

# CITY OF DENTON CITY COUNCIL MINUTES

February 23, 2016

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, February 23, 2016 at 1:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Council Member Roden, Council Member Johnson, Council Member Hawkins, Council Member Briggs, Mayor Pro Tem Gregory, Council Member Wazny and Mayor Watts.

ABSENT: None.

## 1. Items for Individual Consideration

- A. ID 16-356 Reconsider the approval, on February 16, 2016, of a resolution of the City Council, City of Denton, Texas, stating the conditions and circumstances for the sale of 1224 N. Bonnie Brae St., Denton, Denton County, Texas, to Jose Alfredo Rivas and the public purpose achieved by said sale.

Mayor Watts reviewed procedures on how this portion of the meeting would be handled. All of these items were interrelated so speakers would be allowed to speak on each agenda item.

Speaker Cards were submitted by the following:

Ken Gold, 2512 Natchez Trace, Denton, 76210 - support for reconsideration  
Sam Alexander, 3219 McReynolds Road, Sanger, 76266 - opposed to the process  
Bob Clifton, no address given – support for reconsideration

Item died for lack of a motion.

- B. ID 16-354 Consider the approval of a resolution of the City Council, City of Denton, Texas, stating the conditions and circumstances for the sale of 1224 N. Bonnie Brae St., Denton, Denton County, Texas, to Jose Alfredo Rivas and the public purpose achieved by said sale. (This item to be considered only if a Motion for Reconsideration of the foregoing agenda item is approved.)

This item was not considered as there was no motion for reconsideration.

- C. ID 16-357 Reconsider the approval, on February 16, 2016, of an ordinance of the City of Denton approving the sale of 1224 N. Bonnie Brae St., Denton, Denton County, Texas ("Property"), to Jose Alfredo Rivas ("Rivas"), as Buyer, for the purchase price of One Hundred and Seventy Five Thousand Six Hundred and Ninety Eight Dollars and Eight Cents (\$175, 698.08) as stated in the One to Four Family Residential Contract ("Contract"); authorizing the City Manager in accordance with Texas Local Government Code 272.001(k) to execute a deed to Rivas together with any other documents necessary to sell and convey the Property; and providing an effective date. (Hickory Street DME Substation)

Bob Clifton submitted a Speaker Card in opposition.

Council Member Roden questioned if a staff presentation could be made before Council considered the reconsideration.

City Attorney Burgess stated that a staff presentation could be done before consideration of the reconsideration.

Council Member Hawkins agreed with having a staff presentation before reconsideration.

Mayor Watts stated that based on the request from some council members for a presentation from staff and the determination that it was a proper posting, there would be a staff presentation prior to a decision for reconsideration.

Sam Alexander submitted a Speaker Card and spoke against the allowance of a staff presentation at the meeting and requested that he be allowed to speak after the staff presentation.

Council Member Roden stated that there was nothing in the Council's Rules of Procedures to allow for rebuttal of presentation.

Council Member Johnson stated that there were times during Items for Individual Consideration or Public Hearings when questions or items were presented during the discussion and it was not out of the norm to allow staff to make a presentation.

Mayor Watts stated that the question on the table was whether it was appropriate to have a full presentation that was not provided in backup and his comment was that Council was not precluded from asking questions and having staff reply in order to receive information. He questioned if the presentation was not posted with backup was it lawful to bring that presentation forward or more of a question/answer session from Council.

City Attorney Burgess stated that the test was the posting of the agenda as to whether or not appropriate notice was given with regard to the general topic to be discussed. The notice, in her opinion, was appropriate so the posting was appropriate. Council could discuss whatever was necessary regarding the item. The motions for reconsideration were done quickly as the Council's rules indicated that they had to be made at the next official meeting of the Council. The posting was appropriate with discussion as long as it was within the posting.

Mayor Pro Tem Gregory stated that it was not unusual for Council to have questions to staff generated by Council or by citizen emails even with agenda items with backup. This was not an unusual procedure. A request had been made from a Council Member to reconsider two votes and there were lots of questions since that time. Staff spent hours preparing information so as Council reconsidered the items, there would be the information needed to make a decision.

Mayor Watts stated that any information provided by staff at the time was a response to questions from Council and he would allow staff to make a presentation.

Council Member Roden stated that a power point was just a different method of discussion. He requested a walk-through the history of the acquisition of the house from start to finish.

Larry Collister, Deputy City Attorney, reviewed the history of the Bonnie Brae Transmission line and the Bonnie Brae transmission line lawsuit. He noted that the city did not purchase additional easement as the additional transmission line energizing was not done.

Council Member Johnson stated that the City came to own the house in a proper way. There had been commentary that the owner was forced to sell or the City was going to take it through eminent domain. Staff had indicated that the City did not acquire any right of way on Bonnie Brae at that time. The City came to own the house as a settlement of the lawsuit.

Collister that there was no eminent domain or process to acquire easements at this time for the 138kV line.

Council Member Briggs questioned why the City wanted to buy this home instead of paying out the settlement.

Council Member Roden stated that at the last Council meeting claims were made that Mrs. Roth had made attempts to keep home and garage. He requested information on the insight into those requests.

Collister stated that the negotiations took place between the two attorneys. It was his understanding that there was never a request made of the City to settle by removing part of her structure.

Council Member Roden stated that another statement was made that Mrs. Roth settled in a state of duress.

Collister that looking at the lawsuit, every plaintiff was represented by an attorney and also had citizens telling them what to do. All he knew was that the agreement was done with the attorney

Council Member Wazny stated that the City would be reimbursed the purchase of house through ERCOT.

Collister stated he did not know how that was done.

Council Member Hawkins asked for the appraisal of the house.

Collister stated that it was appraised at \$97,500. The City put a new roof on the home and items needed to be done to it.

Mayor Pro Tem Gregory stated that as a result of the settlements the City now had the easement to accommodate the 138kv line.

Collister replied correct for every property involved in the lawsuit.

Galen Gillum, Executive Manager of Administration, stated that a question asked was why only this home was purchased rather than the easement. The amount of easement necessary for the future line was such that removal of the garage was necessary. In order to settle the suit the offer was made to buy the house.

Council Member Briggs questioned if there were other properties in the easement.

Paul Williamson, Real Estate and Capital Support Manager, stated that when there was a bisection of a property, it was difficult to occupy the property and the City work when tenants were in the structure. Permission would have to be granted to get on the property with a large liability to touch the property. On bisections such as these, part of the project was removal of the structure. In a settlement on a case by case basis, the legal strategy for the settlement was purchasing the property. The alternative was to prove the case of inverse condemnation. Mrs. Roth had an opportunity to prove the case but she opted to settle the claim.

Council Member Wazny stated that the City would be reimbursed \$137,500 from ERCOT. She asked if there was legal proof that the City would get reimbursed for the house and not just for the easement.

Phil Williams, General Manager-DME, stated that staff had asked for a legal opinion from the Austin attorney on this issue.

City Attorney Burgess stated that the City would submit the filing to ERCOT and they would review and rule on the amount of the reimbursement. In these kinds of negotiation settlement agreements there was damage to the remainder of the property not taken. The remainder of house might be an issue in the negotiations. The City would take the whole property in many of these cases. This had not yet been filed with ERCOT.

Williams stated that the legal proof was filed in three previous documents and in those documents it had been allowed.

Council Member Johnson asked for a point of clarification as to why only this house was bought.

Williamson stated that in terms of other residential structures, there were three outstanding residences not part of the lawsuit. Staff was working on future needed easements. This was the only one that that such an intrusion that it made sense to purchase the house based on the degree of encroachment as a large amount of the garage was in the easement.

Council Member Roden stated that the process was now at a point as to whether or not to continue to sell the house to Mr. Rivas. This was not the first action that was taken on this item. He requested information on the actions that led to this action.

Gillum reviewed the timeline for the Rivas Relocation and the breakdown of expenses for the home.

Mayor Watts stated that if lawsuits such as inverse condemnations went to trial there was a range of options other than outright purchase.

City Attorney Burgess stated correct and that the issue would be amount of damage to the taken property; the value of the property being taken for City needs.

Council Member Roden stated that if there was no motion on this reconsideration, then the original ordinance would stand and the effect was that the City agreed to sell the house as previously promised.

City Attorney Burgess stated that was correct.

Mayor Watts stated that he did not believe the City did anything wrong in the process. This was a day of celebration for spirit of the law as well as letter of the law. It was also a celebration for Mr. Rivas and a celebration for Ms. Brock who did legal work pro bono.

Item C. failed for lack of a motion.

- D. ID 16-355 Consider the approval of an ordinance of the City of Denton approving the sale of 1224 N. Bonnie Brae St., Denton, Denton County, Texas ("Property"), to Jose Alfredo Rivas ("Rivas"), as Buyer, for the purchase price of One Hundred and Seventy Five Thousand Six Hundred and Ninety Eight Dollars and Eight Cents (\$175,698.08) as stated in the One to Four Family Residential Contract ("Contract"); authorizing the City Manager in accordance with Texas Local Government Code 272.001(k) to execute a deed to Rivas together with any other documents necessary to sell and convey the Property; and providing an effective date. (Hickory Street DME Substation) (This item to be considered only if a Motion for Reconsideration of the foregoing agenda item is approved.)

This item was not considered as there was no motion for reconsideration.

Mayor Watts announced that Council would be going into the Closed Session.

Following the completion of the Open Meeting, the City Council convened in a Work Session in the Council Work Session Room.

Mayor Watts stated that Council went into the Closed Session briefly but was now in Open Session.

1. Work Session Reports

- A. ID 16-253 Receive a report, hold a discussion, and provide staff direction regarding Ordinance 2014-112 Use of Wireless Communication Devices while Driving.

Lee Howell, Police Chief, stated that Council had requested to revisit the use of communication devices while driving. He reviewed the history of how the City got to the current ordinance and the legislative lack of implementation on the State level. Other cities had varied ordinances but primarily prohibit texting. There were a few with no usage but with hands free devices.

Council Member Brigg questioned how many tickets had been issued since the ordinance was passed.

Howell stated that in 2014 there were 152 tickets issued, mostly in school zones. In 2015 there were 149 issued city-wide and 22 so far this year.

Mayor Pro Tem Gregory stated that a prior discussion there was a recommendation from the Police Department regarding enforcement. That it was easier to enforce if there were a complete ban.

Howell stated that the enforcement had to be done primarily by observation. Currently it was hard to determine by observation if an individual was texting or using the device in an acceptable manner.

Council Member Johnson asked if the ordinances with complete bans addressed voice commands.

Howell stated that the ordinances allowed hands free use and definitions would allow voice commands.

Mayor Pro Tem Gregory asked how similar the ordinances such as Little Elm and Argyle were to each other.

Howell stated that there were few differences. Both allowed hands free use in any regard and prohibited the holding of the device in hand for any reason.

Council Member Wazny stated that she liked the idea of hands free and would like to discuss with citizens to see how they felt about it. She suggested looking at other ordinances and see what was include in those ordinances.

Council Member Roden stated that at a prior discussion there was not much opposition to a texting ban but many citizens felt that an outright ban was taking away a liberty. He would like good feedback from the community at this point.

Mayor Pro Tem Gregory felt it was necessary to get a clear sense on where the Council was now with the issue. This would take a lot of time and energy to go in this direction if not supported by Council.

Council Member Hawkins suggested having the Traffic Safety Commission look at the issue again for a review of the issue.

Council Member Johnson was in agreement to not do anything until Traffic Safety engaged a wide cross section of citizen comments.

Consensus of the Council was to send the issue to the Traffic Safety Commission for a survey and consideration.

Council went into the Closed Meeting at 3:03 p.m. to consider the following items.

1. Closed Meeting:

- A. ID 16-300 Consultation with Attorneys - Under Texas Government Code, Section 551.071. Consult with the City's attorneys regarding the present status of the implementation of a new Pole Attachment License Agreement and a new City Right-of-Way Agreement, and the status of claims for unpaid pole attachment fees by Verizon; discuss deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matters. A public discussion of this legal matter 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.
  
- B. ID 16-324 Consultation with Attorneys - Under Texas Government Code, Section 551.071. Deliberate and consult with and provide direction and recommendations to the City's attorneys regarding the status of (i) negotiations with Zayo Group, LLC, regarding their use of City right-of-way for fiber placement via Denton ISD's agreement with the City; (ii) the implementation of a new Pole Attachment License Agreement; (iii) the implementation of a new City Right-of-Way Agreement; (iv) possible ancillary agreements related to both agreements; (v) the status of claims for unpaid pole attachment fees by Verizon; (vi) pending complaints before the Texas Public Utility Commission (Extenet Network Systems, Inc. against the City of Houston - No. 45280; and, Crown Castle NG Central, LLC against the City of Dallas - No. 45470) regarding the imposition of license agreements and fees for use of public right-of-way and the potential impact on the City; and (vii) pending federal legislation related to the use of public right-of-way for wireless communication. A public discussion of these 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.
  
- C. ID 16-330 Consultation with Attorneys - Under Texas Government Code, Section 551.071. Consultation, discussion, deliberation and receipt of information from the City's attorneys involving legal matters relating to the City Council Rules of Procedure 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.

Following the completion of the Closed Meeting at 4:55 p.m., the Council returned to the Work Session to consider the remaining items.

- B. ID 16-260 Receive a report, hold a discussion, and give staff direction regarding the City of Denton Strategic Plan and the performance management and open data components of the What Works Cities initiative.

This item was not considered.

- C. ID 16-263 Receive a report, hold a discussion, and give staff direction regarding the City Council Rules of Procedure.

City Attorney Burgess stated that Council Member Wazny had asked Council to consider postponing this item to a later date and not base a discussion on backup provided.

Mayor Pro Tem Gregory stated that he had some recommendations for changes he would like to provide.

Council Member Roden stated that he would like to have some discussion in order to make some changes to the redlined version of the ordinance that was provided.

Mayor Watts stated that the backup red lined version of ordinance that was provided was for some topics for discussion and others might have suggestions to incorporate.

City Attorney Burgess presented areas for consideration.

Citizen's comments – the suggestion was to move all prior registration speakers to the beginning of the meeting and limit the time to 3 minutes and 4 speakers. She also suggested Council review the open mic provision.

Council discussion was to discontinue the speaker time at the end of the meetings and expand the number of speakers at the beginning with prior registration, whether to increase the number at the beginning to 4 speakers and limit to 3 minutes each, and whether to limit the number of proclamations at any given meeting.

Consensus was to have prior registration of 4 speakers at beginning and keep the speaker time at 4 minutes. There would be no speakers at the end. Posting for the citizen report should be more descriptive to let citizens know what was being discussed.

Council discussed the open mic portion of the agendas and indicated that while they were glad it was tried it appears to not be working. It was difficult to continue with the Open Meetings provisions. They would encourage citizens to use the prior registration process. Council also discussed what to do with those who signed up but did not attend the meetings.

Council noted that the meetings were for business of the City and that there were adequate opportunities for individuals to speak during the meetings.

Mayor Pro Tem Gregory suggested five speakers at the beginning of the meeting with a three minute time limit. The speakers could sign up through Thursday at noon prior to the Tuesday meeting.

Consensus of the Council was to allow five speakers three minutes to speak at the beginning of the meetings. They would have until noon the Thursday before the Tuesday meeting to sign up, a citizen report would not be allowed for an item already on the agenda, the no open mic portion of the agenda would be eliminated and Council would revisit later on people who sign up and don't show up for the meeting.

Council Member Briggs asked that a clarification be brought back for further discussion regarding citizen comments in the Work Session.



Council Member Wazny felt that council members had a right to attend board/commission meetings and suggested notifying the City Manager if someone intended to attend one of those meetings to avoid a quorum.

Mayor Pro Tem Gregory stated that these were the Council's rules and other board/commission members might feel intimidated and limit their involvement at the meetings.

2. 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.

Council Member Wazny suggested considering delaying the daily construction on Lillian Miller until the commuters gone in the morning and end before commuters came back in the evening.

Council Member Hawkins requested a planning meeting of some kind with Fire and PD for the residents regarding a time line for the construction. He suggested detour signs rather than going down Lillian Miller.

Council Member Johnson stated that at the last meeting he had made a suggestion to work all night. He requested information if that would be possible, how much that would cost and how much faster the project would be done. He also suggested shutting off the entrances to the shopping center from Lillian Miller and use the access road to get into the shopping center.

Council Member Briggs requested a report on the recent auto break-ins and the tools being using to do that.

With no further business, the meeting was adjourned at 5:50 p.m.

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CHRIS WATTS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS