

CITY OF DENTON CITY COUNCIL MINUTES

March 19, 2013

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, March 19, 2013 at 3:00 p.m. in the Council Work Session Room.

PRESENT: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden

ABSENT: None

1. Citizen Comments on Consent Agenda Items

Robert Donnelly submitted a Speaker Card for Item 4I. He indicated he was opposed to the ordinance.

2. Requests for clarification of agenda items listed on the agenda for March 19, 2013.

Council Member Gregory, speaking on Item 4I, stated that clarifications and adjustments had been made to the proposed wording based on prior Council conversations. The backup materials had an explanation on when a citizen would be able to speak to Council and when a property owner would be notified. He asked staff to review that information.

Paul Williamson, Real Estate Manager, stated that after the project was identified, the first engagement with the property owner was for a request to survey the property. That request might be as much as couple of years before the project was started. Once an area of acquisition was identified an appraisal was done, the appraiser contacted the property owner to visit the property and had interaction with the property owner. Those were two elements for active engagement with property owners ahead of an offer.

Council Member Gregory reviewed a scenario when a couple on Mayhill wanted to shift the route away from their property to the other side of the street. They had conversation with council members, did a citizen report and had numerous conversations with staff. He questioned if this proposal would that make it less possible for that kind of interaction with the Council.

Williamson stated not at all.

City Manager Campbell stated that the way the ordinance drafted it would be only for first offers pursuant to the appraisal. Any condemnation would still need Council authority

3. Receive a report, hold a discussion, and provide staff with direction regarding potential amendments to the Public Art policy.

Bryan Langley, Assistant City Manager, presented the details of the Pubic Art Policy passed in 2006. The policy stated that the City would include a base of 2% for the arts from all future capital improvement programs with the option and flexibility to increase to a 4% maximum, based on needs and economic conditions. The thought was that a single issue bond issuance would not be included in this policy. The Citizens Bond Advisory Committee and Council

recommended up to \$400,000 in public art improvements for the 2012 bond program. Voters approved the bond program on November 6, 2012.

In July 2012, the HOT Committee asked staff to consider possible amendments to the Public Art Policy. Some of the issues associated with possible amendments included (1) the Capital Improvement Program was not defined, (2) a concern regarding whether all debt issuances such as Certificates of Obligation, General Obligation bonds, Revenue bonds, etc. were subject to the policy, and (3) it appeared that public art would be a required component of a potential convention center debt issuance. In January 2013 the Council informally indicated that their intent was to only apply the policy to voter authorized bonds. At a minimum the policy needed to be clarified to reflect the intent of the Council.

Additional issues - by applying the policy to only voter authorized bonds, public art funding would be limited in time and scope. By law, public art funding could only be applied to projects closely related to bond propositions. This prevented funds from various propositions being combined to complete standalone projects. Public art projects could be independently approved by a separate proposition. The timing and amount of future bond programs was not known. As such, a more reliable, flexible and predictable source of funds was needed to properly fund public art projects.

The Public Art Committee currently served in an advisory capacity to the Parks, Recreation and Beautification Board. The reporting structure was problematic since potential public art projects may be at the Airport, Convention Center and other facilities. The policy made several specific references to the Greater Denton Arts Council but did not mention any other art groups.

Staff recommended that a new public art fund be created to support public art projects. This would maintain a minimum balance of \$500,000 but not more than \$1 million for eligible projects. The funds would be replenished periodically based on need. Additional flexibility would be created since the funds could be used for any project. It also provided more reliable and predictable funding source.

Mayor Pro Tem Kamp questioned the minimum amount of \$500,000.

Langley stated that it was to make sure there was a significant source of funding for projects. The minimum amount could be removed if Council desired.

Mayor Pro Tem Kamp questioned what would happen if a project was at that amount.

Langley stated that if a project approached all of the funding, the funding would have to be replenished the following year with the budget.

City Manager Campbell stated that currently there was no funding to do projects. The proposal was an attempt to furnish the fund at a significant amount to be able to do a project.

Mayor Burroughs questioned that if a fund were established, what restrictions would there be on the City to access those funds for other purposes such as a natural disaster. It would be awkward to remove the funds once they had been established. There were realistic possibilities that a

future Council might want to take the money out of the fund for more pressing needs. He asked what action would have to be taken to get the funds out.

Langley stated that restrictions could be placed in the policy and if a future Council wanted to change the policy it could be done. The idea was to try and have a reliable amount of money for the arts.

Council Member Gregory stated that it would be a statement that the intent was for a specific purpose and could be changed in the future.

Council Member Roden stated that currently there were no dedicated funds for public art. He questioned how projects were done now.

Lockley stated that there was approximately \$30-40,000 of HOT funds for public art. Other than that, funding would be a supplemental budget request.

Council Member Roden asked for the reason for the \$1 million cap.

Langley stated that the fund meant to be a significant amount of money but not to allocate more than resources would allow.

City Manager Campbell stated that Council could change the amount at any time as the fund grew. Council would have the ability to change the range if they wanted.

Council Member Roden asked if the fund would zero out at the end of year or would it continue to build up.

Langley stated that unspent money would remain in the fund. Staff was proposing to sell \$400,000 in GO bonds related to public art. That funding would be put in the fund with a shortage of \$100,000 for the \$500,000 minimum. The Public Art Committee talked about a public art master plan which would be \$70-80,000 for the master plan.

Langley stated that additional language was recommended which would reference various artistic groups and organizations within the community. This would emphasize that the policy was intended to engage all members of the community for public art projects. Currently the policy referenced the Greater Denton Art Council and institutions but a new group in the future would also be included.

City Manager Campbell stated the wording would provide flexibility in the future to allow other groups to participate.

Langley stated that the current Public Art Committee had two appointed members from the DGAC in addition to the seven members appointed by Council. Membership would not change on the Committee.

Council Member Gregory stated in the revised redline policy, the 2% and 4% funding from the CIP projects was eliminated. He was not comfortable deleting that wording unless there was

another stable funding source in place. He was thinking about increasing the HOT fund levels to do that.

Langley stated that there was a listing provided with potential sources for funding. Some of those included any funding source from the Council such as CIP voter approved bond election, Certificates of Obligation or any other allocation from the city funding source.

Council Member Gregory asked if the revisions would allow money from that fund to be used to develop a master plan.

Langley stated correct that Council would approve the use of the funds.

Council Member Gregory asked about funding from bonds.

Langley stated that there could be funding from every bond issuance but there would be restrictions on the use of those funds through the bonds. The funds would have to be related somehow to the projects approved or have a standalone proposition on the ballot for the funding.

Council Member Engelbrecht stated that the \$400,000 from the GO sale was going in the fund but those funds were restricted for street projects. He questioned what was gained by placing those funds in the proposed fund.

Langley stated that public art would gain at least \$100,000 which was not planned. There was no funding approved at this time for public art except for the \$400,000. As the funds were spent, they would have to be replenished by the City. The proposal would provide a funding mechanism for years to come.

City Manager Campbell stated that once the fund was created, there could be several sources of funding into the fund. Some of the funds in the account could be used for the master plan but not the money that was specific for the bond funds. Money from any other source could be used for any other project.

Langley stated that this proposal would place a priority on funding and make sure it met the funding criteria.

Council Member Watts felt it was a good idea to fund a level and source of funding for major projects. He questioned what funds would be restricted and what would be unrestricted. Funds primarily from HOT funds were restricted from the State on what they could be spent for. It would be an additional key to not using the funds for other purposes. HOT funds were restricted. He felt that the bond issuance was done and if there was a desire to create a fund, the \$500,000 would not have to be put in the fund all at once. It might take 2-3 years to get the funds up to that level.

Langley continued that staff was also recommending that the Public Art Committee advise the Council directly. This would increase communication between the Public Art Committee and Council, enhance the importance of public art in the community, and require a revision to the ordinance which established the Public Art Committee. Staff also recommended additional language be included which referenced various artistic groups and organizations within the

community. Other minor changes were proposed to clarify language and improve sentence structure.

In summary, the proposed policy revisions attempted to provide a more reliable and predictable source of funds for public art, increased flexibility for the selection of public art projects and enhanced the importance of public art in the community. If the changes were acceptable to Council, staff would prepare the necessary resolution and ordinance for consideration at a future meeting.

Carol Phillips, Chair-Public Art Committee, presented a background of the Committee. She stated that the Committee was expecting that the funding section would be reviewed and revised, but was surprised by other changes. The Committee felt that “other artistic groups and organizations” referenced in four sections was unnecessary. The proposed funding changes had merits but needed clarification and assurances. A listing of positive results from the Committee was presented.

Proposed policy revisions – the Committee requested clarification of funding from “all future Capital Improvement Programs”. It was felt that the definition needed to be clarified and set by Council without other changes to the policy. In terms of the proposed convention center, the Committee felt that the policy would not apply. Merits of the proposed public art fund included funding source for public art, and allowed a funding source not currently available on an annual basis.

Outstanding funding questions and concerns – the current funding had been tested and succeeded state and nationwide. More specific language needed to be included as to how funds could be used. The Committee’s primary goal was to complete a Public Art Master Plan in the first year funding cycle. Staff indicated that the first funding cycle would include \$400,000 from the Street CIP and \$100,000 from other sources for a total of \$500,000. This raised concerns that encumbered funds could be used over multiple funding cycles to meet the minimum balance. The Committee also questioned if in one fiscal year the \$500,000 was used in total, would the City be able to meet the \$500,000 minimum as stated. Donations from private sources should be held in a separate account and not deducted from the fund balance.

Other artistic groups – in 2005 the City reached out to the GDAC in the formation of the original policy due to its expertise and longstanding strong partnership with the City. The original document included GDAC which had served since 1970 as the umbrella organization for the arts with 37 non-profit organizational members and numerous for-profit business members. The Committee questioned if the intent was to enlarge the size of the Committee.

The Committee felt that it was a knowledgeable, committed and dedicated group. It was ready, willing and able to work openly and closely with the Council and/or staff.

Mayor Pro Tem Kamp stated that Council was not looking to expand the Committee. The use of “other artistic groups” was just an overall statement.

Mayor Burroughs stated that he had a number of issues with a set amount of funding asked for future use. He felt it would set up a lot of friction by unintentionally trying to create a positive outcome but would be very possible to do the opposite. Keeping up the fund balance would be

difficult and could be a tug of war for future Councils trying to fund. He suggested that HOT funds be increased for the consistent funding. It was much better to allow citizens in future CIP committees to make the big ticket calls. Council could have a general charge to future CIP bond committees for a standardized minimum of 2% to be allocated to arts projects and then leave it to the committee to formulate the projects and prioritize the projects. Because it would be a CIP bond process it would adjust to the financial position of the City. This would provide stability for the funds and big ticket items would come from the CIP bond committee. The funding would be narrowed to GOs only.

Council Member Roden asked how much HOT funds were currently provided.

Langley stated that it was approximately \$35,000 per year which represented 2.4% of the receipts.

Council Member Roden felt the numbers were arbitrary and once in place there could be guidance for projects on future funding and how to budget for those projects.

Mayor Pro Tem Kamp stated that the reason the policy was started in the first place was that there was no funding for public art. In 2005 the Council at that time did not think it would take this long to have another CIP bond election. The proposal would allow for other ways to fund the account. She suggested specifying that the funding would come from voter approved bonds.

Mayor Burroughs suggested including a charge to the CIP bond committee.

Mayor Pro Tem Kamp stated that once Council realized the policy could be applied to utility bonds, etc., there was a concern for funding. She felt that additional HOT funds was not a place to look for more funding as spending of those funds had specific categories on how to spend the money.

Council Member Watts stated that the Mayor's proposal revisited the issue Council had with the street issue whether to have the art funding associated with a project or a standalone proposition. With the fund COs could be used and out of that fund could do the debt payment.

Mayor Burroughs stated that his suggestion would be for a separate item and not connected to any other proposition in the GOs. The direction would be a minimum of 2% on a separate line item for public art. The CIP bond committee would determine what projects to use that funding for.

Council Member King felt that it would unhinge the frustration and not be connected. He questioned if the funds were not used in a fiscal year, would it be funded again in the following year.

Langley stated that the amount would be kept in the fund. Council could address how much to put in the fund each year.

Council Member King stated that it would make the city financially responsible on how to fund the account.

City Manger Campbell stated that it would not be an either or situation. If it were a specific project it could be a standalone item on the budget regardless of how it was funded.

Council Member Gregory asked how specific ballot wording would have to be if there was a separate proposition just for art.

Langley stated that it would have to be a capital project with a long life and no debt issuance. He would have to get with bond counsel for specifics. He felt there would not have to be individual details but a general presentation of the project.

Mayor Burroughs felt that as long as it was worded broadly enough, it would be able to meet the threshold criteria.

Council Member Watts stated that the Public Art Committee wanted a master plan and once that was in place, the Committee's recommendations would help with a clearer roadmap to funding. He felt it was not good to do something now but rather wait until a master plan was in place. He felt the first order of business would be to develop a master plan.

Mayor Burroughs stated that many master plans did not have a timeline associated with them.

Langley stated that it might not have a detailed cost analysis for projects either.

Council Member Roden stated that a master plan would give goals. He suggested starting a fund with \$80,000-\$100,000 and not a minimum balance at the immediate time. The 2005 Task Force surveyed cities and the current method of funding was the way it was done. He suggested finding out how that was done mechanically so staff would not have to redo the procedure.

Council Member Gregory stated that he agreed to the change to having the Committee report to the Council, funding in the upcoming budget for a master plan and after that was done work on the rest of the policy changes.

Mayor Burroughs suggested that the definition of bonds to be included in the policy would be CIP GOs and not any others.

Council Member Engelbrecht questioned how long it would take to complete the master plan.

Phillips replied about a year.

Council Member Engelbrecht recommended considering future updates to the Public Art Master Plan at the same time the Comprehensive Plan was updated. He asked how the maintenance of the public art would be funded.

Langley stated that the maintenance would be appropriated in the Parks budget.

Council Member Engelbrecht suggested that as part of process there be a report on the maintenance of outdoor projects.

Langley stated there was a section in the policy regarding maintenance and a budget would be developed for it.

Council Member Watts stated that for clarification, the proposal was to leave in the 2-4% and just change who the Committee would be reporting to plus tie the policy only to GOs.

Langley stated the proposal was that the funding would remain at 2-4% but only for voter authorized bond elections (GOs only) and the Public Art Committee would report directly to Council. He questioned the wording in the proposal dealing with "other artistic groups".

Mayor Burroughs felt it was not necessary to specify other groups as the GDAC was an umbrella group for many other organizations.

Council Member Roden stated that next year there would be a bond election for streets only and the policy was still in the same position as last year. Nothing had been fixed.

Council Member Watts stated that a question from the last vote was whether to have public art included in the proposition or have as a standalone vote.

Council Member Roden stated that as matter of policy, Council needed to determine if it wanted to have it included.

Mayor Burroughs stated that a single bond package such as fire stations would present a difficulty in what public art would be included in that.

City Manager Campbell stated that part of the problem was having that kind of finding tied to a percentage that was unlimited. At 2% Council would have not discretion on how to limit the amount.

Langley stated that there would be a challenge for a specific package. If there were several propositions, even with a master plan, there might not be any kind of overlay with particular projects. That would continue to be a challenge. He questioned if the Council direction was to hold on changing anything in policy until it was known what other cities were doing or limited changes.

Consensus of the Council was to do the limited changes of the reporting structure of the Public Art Committee, limiting the policy only to GOs and delete other artistic groups.

4. Receive a report, hold a discussion, and give staff direction regarding the proposed Hotel/Convention Center.

Jon Fortune, Assistant City Manager, stated that his presentation would include a historical review; project overview in terms of location, hotel/restaurant and convention center; financing for the construction and next steps. He presented information on the historical review from 1994-to present.

Project overview – this project was a collaboration between the City, O'Reilly (OHM) and UNT. It involved an Embassy Suites hotel, a Denton convention center and Houlihan's restaurant. The

site was 13.5 acres located on UNT property. The hotel and restaurant would be OHM funded while the convention center would be city funded. The total project cost was \$85 million with \$25 million of that for the convention center and \$60 million for the hotel and restaurant.

Project Overview – hotel/restaurant - OHM would lease the land from UNT. It would be funded, built and owned by OHM. The Embassy Suites would have approximately 318 suites and be 12 stories. The facility would be LEED certified. Houlihan's would have approximately 8000 square feet with 290 seats. There was an educational opportunity through the UNT School of Hospitality. The cost would be approximately \$60 million.

Council Member Gregory questioned what type of restaurant would be included and if it had to be a Houlihan's.

Fortune stated that OHM was looking for an upper level type restaurant and had a relationship with Houlihan's.

Council Member Watts stated that the \$60 million cost did not include any land costs and asked if there was an idea on the assessed value.

Fortune stated that staff had several conversations with the Appraisal District which indicated that the value of the project was on a gross income approach. The District had a multiplier that would be used for the valuations.

Mayor Burroughs asked if that include the value of fixtures, furniture, etc.

Fortune stated he would research that.

Project Overview - Convention Center – the City could lease the land from UNT with the City to fund and own the convention center. The City would not be funding the hotel. OHM would serve as architect and construction manager. The convention center would be sub-leased to OHM to operate and manage. The approximate cost was \$25 million to fund the convention center. The debt would be supported from project revenue including OHM rent.

Financing - Convention Center – the goal was to have the project be self supporting. The City would sell bonds (COs) to fund the convention center. The debt would be supported from project revenue including OHM rent. A Tax Increment Finance District would be created to help insure the project was developed. It would be located on UNT property that was currently tax exempt, the leasehold interest in the hotel would be taxable and provided an opportunity for participation by DISD and County.

Council Member Watts questioned that with a sublease, if someone wanted to rent the ballroom the rental rate would not be taxed and provide gross revenue for OHM.

Fortune stated correct. He continued with the financing of the convention center. The debt service would be funded by HOT taxes related to the development of the project. This would include HOT revenue from the convention center hotel and up to \$100,000 in HOT revenue from related convention bookings in other hotels. The debt service would also be funded with TIRZ revenue (ad valorem taxes from increased value), city sales taxes, and OHM lease payments to

the City. Those payments would be equal to the net balance of the total project revenue and the amount needed to completely satisfy the city's annual debt payment. It would begin in year three of operations.

Council Member Gregory asked if funding would be taken from other recipients of HOT funds.

Fortune stated that would not be done.

Council Member Watts questioned if the \$100,000 was committed whether the project materialized or not.

Fortune stated that this money would be dedicated to the City's debt services.

Council Member Watts stated that OHM would be make up whatever the City was short in debt service.

Fortune replied correct.

Council Member Watts asked what would happen if the DISD or County would not participate in the TIRZ.

Fortune stated it would result in an additional burden to the developer and not the City.

Mayor Pro Tem Kamp stated that the use of HOT funds had been discussed for a number of years and that the additional amount would not be taken from current recipients.

Council Member Engelbrecht questioned if there was a limitation on the spending of HOT funds.

Mayor Pro Tem Kamp stated it would depend on how the funds were allocated. They also had to be spent annually.

Council discussed the payment options, debt payment options, debt service, options for payment if obligations were not met, and future capital replacement fund.

Fortune stated that next steps involved (1) finalizing the development agreement and leases which required City Council and UNT Regents approval plus Council approval of legal services to finalize the development agreement, (2) creating the TIRZ and invite the DISD and County to participate, (3) completing the design, (4) soliciting construction bids, and (5) beginning construction.

Council Member Watts stated that a condition was to include the TIRZ.

Fortune stated that OHM would want it included as it would determine the lease agreement. The DISD would not participate until they saw the developers agreement. Without the TIRZ, OHM might not do the project.

Council Member Engelbrecht asked about how the time line for the I35 rebuild in the area would fit in.

Fortune stated that there was an 18-24 month design and construction process.

5. Receive a report, hold a discussion, and give staff direction regarding State of Texas Legislative issues, including but not limited to SB and HB 14, related to the process of issuing bonds; HB 738, related to county authority to review a petition by a Municipal Utility District located wholly within a municipal extraterritorial jurisdiction; SB 276, related to the creation of a Local Government Corporation by a transit authority; HB 1496, related to regulation of gas wells; and legislation regarding credit access (payday lending) practices.

Lindsey Baker, Assistant to the City Manager, presented an overview on the legislative session. She stated that bill filing ended on March 8th and that approximately 5700 bills had been filed. She would be reviewing a few bills that were important to the city of Denton.

SH and HB 4 related to fiscal transparency and accountability of cities. This bill would alter the process for issuance of certificates of obligation by cities and counties, and would significantly increase items required to be shown on ballots for bond elections. It would also create increased ongoing reporting requirements regarding indebtedness.

Mayor Burroughs felt this was a high priority bill as it was sponsored by the Comptroller's Office. While it was tagged as a transparency bill, Denton was already doing much of what the bill would require. What affected Denton was the ballot language issue. Part of what was suggested was that the ballot be required to present statistics about all finances of the City or any governmental entity. All bond provisions would require a list of financial data on the ballot itself. This could be done in a graph type form instead of verbiage but there were no notes of explanation required on the wording of the ballot. The discussion was that this would cause more confusion on the side of the voter. Part of his testimony was that it was not possible to educate the voter in the ballot booth. Information could be made available before hand but background information could not be on the ballot for ease of voting. There was also a proposal to delay the ability to issue COs to 45 days from the 30 days from notice. There was no reason for that delay as it was not tied to anything but in debt issuances such a delay could be a killer. This provision only affected local entities with their funds while no state funds were involved. He felt that the House subcommittee had good analysis of the bill but the Senate said very little.

Baker continued with payday lending/credit access business legislation. She stated that over 20 bills had been filed that would limit the fees and interest charged plus limit the amount an individual could access. SB 999 and 1000, sponsored by Senator Wendy Davis, were positive for municipalities in that they would permit municipal regulation of payday lenders. SB 1247, sponsored by Senator John Carona, would preempt municipal legislation particularly in zoning and police powers. A committee substitute would allow cities to regulate zoning but not police powers.

HB 1496 was related to governmental actions affecting private property rights in certain oil and gas wells. The bill would add the development of mineral rights to the list of protected private property rights, proposed to protect against a city regulation that had the effect of preventing or prohibiting the development of an oil or gas well that had been permitted by the Texas Railroad Commission and continued to expressly allow municipalities to address visual aesthetics, noise abatement and hours of operation. At this time, the bill had not moved out of Committee. This

item was also scheduled as an item for consideration on the regular agenda per the direction of Council. To date, only the Town of Flower Mound and the City of Southlake had passed a resolution in opposition to this bill.

John Cabrales, Assistant City Manager, presented an update on SB 276 and HB 1274 relating to the authority of certain transportation authorities to create a local government corporation (LGC). DCTA was in favor of these bills in order to expand their transportation facilities to allow other entities to participate in their service. DCTA would be able to issue bonds but not levy taxes. The corporation would be exempt from the bid process and could award a contract with a no bid process. Staff was concerned about a possible financial impact to services if Denton's sales tax revenues were dedicated to a project from the LGC or if it had financial difficulties. Staff was seeking direction to work with DCTA and look at amending by-laws or direction to amend legislation.

Mayor Burroughs asked if the LGC was created and defaulted on the bonds, would the DCTA be obligated to pay that.

Cabrales stated that other entities that were partnered to create that LGC would also be partnered with the bonds. The LGC would be using the credit and backing of whoever created the LGC.

City Attorney Burgess stated that it might depend on the nature of the issuance and what was pledged for support of the bond.

Mayor Burroughs stated that he had no problem with the direction of trying to expand service. The issue was for capital issuances and having 2 of the 3 member cities concurring with the issuance. Of the three paying member cities two or three have to agree to the capital issuance.

Cabrales stated that when the LGC was created, it would be a standalone entity. There currently was a discussion on the DCTA Board level whether it would take a two-thirds vote of all three cities to create an LGC.

Mayor Burroughs stated that under the current DCTA by-laws a capital project involved consent of two of the three cities to move forward. He questioned if a LGC could be formed to affect the current level of service.

Cabrales replied correct.

Mayor Burroughs stated that with the current structure the requirement was a two-thirds vote of paying cities to affect the service plan. If the LGC was formed, it would not take a two-thirds vote of the paying cities to build a capital project.

Cabrales stated correct as it would be a separate entity.

Mayor Burroughs stated that if a LGC was formed without a two-thirds vote and if a default occurred, the current paying cities of DCTA would have to absorb the cost of the default.

Cabrales stated if they pledged the sales tax revenues from the three member cities.

Council Member Roden stated that any expansion would benefit the system but he wondered if Lewisville and Highland Village were concerned about this.

City Manager Campbell stated that a meeting was planned with the three member cities during this week.

Jim Cline, President-DCTA, stated that the intent of what they were trying to do was to protect their current services. The powers of a LGC were the ones that were given to it by the founding agencies. Those powers were set up in the Articles of Incorporation. DCTA was in the process of holding discussions of a by-laws change that would include the Articles of Incorporation as one of the issues that would require a two-thirds majority. As a minimum, two out of three made a lot of sense as it would provide protection to the contributing member cities as this moved forward. A change in the long range system plan and the service plus the operating funds and capital funds that the DCTA had would have to be approved by a majority of the board and two-thirds of the financially participating cities. Expanding the system would be a benefit to the whole system. Funding of that expansion was for those who would benefit from that expansion. An example would be a rail expansion to Frisco. That would need to be a standalone entity so that its debt, operations, grant commitments would only be a benefit to and not a liability of the existing half-cent sales tax in the A Train Corridor.

Mayor Burroughs stated that with an expansion to Frisco, how standalone would that be. He questioned if the LGC defaulted in its bonds, would the partners of bonds stand behind it.

Cline stated that what was pledged for the debt issuance was where they would go back to.

Mayor Burroughs asked when the pledging took place.

Cline stated that what was needed was to look at the bond covenants. He stated that the Articles of Incorporation had to be carefully written with proper bond covenants to provide protection as it moved forward.

City Manager Campbell stated he would be more comfortable with the proposal if he knew at what point Denton would be responsible and have a voice. Once a LGC was created, then Denton may be the one out and not in the two-thirds for the capital project approval.

Mayor Pro Tem Kamp stated that she was also concerned about that part. She had concerns about the service plan. She questioned if when the LGC was formed, would it have the authority to affect the service plan.

Cline stated that the DCTA Board controlled the service plan for the overall service. The LGC did not have the authority to raise funds; it only had funds from its members.

Council discussed various scenarios on what would happen if the LGC defaulted on the bonds and who would be liable for the bonds,

Charles Emery, Chairman-DCTA Board, stated that the service plan had been approved a long time ago. DCTA felt that a LGC was the best way to protect the sales tax stream and still move

forward. He was comfortable with the proposal and felt DCTA could be protected with debt wording.

Mayor Burroughs felt that the highest degree of protection would be at least two-thirds approval in the formation of a LGC to ensure that protections would secure the formation and not divert from Denton's sales tax from DCTA.

Cabrales presented information on HB738 dealing with municipal utility districts (MUD). Currently if a MUD was proposed to be located within the ETJ of a city, only the city had a role in consenting or refusing to approve its creation. A county had a role in the creation process, if it chose to exercise it, only when all or a part of the proposed MUD was to be located outside a city's ETJ. The county's role was to review the MUD petition filed with the TCEQ and to submit a written opinion stating whether or not the county recommended the creation of the MUD.

Council Member Watts asked if the County could make comments if the MUD was wholly in a city's ETJ.

City Attorney Burgess stated that a county could make comments and the TCEQ could decide whether to consider those comments.

Cabrales stated that staff had met with Commissioner Coleman addressing concerns over the bill as it currently was filed. The bill was in conflict of the Council's legislative program. As such there were five different versions of the bill which were included with the resolution listed on the regular agenda. There were other large cities opposed to the bill unless they were bracketed out.

Mayor Burroughs questioned if the County could submit comments now, how was that different from the bill. The intent of the bill was to slow down special districts to preempt the ability of cities to extend services. The original wording could be read that the City could object while in the ETJ but might allow a county to say it wanted to form it and the county would override the city. His reading of the bill did not add anything not there now. When outside the ETJ, the county could weigh in. His concern was that the city got informed of the formation of the proposed project.

Cabrales stated that currently a city determined whether or not it wanted a MUD created in the ETJ. This would allow the county to have a say for it to be created wholly in the ETJ.

Mayor Burroughs felt that it was just a notice issue and a comment issue and wanted to be really sure there was a compelling interest to oppose it.

Council discussed the provisions of the proposed bill and what authority a county would have in commenting on the formation of a MUD.

Cabrales stated that currently the law did not allow the County the ability to provide comments. This legislation would codify that the County would have a say in a MUD that was completely in a city's ETJ. Staff felt that was in conflict of legislative program approved by Council.

Knight stated that there was a resolution of support on the regular agenda with five options attached for Council to select which one to support.

Mayor Burroughs suggested giving staff direction to present Option 5 during the regular session and then to debate it during the meeting.

Mayor Burroughs announced Work Session Items 6 and 7 would not be discussed at this meeting and that Closed Session Items A.1. and B.1. would also not be considered.

Following the completion of the Work Session, the Council convened into a Closed Session to consider the following:

1. Closed Meeting:

A. Competitive Matters Concerning Public Power Utilities – Under Texas Government Code Section 551.086.

1. Receive competitive public power information from staff regarding plans and proposals respecting the Denton Municipal Electric (“DME”) system and its resources; and discuss, deliberate and provide staff with direction regarding such matters.

This item was not considered.

B. Consultation with Attorneys – Under Texas Government Code Section 551.071.

1. Consult with the City’s attorneys regarding legal issues associated with the delegation of authority to the City Manager to make offers and accept counter offers to purchase real property for public works and electric utility capital projects where 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 clearly conflicts with the provisions of the Open Meetings Act, Chapter 551 of the Texas Government Code.

This item was not considered.

2. Consult with and provide direction to City’s attorneys regarding legal issues associated with the regulation of gas well drilling and production with the City Limits and the extraterritorial jurisdiction, including Constitutional limitations, current and proposed statutory limitations upon municipal regulatory authority, current and proposed statutory preemption and/or impacts of current and proposed federal and state law, including case law, regulations, and proposed legislation as it concerns municipal regulatory authority and matters relating to enforcement of the ordinance.

3. Consult with City’s attorneys regarding legal issues and strategies related to the adoption of a proposed ordinance regulating credit services organizations and credit access businesses, 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 potential litigation.

4. Consult with the City's attorneys regarding legal issues associated with the creation of municipal utility districts within the City's extraterritorial jurisdiction under existing and proposed State legislation, and administrative regulations. 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 clearly conflicts with the provisions of the Open Meetings Act, Chapter 551 of the Texas Government Code in this matter.

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

There were no proclamations or presentations for this meeting.

3. CITIZEN REPORTS

There were no citizen reports for this meeting.

4. CONSENT AGENDA

Council Member King motioned, Council Member Engelbrecht seconded to approve the Consent Agenda and accompanying ordinances and resolutions with the exception of Item I. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – "aye". Motion carried unanimously.

Approved the minutes listed below.

- A. Consider approval of the minutes of:
February 4, 2013
February 5, 2013
February 12, 2013

Ordinance No. 2013-063

- B. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of two Dragon Runner 20 Remotely Operated Vehicles (Small Platform Robots) from QinetiQ North America, Inc. which are available from only one source and in

accordance with Chapter 252.022 of the Texas Local Government Code such purchases are exempt from the requirements of competitive bidding; with funding to be reimbursed 100% through the Dallas Fort Worth Arlington Urban Area Security Initiative, a Homeland Security Grant Program; and providing an effective date (File 5191-Purchase of Two Dragon Runner 20 Remotely Operated Vehicles for the City of Denton Fire Department Bomb Squad in the amount of \$173,886).

Ordinance No. 2013-064

- C. Consider adoption of an ordinance accepting bids and awarding a public works contract for the US Highway 380 Utility Relocations Project; providing for the expenditure of funds therefor; and providing an effective date (Bid 5190-awarded to North Texas Contracting, Inc. in the amount of \$3,446,977). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-065

- D. Consider adoption of an ordinance accepting bids and awarding a public works contract for the Morse Street and Alexander Street Water and Sewer Replacement Project; providing for the expenditure of funds therefor; and providing an effective date (Bid 5170-awarded to Dickerson Construction Company, Inc. in the amount of \$484,105.50). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-066

- E. Consider adoption of an ordinance of the City of Denton, Texas creating a Capital Improvements Advisory Committee pursuant to Texas Local Government Code §395.058 as a requirement before authorizing impact fees; appointing the planning and zoning commission's members as members of the capital improvements advisory committee; providing for the appointment of and appointing one additional ad hoc member to the capital improvements advisory committee from the extraterritorial jurisdiction of the City of Denton, Texas; providing for the adoption of procedural rules for the capital improvements advisory committee to follow in performing its duties; and providing for a effective date.

Ordinance No. 2013-067

- F. Consider adoption of an ordinance of the City of Denton, Texas, accepting that certain Special Warranty Deed, from Robson Denton Development, LP, an Arizona Limited Partnership, conveying certain lands located in the C. Manchaca Survey, Abstract No. 789, also known as Lot 1, Block A, City of Denton Water Plant, certain real property located in Denton County, Texas, according to the Conveyance Plat thereof, recorded under Document No. 2013-049, Plat Records of Denton County, Texas (The "Lands"), and being generally located on the north side of Lively Road approximately one half mile east of Seaborn Road; and providing for an effective date.

Ordinance No. 2013-068

- G. Consider adoption of an ordinance authorizing the City Manager or his designee to execute, for and on behalf of the City of Denton, Texas, an Amendment of

Temporary Lease ("Amendment"), by and between the City of Denton, Texas ("City") and Billie Glosser ("Tenant"), amending that certain Temporary Lease (herein so called), dated effective December 28, 2012, by and between City and Tenant, leasing to Tenant a 147.85 acre tract, more or less, located in the D. Davis Survey, Abstract No. 356, Denton County, Texas, as more particularly described in the Temporary Lease ("Property"), said Real Property being generally located along the west side of Tom Cole Road, across from the Denton Municipal Airport, said Amendment, among other terms, extending the term of, and amending the rent payable under, the Temporary Lease; authorizing the City Manager to execute the Amendment of Temporary Lease; providing a savings clause; and providing an effective date.

Ordinance No. 2013-069

- H. Consider adoption of an ordinance of the City of Denton, Texas to declare the intent to reimburse expenditures from the Unreserved Fund Balance of the General Fund with General Obligation Bonds with an aggregate maximum principal amount equal to \$4,000,000 to construct and improve streets approved by voters in November 2012; and providing an effective date.

This item was not considered.

- I. Consider adoption of an ordinance of the City of Denton, Texas, delegating certain authority to the City Manager to make offers and to accept counter offers to purchase eligible real property interests necessary for City of Denton public works and electric utility capital improvement projects; authorizing the City Manager to execute contracts to purchase said real property interests for and on behalf of the City of Denton; authorizing the City Manager to expend funds in accordance with the terms of said contracts; providing a severability clause; and providing an effective date.

Ordinance No. 2013-070

- J. Consider adoption of an ordinance approving a salary increase for Anita Burgess under the performance review provision of her employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

Ordinance No. 2013-071

- K. Consider adoption of an ordinance approving a salary increase for George C. Campbell under the performance review provision of his employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

Ordinance No. 2013-072

- L. Consider adoption of an ordinance approving a salary increase for Robin A. Ramsay under the performance review provision of his employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

5. ITEMS FOR INDIVIDUAL CONSIDERATION

Ordinance No. 2013-073

- A. Consider adoption of an ordinance of the City of Denton, Texas, requiring registration of credit access businesses; defining terms; establishing a registration fee; imposing restrictions on extensions of consumer credit made by credit access businesses; providing recordkeeping requirements; providing defenses; providing a penalty not to exceed \$500; providing a savings clause; providing a severability clause; and providing an effective date.

John Knight, Deputy City Attorney, presented the details of the ordinance. The proposed ordinance was regulatory in nature to address the nature of credit access lending. A number of other cities had adopted regulatory ordinances. The purpose of the ordinance was to protect the welfare of the citizens by monitoring credit access businesses to reduce abusive lending practices and by restricting the amount of credit that could be extended. The ordinance would establish a registration program for credit access businesses, impose record keeping requirements and require the display of a certificate of registration. It also would place restrictions on the amount of credit that could be extended, restricted the manner of repayments and limits the number of times the credit extension or loan may be refinanced. Violation of the ordinance would be a Class C misdemeanor. The provisions would be effective upon publication or could be delayed to be effective until the summer of 2013 depending on bills passed by the legislature.

Council Member Roden asked which department would deal with the registration and problems or complaints with businesses.

Knight stated that had not been decided yet. The ordinance stated that the documentation would be reviewed by a director designated by the City. It could also be a peace officer.

Council Member Roden asked about the timing to enact the ordinance. Businesses needed to know who to deal with.

Knight stated that if the ordinance was approved at this meeting, it would not be effective until 14 days from date of passage.

Council Member Gregory asked who would receive the misdemeanor charge if a violation occurred. He questioned if it would be an employee or the manager.

Knight replied that it would be a fact of proof regarding who conducted the violation. It would depend on the specific case.

City Attorney Burgess stated that the ordinance defined a person in violation as an individual, corporation etc. Any of those could be in violation and receive the citation.

Council Member Gregory stated that if the ordinance was passed, informational notices would have to go out to the businesses so that they knew the requirements.

Mayor Burroughs stated that because the practices of the business would violate this ordinance, there was a need to go out of the way to give the actual notices to the businesses. It might take someone providing the delivery.

Knight stated that the notices could be mailed or hand delivered and would also be published in the paper.

Mayor Burroughs stated that he would like to go out of the way to provide notice of the regulations. He noticed that there was no requirement for posting of the restrictions at the business as part of certificate of registration. He suggested putting in the regulations a provision for public display of what had been passed. The workers and potential clients would be notified so they would know about the notice. It would be a simple way to put everyone on notice. He suggested directing staff to put that wording in the certificate.

Knight stated that as the registration was a function of the City, any kind of desired wording could be added.

Council Member Engelbrecht suggested having a date certain when the businesses would have to be registered.

Knight stated that a grace period could be added or the effective date of the ordinance could be delayed for a time period for an education period. As presently worded, the ordinance requirements would be immediate.

Mayor Burroughs stated that as there was no registration form at this time, he did not want to do anything to impede the City's ability to enforce the ordinance. He suggested putting in a couple of weeks to have all of the provisions ready for registration, etc.

City Attorney Burgess stated that one way to address the issue would be to make the ordinance effective a month out rather than at publication. The forms could be then mailed with the businesses coming in to register.

City Manager Campbell stated that it would also allow time for staff to report back to Council on who would administer the ordinance and the certificate restrictions.

Council Member Roden expressed the need to identify the 39 businesses that might be under this ordinance. It had been noted that there were certain agencies that might fit the criteria that did not have to register with the State. He questioned the procedure if a business was identified that was not State licensed.

Knight stated that the ordinance would not apply if a business was not required by State law to register with them. If the business was operating and was required to be licensed by the State, the ordinance could be enforced against them.

The following individuals submitted Speaker Cards:

Kayce Strader, 408 Egan, Denton, 76201 - support

Joe Ader, 607 E. College, Denton, 76209 - support

Carmel Perez Snyder, 8140 Walnut Hill Lane, #108, Dallas, 75231 - support
Pat Smith, 2300 East University, Denton, 76209 - support
Hunter Bonner, 3305 Ocean Drive, Denton, 76210 - support
Starita Smith, 301 Coronado Drive, #1034, Denton, 76209 - support

Comment cards were submitted by:

Amber Briggie, 1315 Dartmouth Place, Denton, 76201 - support

Council Member Gregory felt that it would be helpful to add wording to the notice that if someone felt a business was in violation of the ordinance to contact the city of Denton. Denton would be joining other cities in passing this ordinance as the State was not taking enough action to solve the problem.

Council Member Watts stated that he was proud of the community to spearhead this issue. He thanked the Council for taking a stand on the issue and the cities that went before Denton on the issue.

Council Member Roden questioned how long staff needed to do what Council had asked in terms of notification and what would be a good implementation date.

City Manager Campbell stated that staff could get information to Council within the next week and suggested making the effective date three weeks from this meeting.

Council Member Roden suggested an effective date of 21 days from the date of this meeting.

Council Member Engelbrecht asked if it would be possible to publish the ordinance in the three week window and not wait for effective date.

City Attorney Burgess stated that could be done.

Council Member King suggested adding a phone number to call with the notice.

Mayor Burroughs stated that these types of businesses were proliferating throughout the State. The average interest rate was 600%. There was another legitimate reason these entities came into existence. Some people had little or no credit and needed an immediate loan. These businesses met a legitimate need but responsible organizations that were not abusive were few. He hoped that local lending institutions could address the issue in a legitimate way. These were high risk loans but hoped that legitimate lenders would accommodate the needs.

Council Member Gregory stated that United Way was taking the lead to meet with local banks regarding a program called Bank On to establish relationships with banks and credit with banks so when a person had an emergency he could get a loan.

Council Member Roden motioned, Mayor Pro Tem Kamp seconded to adopt the ordinance. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

- B. Consider appointment of board members for Tax Increment Financing Zone Number One (Downtown TIF).

Julie Glover, Economic Development Program Administrator, stated that there were four members on the Board whose terms were expiring. All of those members were eligible for reappointments. James King, Virgil Strange, Hank Dickenson and Harold Strong had all expressed an interest in serving another two year term. Staff recommended reappointment of these four Board Members.

Council Member Watts motioned, Council Member Engelbrecht seconded to approve the reappointments as noted above. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Resolution No. R2013-007

- C. Consider approval of a resolution of the City of Denton, Texas supporting House Bill 738 recently introduced in the 83rd Texas Legislature, relating to the review by a county commissioner's court of the creation of a proposed municipal utility district (MUD) within a city's extraterritorial jurisdiction; and providing an effective date.

John Cabrales, Assistant City Manager, stated that this was a resolution of support for HB 738. He noted that the bill had just come out of Committee with wording that was slightly different than Exhibit 5; however, the intent was still the same as Exhibit 5. Denton County had passed legislation in support of the bill and asked the City to do the same.

Council Member Watts motioned, Council Member Gregory seconded to approve the resolution with the substitute bill from Committee. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Resolution No. R2013-008

- D. Consider approval of a resolution of the City of Denton, Texas, opposing House Bill 1496, recently introduced in the 83rd Texas Legislature, relating to the applicability of the Private Real Property Rights Preservation Act to certain governmental actions relative to oil and natural gas drilling activities; and providing an effective date.

Lindsey Baker, Assistant to the City Manager, stated that Representative Van Taylor had filed HB 1496 that related to governmental actions affecting private property rights in certain oil and gas wells. The bill was contrary to the Council’s policy statement to allow local governments to enact ordinances relating to health and safety regulations as applied to gas drilling and production activities.

The following individuals submitted Speaker Cards:

Ricardo Correa, 117 E. Prairie, Denton, 76201 - support

Cathy McMullen, 805 Ector, Denton, 76201 - support
Candice Bernd, 412 ½ Fry, Denton, 76201 - support
Amber Briggie, 1315 Dartmouth, Denton, 76201 - support
Kelsey Fryman, 903 McCormick, Denton, 76201 - support

Comment Cards were submitted by:

Rebekah Hinojosa, 621 Schmitz, Denton, 76209 - support
Morgan Larson, McCormick, Denton, 76201 - support
Adam Briggie, 1315 Dartmouth, Denton, 76201 - support
Vicki Oppenheim, 600 Windfields, Denton, 76209 - support
Lydia Alexander, 2043 Scripture, Denton, 76201 - support
Jay McElhinney, 605 N. Austin, Denton, 76201 - support
Pauline Raffestin, 2015 Bowling Green, Denton, 76201 - support

Council Member Roden asked for an explanation on how the City worked on legislative issues.

Baker stated that Council had passed legislative issues that they were concerned with. Staff worked with partner cities throughout the State, worked with TML on bills, and had legislative consultants monitoring the bills. Staff also worked with committees and committee members where the bills would be heard by presenting letters to them and going to a bill's author to let him/her know about city's position.

Council Member Gregory asked what a resolution or ordinance did to communicate to the policy makers about the City's position.

Cabrales stated that it did not carry any more weight than a letter or communication with a staff person. It depended on what would be best strategy for a particular bill.

Mayor Pro Tem Kamp motioned, Council Member Watts seconded to approve the resolution. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

6. PUBLIC HEARINGS

Ordinance No. 2013-74

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a Comprehensive Plan Amendment from a "Community Mixed Use Centers" future land use designation to a "Neighborhood Centers" future land use designation; on approximately 34.04 acres of land located on the east side of Country Club Road (FM 1830), between Ryan Road to the north and Hickory Creek Road to the south, in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability clause and an effective date. (CA12-0005, Country Club Road Tract) The Planning and Zoning Commission recommends approval (7-0).

Mayor Burroughs noted that Items A and B would be presented together.

Bryan Lockley, Director of Planning and Development, presented the details of the proposals. He stated that Item A would provide for a comprehensive plan amendment and in conjunction with that amendment, the applicant was proposing to rezone the property to Neighborhood Residential-4. The property was located on the east side of Country Club Road between Ryan Road and Hickory Creek Road. The neighborhood residential zoning would allow for residential development. The rezoning would change the makeup of the current zoning and the community mixed use center.

Some of the issues associated with this request included the Mobility Plan, Denton Plan and the Development Code. The Mobility Plan showed Country Club Road to become a four lane secondary arterial. Hickory Creek was planned to become a six lane primary arterial. The KCS Railroad ran adjacent to the site's eastern boundary. This site was essentially an island bounded by planned arterials and the railroad. There was also a FEMA floodplain on the south and west of the property. A portion of the floodplain ran from north to south within the property.

Based on the following criteria, there was adequate public infrastructure capacity to serve the site: water, wastewater, stormwater, transportation, drainage, environmental, parks, electric, fire/EMS. Those items could adequately support a residential development. However, the Denton Plan criteria indicated that neighborhood center would be an inappropriate future land use designation. This proposed rezoning would create an isolated district. Based on the criteria a community mixed use center was the most appropriate future land use designation for the site.

The Planning and Zoning Commission recommended approval for the amendment and for the zoning. However, the Development Review Committee recommended denial for both proposals. Staff's denial was based on code requirements and the Mobility Plan.

Council Member Gregory asked if the rezoning was approved for NR-4 would the developer be responsible for providing a park.

Lockley stated that the developer would not be required to put in a park.

Council Member Watts questioned if the streets did not become what was proposed in the Mobility Plan, was the land use more detrimental as single-family residential or developed as mixed use commercial. Would there be less of an impact if the zoning were single-family residential.

Lockley stated that from a land use perspective, residential would be more appropriate for roads there today. However, with the planned development of the roads, commercial would be better due to intense traffic.

The Mayor opened the public hearings for both A and B.

Paul McCracken, speaking for the applicant, stated that this was a tough area for development as it was not a good site for commercial due to the t-intersection. There was considerable flood plain to the south which was hard to attract commercial development. There was a developer

ready to start on the tract. The landowner to the south was in support and would like the same action on his property if they were successful. That would take away the isolation of the proposed zoning. There had been no commercial retail opportunities in this area for many years. Residential development might attract commercial in the future.

Council questioned the size of the footprint, the size range of the proposed homes and whether there would be one story and two story homes.

Bob Shelton, applicant, felt that residential made more sense than commercial at this time. They would be required to build a portion of Hickory Creek.

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 King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-075

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Community Mixed Use General (CM-G) zoning district and use classification to a Neighborhood Residential 4 (NR-4) zoning district and use classification on approximately 34.04 acres of land located on the east side of Country Club Road (FM 1830), between Ryan Road to the north and Hickory Creek Road to the south, in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability clause and an effective date. (Z12-0010, Country Club Road Tract) The Planning and Zoning Commission recommends approval (7-0).

This item was considered with Item A.

Council Member Roden motioned, Council Member King seconded to adopt the ordinance. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-076

- C. Hold a public hearing and consider adoption of an ordinance approving a Detailed Plan to allow a 6,816 square-foot building for new auto parts sale on 0.835 of land located within the Wheeler Ridge Planned Development District (PD-176). 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. (PDA12-0005, O'Reilly Auto Parts) The Planning and Zoning Commission recommends approval (7-0).

Brian Lockley, Director of Planning and Development, stated that the request was for a detailed plan to allow a new auto parts sales building on property located within the Wheeler Ridge Planned Development. He reviewed the current zoning map and future land use map. The Planned Development was approved by Ordinance 99-367 and designated two commercial parcels that allowed uses permitted in the commercial zoning category. The requirement of the detailed plan included acreage, land use, offsite information, traffic and transportation, buildings, trees, sidewalks and bike plan. There would be a joint access with the 7-11 already on the property. The Planning and Zoning Commission recommended approval as did the Development Review Committee subject to conditions.

The Mayor opened the public hearing.

Matt Bolls, 2016 Mistywood, Denton, asked how the people across from the proposal were notified about the building proposal.

The Mayor closed the public hearing.

Mayor Pro Tem Kamp asked for an explanation of how the public was notified of the proposal.

Lockley stated that there were 200 foot legal notices and 500 foot courtesy notices sent out regarding the proposal.

Council Member Engelbrecht stated that only an auto parts store would be allowed. With previous planned developments a range of retail uses had been allowed. He questioned if the business was not successful, would the Planned Development have to be amended again.

Lockley stated no there was a range of uses for commercial uses.

Mayor Burroughs stated that the Planning and Zoning Commission recommendation, as a condition, was limited to new auto parts sales only.

Lockley stated that as a planned development amendment with a detailed plan, the Planning and Zoning Commission wanted to ensure that any subsequent uses would meet the same requirements. Their issue was that new uses should have staff review or come back to the Planning and Zoning Commission and City Council. They wanted to ensure that because it was a planned development, it would still require an amendment and still be meeting the requirements of the planned development.

Council Member Engelbrecht stated that a range of potential operations would do the same thing. It would then be reviewed by staff and allow more flexibility.

Lockley stated that would be an option for Council to consider.

Council Member King motioned to approve the proposal as recommended by the Planning and Zoning Commission including all conditions.

Mayor Burroughs stated including the auto parts sales only.

Council Member King replied correct.

Mayor Pro Tem Kamp seconded the motion.

Mayor Burroughs stated that although he was in favor of the proposal, he suggested that perhaps an amendment might be appropriate and Council vote on the amendment. If that did not pass, then vote on the motion.

Council Member Engelbrecht motioned for an amendment to remove the auto parts sales only condition.

Council Member King seconded the motion for an amendment.

Mayor Pro Tem Kamp asked for a clarification on why the Planning and Zoning Commission put that condition on the proposal.

Lockley stated that it was not a matter of the uses as all uses under commercial would be permitted. The question was if this property were to be vacant for a number of years, the Planning and Zoning Commission wanted to make sure a new business would meet the same requirements. If the proposal was limited to auto parts sale, then any change would go back to the Planning and Zoning Commission. This was to ensure that it met the same code requirements.

Council Member Watts asked if the maker of the motion and second would approve a friendly amendment, then there would be no need to vote on an amendment.

Council Member King and Mayor Pro Tem Kamp agreed with the friendly amendment.

Mayor Burroughs stated that the motion was to approve the request with Conditions 1-3 from the Planning and Zoning Commission.

Council Member King motioned, Mayor Pro Tem Kamp seconded to adopt the ordinance with conditions #1-3 from the Planning and Zoning Commission. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

- D. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit to allow a basic utility; a DME Electric Substation, on approximately 8.75 acres of land within a Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district classification and use designation; located west of Loop 288, south of Audra Lane, and directly east of Audra Meadows, Phase 2 Subdivision, within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing a severability clause and an effective date. (S12-0005, DME Audra Substation) The Planning and Zoning Commission recommends approval (5-0).

Brian Lockley, Director of Planning and Development, presented information on the specific use permit to construct an electrical substation. The substation would be constructed in two phases. Phase I would include construction of the substation and connection of the substation to an existing transmission line adjacent to the site. Phase II would include construction of a new transmission line, connection of the substation to the new transmission line and decommissioning and removal of the old transmission line. The site plan and western property line buffer was described. A Type C buffer was required. The Type C buffer included a 15 foot planting strip with a combination of 5 evergreen and deciduous trees and 30 shrubs per 100 linear feet. The property was set back from Loop 288 and was one of seven which was considered for the location of the substation. The Planning and Zoning Commission recommended approval with conditions. Those conditions included the buffer zone and a perimeter masonry wall constructed with a minimum height of 10 feet. The Development Review Committee also recommended approval.

Council Member Gregory asked if there was a requirement for a supermajority vote.

Lockley stated that the threshold needed was 20% of the land area within 200 feet so no supermajority vote was required.

Council Member Roden stated that there were questions for the public process relating up to this proposal.

Lockley stated that for the meeting at the Singing Oaks Church, notices were sent out within 500 feet of the proposal.

Council Member Roden asked if the notices were sent out to the owners of the homes or the residents.

Lockley stated that they were sent to the home owners based on the information from Denton County Appraisal District.

Council Member Gregory asked if a notification sign was required to be put up for a zoning change.

Lockley stated that signs were usually installed along arterials where they would get the most visibility. In this case, the signs were placed along Audra Lane.

Council Member Roden asked about the date of the initial meeting.

Phil Williams, General Manager-DME, stated that the initial meeting was November 27th.

Council Member Roden asked about the number of people present.

Williams stated that five people signed in.

Council Member Roden asked about the separate notices sent from Planning and what was on the post card.

Williams displaced a copy of the post card mailed out. Information was also posted on the City's website.

The Mayor opened the public hearing.

Williams stated that there were several different sites considered before this one was chosen. The proposed landscaping met all of the code requirements. Staff had met with the landowners.

Mayor Burroughs asked why the other sites were not chosen.

Williams stated that one landowner would not sell the property, TxDot would not allow one of the sites, one had a 30- inch water line on it and the site to north had a drainage feature.

The following individuals submitted Speaker Cards:

Alan Breese, 4317 Boca Raton Drive, The Colony, 75056 - opposed

Kristiey Rodriguez, 902 Bayfield, Denton, 76209 - opposed

Leticia Rivas, 1020 Bayfield, Denton, 76209 - opposed

Richard Hainer, 1112, Bayfield, Denton – concerned about access to the property.

Brendan Carroll, 2223 Houston, Denton, 76201-recommend look at how utility easements might change in future

Claire Lane, 909 Bayfield, Denton, 76209 - opposed

The Mayor closed the public hearing.

Comment Cards were submitted by:

Mario Vasquez, 1000 Bayfield Drive, Denton, 76209 - opposed

Mayor Pro Tem Kamp asked about access to the property.

Williams stated that the City would be donating right of way for the Mobility Plan to change Audra. There would be a private entrance off Loop 288 for construction and after Audra was changed, the traffic would come down Audra.

Mayor Pro Tem Kamp asked about security of the site.

Williams stated that once the facility was constructed staff would only come once a week to inspect it. The security system would include video cameras and alarms to the dispatchers.

Mayor Pro Tem Kamp asked what would happen to the time line for construction if the proposal was postponed.

Williams stated that it would give staff time to work out the final details.

Mayor Burroughs asked about weekly inspection at night.

Williams stated that the inspections were usually during the day.

Mayor Burroughs asked about the roadway component.

Williams stated that it was not near the current residences.

Council Member Gregory asked about the transformers located in the substation.

Williams stated that there would be two on the site.

Council Member Gregory asked if they were larger than the ones on Kings Row.

Williams stated that they were about the same size.

Council Member Gregory asked about the low hum at the Kings Row station.

Williams stated that there would be no high pitched sounds.

Council Member Gregory stated that the neighbors requested a buffer zone. Using the site plan, there would be a Type C buffer 15 feet wide, 100 feet from the neighbors fence. He questioned how long it would be.

Williams stated that it would go from the property line to the drainage ditch.

Council Member Gregory asked if there was any reason to extend it further north.

Williams stated that could be done.

Council Member Gregory questioned if a Type D buffer would be appropriate.

Lockley stated that the condition could be changed to a Type D buffer.

Council Member Gregory asked if it could be extended further to the north.

Lockley stated that it could not go outside the boundary of the substation property.

Council discussed the types of plantings in the buffer and the location of the site on the property.

Council Member Gregory motioned, Council Member King seconded to postpone consideration until April 2, 2013 to give the applicant time to work with the neighbors on a buffer plan. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

8. 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 Watts requested a presentation from DME on TMPA debt and a specific plan on how to achieve desired goals. This could be a joint meeting with the Public Utilities Board.

Mayor Burroughs requested a copy of standard notices for various purposes such as the 200 and 500 foot notice cards, notices sent out for rezoning, detailed plan amendment, etc. He would like to see how those were worded. This could be accomplished in an Informal Staff Report.

Council Member Gregory suggested that the Committee on Citizen Engagement could also consider those notices and make suggestions on wording.

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

There was no continuation of the Closed Meeting.

With no further business, the meeting was adjourned at 10:34 p.m.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS