in the larger picture of the infrastructure. That would show what needed to be identified in terms of water, streets, etc.

Mayor Burroughs questioned how a developer could predict where the water connection would come through because as time went on it might change due to other circumstances.

Arora stated that an initial look would be done with what facilities currently were in place with the water lines, etc. They had models to know what the existing use was and if an additional load was placed on it how it would be handled. If the project was going to exceed the load, the model of the project would show that.

Mayor Burroughs stated that only what the load was internal to the development in terms of volume for drainage or the water requirement would have to be identified. A developer would not have to identify the connections to other city facilities.

Arora stated correct that once the impact of the load was identified, staff would know what to assess the developer for the infrastructure needs.

Mayor Burroughs stated that the wording for Item #4 implied that the developer would have to know what the project would do to the city's infrastructure off- site as well.

Arora stated that it could be both internal and external to the development.

Council Member Watts felt that the wording of Item #4 needed to include that if the PD didn't have the interior capacity when it came to Council, the developer needed to acknowledge that and have a plan on how to solve the problem. This was an issue of how to strike a balance of planning the capacity needs of development with an understanding of what the developer would have to do.

Arora stated that was how the City would get there and know what was being proposed. If the infrastructure would not support the PD, then the developer and City needed to know what requirements were needed.

Mayor Burroughs noted that the current wording for Item #4 included "connection of these facilities to exiting public infrastructure". He asked how a developer would know many years in the future where the connections would be and how would that be known up front to be meaningful.

Arora stated that was done through the model. He stated that wording could be modified based on Council's concerns.

Council Member Watts asked about the list of 28 general fee regulations and who decided on the specifics of those items.

Cunningham stated that there were guidelines associated with the list of 28.

Council Member Watts stated that staff and a developer would agree on the general concepts and the project would then to the Planning and Zoning Commission and Council.

Cunningham replied that was the correct sequence.

Cunningham stated that the next step was the PD Detail Plan. The proposal was to have the Detail Plan approved by the Planning and Zoning Commission and not Council as it had to be in accordance with the PD Development Plan. The PD Detail Plan must be in accordance with the adopted PD District Development Plan.

Council Member Engelbrecht stated that he was not comfortable with that procedure.

Cunningham stated that the PD Development Plan set the standards for the development. Twenty five years from now the applicant could have the opportunity to review the plan as it might be dated and could make adjustments for current standards. Once the plan was vested, it was there.

Council Member Engelbrecht stated that it was one thing to have a plan and another thing to have it built. He was not convinced that this approach for approving the basic standards 25 years out would work.

Mayor Burroughs asked at what point a Detail Plan was required to be submitted such as with a multi-phase development.

Cunningham stated it was done when the developer was ready to do the phase. He noted that there would be some vesting due to state law. Something had to be done with the development plan within 24 months. If nothing was done, then the plan would expire. If something was done with the plan, then the entire plan would be vested.

Aaron Leal, Deputy City Attorney, stated that the project was looked at as a whole and that was what was looked at for vested rights due to state law.

Mayor Burroughs stated that a Detail Plan was when the elements on the ground were known. The specifics were for the Detail Plan and that was not done for the whole development. The uses were permanent when zoned and could not be changed. The way a development looked with trees, utilities, traffic flow, etc. was done at the detail level and that was under a structured time frame. Previously there was no time frame that expired but this proposal did have those time frames.

Council Member Watts felt that in order to continue to give staff direction there was a need for an informal staff report or a work session on vesting rights as it applied to PDs and what vesting rights were or were not. That should include which regulations were subject to vesting and which had to follow under the current regulations.

Mayor Burroughs suggested staff outline each of the elements and what would vest when a Concept Plan or Detail Plan was done and when they were lost.

Cunningham stated that a detail plan would be approved by the Planning and Zoning Commission instead of the Council.

Council Member Watts stated that he struggled with this option of not coming to Council for final approval. The Detail Plan phase was when everything was decided and at times those were very important to the community at large.

Cunningham stated that the PD Development Plan was when regulations for land use, etc. were determined and adopted by Council. The Detail Plan phase ensured that what was proposed on smaller tracks were designed in accordance with the regulations determined by Council.

Council Member Watts asked how that figured into the example of Robson Ranch with its second detail plan.

Cunningham stated that there were a lot of loop holes with the original plan regulations. The Detail Plan was to make sure it was in accordance with the regulations approved by Council. The developer could not go outside the standards set by the Council and if a change was needed, it would have to go back to Council. The bulk of the regulations were in the PD Development Plan.

Council Member Engelbrecht stated that the interest of the community was in the site plan not the development plan.

Cunningham stated that right now development plans did not come to Council for review and were only reviewed by staff. The development plan would have all of the lot coverage and all of the 28 items listed in the development plan regulations.

Mayor Burroughs noted that the wording for the 28 areas did not indicate that they were under the development plan stage and he could not tell when that review occurred. He felt that needed to be made clearer.

Cunningham stated that all of those design standards would be in the PD District Development regulations. When the proposal went to the Planning and Zoning Commission, the Commission was only ensuring that what was in the detail plan was in keeping with the PD District Development Plan.

Council Member Roden asked what amount of time would be saved by not having Council approval in the fourth step.

Cunningham stated that it might add another month. The goal was that the detail plan would not rehash the development standards already in place.

Council Member Roden questioned the placement of the community input meeting. As it was now proposed, the community meeting would be showing the use of the property. However, the use was not the issue but rather what the project was going to look like. He asked when those types of discussions would take place.

Cunningham stated that once the PD Development Plan was submitted, there would be two public hearings; one at the Planning and Zoning Commission level and one at the Council level to address the detail issues.

Council Member Roden asked for an example of what the entire process would look like going through this process.

Cunningham stated that staff could make such a presentation at a future work session.

Council Member Engelbrecht asked about an abandonment of a project or the starting of a project and not finishing it.

Cunningham stated that staff was working on a possible cash out provision to make sure the project was implemented.

Council Member Watts stated that as this was a change from the current process and that all of the ramifications might not be fully understood, he would suggest leaving the Detail Plan at the Council level so as to make the process comfortable with Council and then move it to the Planning and Zoning Commission in the future.

Cunningham stated that the next step would be to address Council's input regarding the regulations and to run a couple of projects through the process to work out the kinks before it was adopted.

Consensus of the Council was to keep working on the ordinance noting the Council's concerns.

Following the completion of the 2nd Tuesday Session, the City Council convened in a Closed Meeting to consider specific items listed below under the Closed Meeting section of this agenda.

1. Closed Session

- A. Consultation with Attorneys - Under Texas Government Code Section 551.071.
 - 1. Consult with, and provide direction to, City's attorneys on legal rights, restrictions, obligations, and issues associated with the proposed annexation of DH-12, where a public discussion of such legal matters would conflict with the duty of the City's attorneys to the City of Denton, Texas under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, and where such matters may become an issue in potential litigation.

- B. Deliberations regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; and Consultation with Attorneys - Under Texas Government Code, Section 551.071.
 - 1. Receive a briefing from Staff regarding public power competitive and financial matters regarding Wholesale Transmission Charges for September through December 1999; and consult with the City's attorneys regarding legal issues involved in Public Utilities Commission of Texas Docket No. 20381 and 39066 and Cause No. 99-14787 that have resulted in a decision by the Supreme Court of Texas, styled Texas Municipal Power Agency et al. v. Public Util. Commission of Texas, 253 S.W.3d 184 (Tex. 2007), which has now resulted in a Stipulation disposing [I have deleted "all"] of the pending litigation regarding this matter, where a public discussion of this legal matter would conflict with the duty of the City's attorneys to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. Discuss, deliberate and provide Staff with direction.

Following the completion of the Closed Session, the Council convened in a Special Called Session to consider the following:

Ordinance 2011-193

1. Consider adoption of an ordinance amending a Service Plan adopted on August 16, 2011, for an area of land to be annexed to the City of Denton, Texas, pursuant to an annexation plan, generally identified as DH-12 consisting of approximately 1,167 acres located south of east University Drive, east of north Mayhill Road, north and south of Blagg Road, north and south of Mills Road and east and west of south Trinity Road, and more specifically identified and depicted in Exhibit "A" attached hereto, which area is adjacent to and abuts the existing city limits of the City of Denton, Texas; providing for a savings clause; and providing an effective date.

Jon Fortune, Assistant City Manager, stated that staff was recommending approval of the ordinance and plan as amended.

Council Member Engelbrecht motioned, Council Member Roden seconded to adopt the ordinance as amended. On roll call vote: Council Member King "aye", Council Member Roden "aye", Council Member Engelbrecht "aye", Council Member Watts "aye" and Mayor Burroughs "aye". Motion carried unanimously.

Ordinance 2011-194

2. Consider adoption of an ordinance of the City of Denton, Texas approving and authorizing the "Stipulation and Motion for Approval Thereon" regarding Public Utilities Commission of Texas Docket No. 39066 that involves the wholesale transmission cost payments for the period September 1, 1999 through December 31, 1999; authorizing the settlement of claims and authorizing the city's legal counsel of record to execute and deliver the stipulation; authorizing the city manager to receive payments and to pay out the applicable payments in such amounts as provided in said stipulation; and providing an effective date.

Mike Copeland, Utility Attorney, stated that the ordinance had been provided in the Council packets.

Council Member King motioned, Council Member Engelbrecht seconded to adopt the ordinance. On roll call vote: Council Member King "aye", Council Member Roden "aye", Council Member Engelbrecht "aye", Council Member Watts "aye" and Mayor Burroughs "aye". Motion carried unanimously.

With no further business, the meeting was adjourned at 5:55 p.m.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS