

CITY OF DENTON CITY COUNCIL MINUTES

December 16, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, December 16, 2014 at 1:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Mayor Pro Tem Engelbrecht, Council Member Gregory, Council Member Hawkins, Council Member Johnson, Council Member Roden, Council Member Ryan, and Mayor Watts.

ABSENT: None.

1. Citizen Comments on Consent Agenda Items

There were no citizen comments on Consent Agenda Items.

2. Requests for clarification of agenda items listed on the agenda for December 16, 2014.

Council Member Ryan asked for an explanation of Item I in terms of cost and how the agreement worked.

Jim Coulter, General Manager-Water Administration, stated that there was an individual with a problem with septic service in the area. The agreement was with the individual and the Fresh Water Supply District to treat the water but the service was still Denton's line and fresh water area. The individual paid the full cost of the line and the agreement would reimburse him from others who may want to tie into the line in the future.

Council Member Johnson asked about Consent Agenda Item B which dealt with TWU ticket writer devices and whether they administered traffic citations in that area.

City Manager Campbell replied yes and that the citations went to Municipal Court. Using the ticket writer devices would be more efficient for Municipal Court.

Mayor Watts questioned the increase in price for Consent Agenda Item D and asked for an explanation on the price was determined.

Phil Williams, DME General Manager, stated that this was an amendment the contract. The contract was completed before knowing what sites would be used and now that those were determined, there was more work at two of the sites than anticipated such as more fill work, etc.

3. Work Session Reports

A. ID 14-0830 Receive a report, hold a discussion and give staff direction regarding the 2015 State Legislative Program of the City of Denton for the 84th Texas Legislature.

Lindsay Baker, IGR/PIO, presented updated information on the program. She was requesting feedback on Council on how they wanted to move forward on the program.

Council Member Gregory asked about the statement of goals.

Baker stated that the focus was to look at the organization and how to operate as a full service city. The key was to maintain the services provided and protect the quality of life for citizens.

City Manager Campbell asked if the issue concerning sanitary sewer overflows was amended.

Baker stated that a statement was added under the utilities area.

Council Member Roden stated that there were public comments made concerning the fracking issue and questioned what was on-line for that issue.

Baker stated that staff was moving forward with legislation in terms of vested rights and protecting the city's zoning authority in terms of gas wells and where they were located.

Council Member Roden asked where citizens could get more information on that.

Baker stated that the information was on the gas well webpage which would be updated for any bills filed in the Legislature.

Council Member Roden asked about the drafting on the legislation and where they were in the process.

City Attorney Burgess stated that she had spoken with Snapper Carr and there was preliminary language on paper. They were working on that draft.

Mayor Watts asked about the posting of legal filings.

Baker stated that those were posted on the gas well website page under litigation.

Council Member Ryan asked about red light camera information and the yellow lights setup.

Chief Howell stated that the enforced intersections chosen for the cameras were done so because of the hazards involved to enforce with a physical presence and the difficulty to enforce them. It would require multiple officers at any time to effectively work the intersections. The camera did what the physical officers would do which was a cost saver. An officer would have to run the red light similar to a citizen to enforce the violation.

B. ID 14-0834 Receive a report, hold a discussion, and give staff direction regarding the use of economic development incentives in residential development projects.

Bryan Langley, Assistant City Manager, stated that item was about potential residential incentives. The Overview and Purpose of the presentation was to evaluate housing values in Denton and surrounding communities, discuss the Strategic Plan and Council retreat comments concerning housing goals, review recent development inquiries that had been received by staff, discuss current development policies and guidelines and consider whether Council was interested in pursuing incentives for residential development, and if so, discuss what factors were most desirable. He presented information on area housing statistics.

Strategic Plan/Retreat Connections – The Strategic Plan highlighted Key Focus Area 3 in terms of Goal 1 and Goal 3. The Council retreat discussions also focused on the need to improve housing value and options in the community.

Development Inquiries – staff recently had several residential developers inquire about the possibility of using incentive/financing mechanisms such as a Public Improvement District or Tax Increment Reinvestment Zone. Examples of the PID/TIRZ development in terms of infrastructure costs to be funded and the associated costs for those in terms of a home value were demonstrated. Similar metroplex developments that had used these types of incentives were reviewed.

Current policy – the City had adopted PID guidelines in 2007 which were amended in 2014. The guidelines for that policy were reviewed. It was noted that the City did not have a TIRZ policy but generally the tool had been restricted to significant projects with major economic development impact, the containment of multiple tracts of land that the city desired to be developed or redeveloped, Downtown TIRZ #1, Westpark Industrial TIRZ #2, and Convention Center TIRZ #3.

Questions to consider – did the Council want to consider incentives to residential housing developments? If so, adoption of incentives would depend on a variety of factors such as value of homes versus existing developments in Denton, amenity packages offered to development residents and overall City, size of developments, infrastructure provided public benefit and enabled future growth in the City, and development alternatives without incentives may be less desirable for City.

Staff recommended that development incentives of a PID/TIRZ be considered if: (1) homes prices would significantly exceed current market offerings in Denton, (2) amenity packages offered substantial value to the community, (3) public infrastructure provided public benefit and enabled future development in the City, (4) TIRZ only “incentivizes” development that exceeded a specific target for home values, (5) TIRZ incentive represents only the O&M portion of the tax rate (e.g. excludes debt service rate), and (6) development furthered other City strategic goals (e.g. comprehensive plan, compact development, rehabilitation of blighted areas, etc.). If directed by Council, staff would engage developers to negotiate specific terms and conditions for consideration.

Council discussion centered on how an incentive changed a housing market, could Denton support incentives based on current housing values, what older residents would get out of the amenity packages offered from the new developments, the opportunities associated with larger developments, and the need to create the need for the demand. Amenity planning would have to be reviewed very carefully as well as amenity access.

Langley stated that the next steps, if directed to proceed, would be to work to create a term sheet for consideration by Council and potential developers.

Council discussed that this was not a mindset that if done for one would have to be done for all, consider the amount of money/debt a developer had to build large residential area, the term sheet would need clarity such as what would happen if the developer changed, guarantees of quality

and defining quality so that those did not become arguments in the future. Another suggestion was to look at incentives with older neighborhoods for revitalization of those areas.

Langley stated that in order to provide the frame work for a future conversation, staff needed to know what would be important for the Council to consider.

Mayor Watts suggested taking out the TIRZ from the equation as that could be done with a specific development as needed.

Council Member Hawkins suggested having a term sheet available for developers who might not know of them.

Council Member Johnson stated that there would be the need to have a lot of flexibility and to put as few hard fast guardrails as possible in order to have the flexibility to work with different types of developments.

Mayor Watts stated that the consensus of the Council was to have staff engage developers to negotiate specific terms and conditions for consideration. No term sheet should be developed. From the list of bullet points presented, Items #1 and #2 would remain and Items #3, #4 and #5 would be removed.

Council Member Gregory stated that another aspect of development was to encourage homes that exceeded the current standards in terms of sustainability and those types of homes should be considered in the mix of incentives.

C. ID 14-0807 Receive a report and hold a discussion regarding billboards impacted by the I-35E widening project.

This item was not considered.

Following the completion of the Work Session, the City Council will convene in a Closed Meeting at 2:54 p.m. to consider the specific items listed below under the Closed Meeting section of this agenda.

1. Closed Meeting:

Item 1.D. was considered.

D. ID 14-0850 Consultation with Attorneys - Under Texas Government Code, Section 551.071

Consult with and provide direction to City's attorneys regarding potential litigation and legal issues and strategies associated with the City's sign code and sign regulations, where a public discussion of such matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Council reconvened in Open Session at 3:45 p.m. Council returned to the Closed Meeting at 3:48 p.m. to consider the following:

- A. ID 14-0821 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the acquisition of real property interests located in the David Hough Survey, Abstract Number 646, located generally in the 3900 block of Quailcreek Road, located 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 real property interests referenced above where a public discussion of these legal matters would 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, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. (Mayhill Road Widening and Improvements Project & Municipal Landfill: Parcel M139 - Robert Donnelly)

- B. ID 14-0824 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Discuss, deliberate, receive information from staff and provide staff with direction pertaining to the acquisition or the condemnation of fee simple tracts, utility easement tracts, slope easement tracts, drainage easement tracts and temporary construction easement tracts for the Bonnie Brae Street Widening and Improvements project, the limits of which are generally between the intersection of Bonnie Brae Street and Interstate Highway 35 East and the intersection of Bonnie Brae Street and U.S. Highway 380, affecting real property tracts in the Robert Beaumont Survey, Abstract No. 31, the Buffalo Bayou, Brazos and Colorado Railroad Survey, Abstract No. 192, and the Eugene Puchalski Survey, Abstract No. 996, in the City and County of Denton, 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.

- C. ID 14-0833 Deliberations regarding Real Property - Under Texas Government Code, Section 551.072; Deliberations regarding Consultation with the City Attorney - Under Texas Government Code, Section 551.071; Deliberations regarding Economic Development Negotiations - Under Texas Government Code, Section 551.087.

Receive a report and hold a discussion regarding legal and economic development issues regarding economic development incentives for a business prospective in the Cole Ranch Development. This discussion shall include commercial and financial information the City Council may receive from the business owners which the City

seeks to have locate, stay, or expand in or near the territory of the City, and with which the City Council is conducting economic development negotiations, including the offer of financial or other incentives. Also hold a discussion with the City's attorneys on the referenced topic where the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

- E. ID 14-0847 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff, discuss, deliberate, and provide staff with direction regarding real estate matters related to the site selection for the DME Hickory substation, presently located at the intersection of West Hickory and South Bonnie Brae in the City of Denton, Texas, and concerning certain real property within the immediate vicinity, and the potential acquisition of real property interests. Consultation with the City's attorneys regarding legal issues associated with the condemnation or acquisition of the real property interests where a public discussion of these legal matters would 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, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

- F. ID 14-0796 Consultation with Attorneys - Under Texas Government Code, Section 551.071.

Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including: Constitutional limitations, statutory limitations upon municipal regulatory authority; statutory preemption and vested rights; impacts of federal and state law and regulations; impacts of gas well drilling upon protected uses and vice-versa; moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance, both current and proposed; settlement matters concerning gas well drilling in the City; surface development issues involving surface and mineral estates; and legal matters associated with a citizen's initiative ordinance and pending litigation styled Jerry Patterson, Commissioner, Texas General Land Office v. City of Denton Texas, Cause No. D-1-GN-14-004628 currently pending in the 53rd District Court of Travis County and Texas Oil and Gas Association v. City of Denton, Cause No. 14-09833-431 currently pending in the 431st District Court of Denton County regarding hydraulic fracturing where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

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. ID 14-0838 Denton Humanity Restored's Actively Caring for People Month

Mayor Watts presented the proclamation for Denton Humanity Restored's Actively Caring for People Month.

3. CONSENT AGENDA

Council Member Hawkins motioned, Council Member Ryan seconded to adopt the Consent Agenda and accompanying ordinances and resolutions. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Ordinance No. 2014-423

A. ID 14-0736 Consider adoption of an ordinance of the City of Denton, Texas, amending Ordinance No. 2013-335, prescribing the number of positions in each classification of police officer; providing a repealer clause; and declaring an effective date.

Ordinance No. 2014-424

B. ID 14-0815 Consider adoption of an ordinance authorizing the City Manager to execute an Interlocal Agreement with the Texas Woman's University (TWU) under Chapter 791.001 of the State of Texas Government Code, to authorize the City of Denton to provide five (5) electronic tickets writers including software, implementation services, training and licensing fees, which will be loaned to the TWU Police Department to assist with Class C Misdemeanor enforcement; authorizing the expenditure of funds therefor; and declaring an effective date (File 5706).

Ordinance No. 2014-425

C. ID 14-0816 Consider adoption of an ordinance of the Council of the City of Denton, Texas accepting a proposal and awarding an "Agreement for the P.L.U.S. One program by and between the City of Denton, Texas and Interfaith Ministries, Inc." for a utility assistance program for low-income Denton residential households in an amount not-to-exceed \$100,000 per year; providing for the expenditure of funds therefor; and providing an effective date (RFP 5630-Utility Assistance Program for the City of Denton, Texas-for a one (1) year term with two (2) one year renewal options). The Public Utilities Board recommends approval (7-0).

Ordinance No.2014-426

- D. ID 14-0818 Consider adoption of an ordinance of the City of Denton, Texas authorizing the approval of a Fifth Amendment to a contract with Mann Robinson and Sons, Inc. for the procurement of services and materials to prepare substation sites and transmission line easements for construction; providing for the expenditure of funds therefor; and providing an effective date (RFP 5086-providing for an additional expenditure amount of \$595,000 with the total contract amount not-to-exceed \$2,975,000). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2014-427

- E. ID 14-0819 Consider adoption of an ordinance of the City of Denton, Texas authorizing the approval of a Fourth Amendment to a contract with Falcon Steel Company for the procurement of galvanized, tapered, steel structures for substations for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5115-providing for an additional expenditure amount of \$415,000 with the total contract amount not-to-exceed \$2,075,000). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2014-428

- F. ID 14-0822 Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager, or his designee, on behalf of the City, to exercise the options to purchase real property, and to purchase real property, generally located in the 100 block of N. Bonnie Brae ST., 2500 block of W. Hickory St., and 2300 block of W. Oak St., Denton, Denton County, Texas, which is for the public use of expansion, construction, maintenance, operation, and improvement of electric transmission and distribution lines, facilities, and structures, including substations, from John R. Lott and his related entities, for the total purchase of \$1,500,000.00; authorizing the expenditure of funds; and, providing an effective date.

Ordinance No. 2014-429

- G. ID 14-0829 Consider adoption of an ordinance accepting competitive proposals and awarding a public works contract for the construction of storm drain, water, and sanitary sewer improvements for the McKinney Street Substation addition; providing for the expenditure of funds therefor; and providing an effective date (RFP 5610-awarded to Nu-Way Construction in the not-to-exceed amount of \$184,505.75.) The Public Utilities Board recommends approval (6-0).

Resolution No. 2014-044

- H. ID 14-0831 Consider approval of a resolution of the City of Denton, Texas, adopting the City of Denton's 2015 State Legislative Program for the 84th Texas Legislature; and providing an effective date.

Ordinance No. 2014-430

- I. ID 14-0836 Consider adoption of an ordinance of the City Council of Denton, Texas authorizing the City Manager to execute a Sewer Main Pro-Rata Reimbursement Agreement by and between the City of Denton, Texas and Peck Construction, LLC for reimbursement of the costs of building a sewer main, through pro-rata charges

paid to the City; authorizing the transfer of funds pursuant to the agreement; and providing an effective date.

Approved the minutes listed below.

J. ID 14-0846 Consider approval of the minutes of October 21, 2014 and October 28, 2014.

Ordinance No. 2014-431

K. ID 14-0856 Consider adoption of an ordinance of the City of Denton, Texas, authorizing a Special Called Joint Public Hearing with the City Council and the Planning and Zoning Commission to be held on Tuesday, January 6, 2015, pursuant to Texas Local Government Code §211.007(b) at the City Council Chambers at 6:30 p.m., to consider recommendation and possible action upon an ordinance amending Ordinance No. 2014-137, as amended, which established a moratorium of the acceptance, processing and approval of certain applications related to gas well drilling and production activities; prescribing notice of the joint meeting pursuant to Texas Local Government Code §211.007(d); providing for a recommendation by the Planning and Zoning Commission; superseding the provisions of all ordinances on the same subject matter to the extent of a conflict; and providing for an effective date.

4. CONCLUDING ITEMS

A. 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.

Mayor Pro Tem Engelbrecht noted several commercial items the Denton Convention and Visitors Bureau were selling.

Council Member Hawkins requested an Informal Staff Report on the Amber Alert system.

Council Member Johnson recognized the Boy Scouts in attendance at the meeting.

Mayor Watts requested an update on the tree ordinance along with recommendations for guidelines on the tree fund to include a firm time frame when it was coming back to Council.

Mayor Watts requested an update on his request for a time line of the permitting of projects

B. Possible Continuation of Closed Meeting of Closed Meeting topics, above posted.

There was no continuation of the Closed Meeting.

Special Called Session of the City of Denton City Council on December 16, 2014 at 6:30 p.m. in the City Council Chambers located at City Hall, 215 E. McKinney Street, Denton, Texas.

1. **PUBLIC HEARINGS**

- A. DCA14-0009 Hold a Joint City Council and Planning and Zoning Commission Public Hearing to receive public input, consider, make recommendations and/or take appropriate action, including adoption, concerning an ordinance amending Subchapters 5, 7, 16 and 22 of the Denton Development Code, relating to Gas Well Drilling and Production, Definitions and Procedures; amending Ordinance No. 2013-248, relating to planning and development fees and road damage remediation fees relating to gas well drilling and production activities; adding new Subchapter 22A to the Denton Development Code, relating to Oil and Gas Pipelines, Definitions, Procedures; providing a cumulative clause; providing a severability clause; providing for a penalty; and providing for an effective date.

Mayor Watts opened the public hearing for the Council and Chairman Thom Reece opened the public hearing for the Planning and Zoning Commission.

Darren Groth, Gas Well Administrator, presented an update on the gas well ordinance. The meeting agenda would include background information, information on the Inspections Division, Ordinance Revisions and Project Timelines.

Background – this section provided an understanding that a problem moving forward involved how to effectively regulate new activity at existing sites in the City. Note that nothing contained in these proposed ordinance amendments was intended to supersede the hydraulic fracturing ban ordinance adopted by the voters on November 4, 2014. He reviewed the underpinnings of the revisions from various articles regarding vertical wells and horizontal wells.

Guiding Principles – these principles showed that impacts were minimized by co-locating multiple wells on a single site, the Barnett Shale field rules allowed one gas well per 20 leased acres, mineral owners were allowed access to their minerals from within the leased property and good regulation of gas well activities must address more than setbacks and limit occupation of critical city open space for surface development.

Inspections Division – the Inspections Division was founded in 2011 with a task to review and approve drilling site applications; permit and inspect gas, oil, and injection wells, and maintain maps and data for every well. The Gas Well Inspections Division created a quick reference code for simple access to their website from any Smartphone. The Division website had a user friendly main page with simple icons for ease of use and contact information, contained news and litigation links to provide information related to the City's gas drilling oversight program and pending litigation. The locator application allowed easy search to view detailed gas well

location information and contained interactive maps that were accessible on multiple platforms. There were data pages available for in-depth research of gas wells located within Denton's jurisdictional areas.

Ordinance revisions - Chapter 22 reorganization – The objective of the reorganization was to facilitate the use and understanding of the procedures and to organize substantive standards by subject matter. Two version of the ordinance were available on line for review. The redlined version showed the language changes and a clean copy of the new language. Some sections were deleted and others were added.

Production monitoring – this was a new program with inspections by a 3rd party retained by the City at the cost to the operator to determine if equipment was properly functioning.

Frequency of pad site inspections - this provision would allow for inspections depending on a priority based on distance from a protected use.

Pipeline regulations – this was a new program that fulfilled the objective to capture all authority allowed under state law in order to map gas pipelines within the city of Denton and the ETJ.

Gas well Notification Disclosure – this was a new program in which surface plats would note the location of the pad site, the existence of wells, the possibility of new wells, the possibility of more drilling and fracturing, and the possibility of re-working. The disclosure would also have a Declaration of Restrictive covenant to advise purchasers of the existence of wells. This notice document would be recorded in County Clerk's Office.

Council Member Roden questioned when the average home buyer would see the notices.

Aaron Leal, Deputy City Attorney, stated that most home buyers do not purchase outright with cash. They get a home loan and the information would be part of the financing mortgage title. That information would also be available for any subsequent buyer.

Council Member Gregory noted that someone driving through neighborhood and saw a structure with no sign on it might not know what it was. He asked if there was anything in the ordinance regarding physical signage of the property.

Groth stated that a notice would be required in the form of a sign at the well site identifying who operated it, how to access the operator and the wording of the larger paragraph wording.

Council Member Roden asked for a report on why the other options were not chosen for notification.

Mayor Watts asked how information was being provided about the website, maps and well site designations.

Groth stated that they were addressing ways to do that through social media. Staff would formally adopt a program to get the word out regarding the website.

Mayor Watts stated that there may be an opportunity to lobby the Texas Real Estate Association and to put the information on the seller's disclosure form.

Commissioner Connor stated that realtors were obligated to report prior problems with the homes and questioned if they were obligated to report gas wells.

Groth indicated that he would research that issue. He continued with Co-Location. The objectives of co-location were to minimize surface impacts, select optimum surface site location within leased acreage, capitalize on technological advances to require co-location of multiple wells on a single site, open land for surface development and restrict leased acreage from future gas well development.

Co-Location Proposal - new wells would require a consolidated site with a consolidated permit required for existing sites and combining district for new sites. One site would be selected for all new gas wells. There were acreage restrictions under both scenarios.

New Site Co-location – required legislative approval by the Planning and Zoning Commission and the City Council. For new sites, an optimum site would be selected based on multiple factors. An overlay zoning district would impose restricting the entire leased acreage with the possibility of mitigating conditions being imposed. A Combining District could be used for new sites within acreage containing an existing site or for existing sites at the operator's option.

The proposal for existing sites co-location would require administrative approval by the Gas Well Administrator. Step 1 included all continuous leased acreage would be considered in a review with the operator having an opportunity to present impediments to the Zoning Board of Adjustment. Step 2 involved one site approved for additional wells based on the largest setback. The entire remaining acreage would be restricted from future drilling.

Council Member Roden asked what would be the avenue for a developer of a new site to know the administrative process.

Groth stated that there would be a similar process to what currently existed. Any new site would need administrative approval. The application required the ability to locate the site on the property with cooperation between the developer and owner of the property.

Council Member Roden questioned what would trigger the surface developer into the discussion.

Groth stated that the operating lease would have to be re-negotiated with the owner of the property. The applicant would be required to sign and attest to have notices of the surface owner and the ability to submit it on behalf of the surface owners.

Council Member Gregory questioned if there was a step where the surface owner had an opportunity to weigh in on the location of the sites.

Groth stated that Step 1 could have the surface owner sign the application but staff would look at when to have that step included in the process.

Mayor Watts stated that in zoning tract hearings, notifications were sent out and in that case, the surface owner would be notified.

Groth stated that if the proposal were in a public hearing process the notice area would be quite large and the adjoining property owners would also be notified.

Terry Morgan, Attorney Consultant, stated that a requirement could be added to notify each surface owner which would not be the same as an administrative review.

City Attorney Burgess stated that an applicant had to provide proof of the surface uses which could be an easy addition to the administrative portion.

Morgan stated that this would not be to require consent but rather just a notification.

Groth continued with limits on administrative approval for existing site. The objectives were to seek the greatest setback distance, identify the drill site that would have the least impact to the greatest number of surface uses, minimize the number of drill sites by restricting a greater amount of acreage, and open additional acreage in the interest of the general public and future development.

Mayor Watts questioned what the second objective was being used for and if that would be a place where the surface owner would have some impact on the selection.

Groth stated that it could be used for that depending on whether the lots were platted or if there were homes already near the site.

Commissioner Connor stated that based on the footage, the surface use would be limited because with setbacks as a radius there would be 1000-2000 feet in setbacks. Using such a radius, half of the land could not be used for surface structures.

Groth stated that was not the intent as that would fall under reverse setbacks with two different criteria. He continued with limits on administrative approval for existing sites. For leased acreage less than or equal to 160 acres, the minimum setback would be 1000 feet. Over 160 acres, the minimum setback would be 800 feet. Reverse setback for an existing site was a 300 foot radius from the pad site to the structure. If the site were co-located, the distance would be a 600 foot radius.

Council Member Johnson asked whether the distance was from the edge of the pad site based on how the pad site boundaries were designed.

Groth stated that it would be by definition on the plat. Some were not clearly defined but a standard pad site definition would be used. The 100 foot offset would be before the 300 foot setback.

Council Member Johnson asked what impact that would have to surface development.

Groth stated that it would be an opportunity to limit the number of sites. It would allow for additional development and open the land for development with restrictions from future development of pad site.

Council Member Roden stated that the scenarios assumed that the operator had come to table first and identified which sites to co-locate and which sites were regular sites. In the scenario where there was development of the surface before the operator made the decision, the default setback would be 300 feet and the operator would be out of luck for those sites.

Groth stated that a consideration for a regular site was that there could be several applications of co-located sites before development. If development occurred, the limit was 300 feet with no mechanism to get to a 300 setback distance. The developer would have to look for a new site for a well from the development but not at the existing location.

Groth continued with the insurance provisions. The provisions were reviewed by expert coverage attorney. A certificate of insurance would be required and a copy of endorsements adding the City as an additional insured. The permit would be suspended if the insurance was cancelled. The insurance would have to be issued by a financially sound company. The provisions for the general liability, environmental impairment and auto liability provisions were noted. Provisions would also be provided for worker's compensation, an umbrella liability and control of the well. He presented the project timelines reviewing the current requirements and the proposed timeline.

Commissioner Briggie asked about the production monitoring and what that included.

Groth stated that it would be a third party monitoring to make sure the equipment on site was properly functioning. The goal was to check for equipment that was maintained, inspected and tested to assure proper operating integrity and reliability. It was not sampling of the air, water, etc.

Commissioner Briggie asked if there would be surprise inspections.

Groth stated that the inspection might vary but that there would have to be coordination on the location. Some inspections could be done at any time but other sites wanted someone there when doing the inspection. There might not be activity on some of the sites depending on they were in the process.

Commission Briggie stated that she would hope that the inspections would not be announced in order to get the best type of inspection.

The following individuals spoke during the public hearing:

Ed Ireland, Executive Director of Barnett Shale Energy Education Center, felt that more time was needed for input into the process. He spoke on a number of the items in the proposed ordinance.

Council Member Gregory stated that Mr. Ireland was asking to consider an extended period of time over 90 days. The current moratorium was scheduled to end January 20th and he questioned Mr. Ireland if he was in favor of an extension of the moratorium.

Ireland stated that it would be better to extend the moratorium than to enact an improper ordinance.

Cathy McMullen, 805 Ector, Denton - requested further revisions for health, safety and quality of life for Denton's residents. Among her suggestions were no flaring or venting, vapor recovery units on all equipment, no open pits, use a closed mud loop system, air monitoring through all phases through production, and no lift system. If the ban was overturned all flowback include pressured flowback tanks and final approval for variances go to Council.

Jeff McClung, 2018 Longmeadow, Denton - provided suggestions for vapor recovery units to be mandatory for all sites, air sample and water samples should be taken.

Adam Briggles, 1315 Dartmouth, Denton - in favor of the co-location idea, reverse setback distances were still minimal, audience for this disclosure for renters, agreed that there needed to be a way to encourage ongoing compliance, how to respond to complaints, and air and water monitoring in addition to equipment monitoring.

Jonathan Adams, 2210 West Woodrow, Denton, felt that the industry did not need to be self-regulated.

Cindy Spoon, 2210 Westwood – among her suggestions were that the moratorium should be extended, monitor air and water, inspections should be a surprise, vapor recovery units, increase distances in reverse setbacks, and enforcement plan for the ban.

Guy Claussner, 4124 Selene, Denton – concerned about third party inspections instead of the City doing the inspections and agreed with air, water and soil testing.

Comment cards were submitted by the following:

Betty Farmer, 947 Hilltop Road, Argyle - opposed to the ordinance

Ken Gold, 2512 Natchez Trace, Denton, 76210 – in favor

Additional speakers included:

Ed Soph, 1620 Victoria, Denton – spoke on insurance requirements, the need for precautionary measures, the need for monitoring and baseline studies, protection for health and safety of residents, and meaningful signage around wells.

Angie Holliday, 419 Fulton, Denton – requested various measures some of which included monitoring of air, water and soil, surprise inspections, extension of the moratorium, vapor recover units, no flaring in city limits, no open pits and an enforcement plan for the ban.

Taralynn Hunter, 118 Bernard, Denton – suggested various measures some of which included quarterly inspections for all well sites, surprise inspections, air, water and soil testing done by a 3rd party at the industry expense, no flaring or venting, vapor recovery units, no open pits and no compressor stations.

Taylor Breckenridge, 904 West Hickory, Denton – commented on the same concerns as those before him.

Council Member Ryan motioned, Mayor Pro Tem Engelbrecht seconded to continue the public hearing to the January 6, 2015 Council meeting.

Council Member Hawkins requested additional information on the Ireland scenario.

Commissioner Connor asked what kind of vehicle could be put in place so that when changes were made to the ordinance, there wouldn't have to be a public hearing every time or was that a requirement.

City Attorney Burgess stated that the objective was to encourage as much information into a public hearing to make decisions. Council would have an opportunity after receiving a Planning and Zoning Commission recommendation to consider additional comments so that would be handled just a bit different.

Commissioner Connor questioned that as the law changed and the ordinance would have to change would it have to come back to the Commission every time.

City Attorney Burgess replied no that after the Commission made a recommendation it would come to Council and Council would consider it on January 6th.

Council Member Gregory requested that staff provide the Commission and Council a list of the concerns from citizens and the industry for consideration. He questioned what type of enforcement provision was included in the fracking ban passed by the citizens and how that guided staff.

City Attorney Burgess stated that the initiative ordinance passed by the citizens included a penalty provision which included a fine only penalty Class C misdemeanor. It did not involve arrest or jail time. However, there were other provisions of the Code of Ordinance that allowed for injunctive relief that was the possibility for all city ordinances. Staff could look at the initiative ordinance or other code provisions for relief.

Council Member Gregory asked for a definition of injunctive relief.

City Attorney Burgess stated that it was a process where a party could go into Court to stop an activity such as temporary restraining order.

Council Member Roden suggested adding to the list the idea to explore with the TCEQ and the Railroad Commission to work in partnership with cities for items such as monitoring. He

requested information on pending applications and implications to the ordinance, educational information be put on the website regarding monitoring and production monitoring.

On roll vote to continue the public hearing to the January 6, 2015 Council meeting, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Following the completion of the public hearing, Council did not meet in a joint Closed Meeting.

With no further business, the meeting was adjourned at 9:25 p.m.

CHRIS WATTS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS