

CITY OF DENTON CITY COUNCIL MINUTES

April 2, 2013

After determining that a quorum was present, the City of Denton City Council convened in a Work Session on Tuesday, April 2, 2013 at 3:30 p.m. in the Council Work Session Room.

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

ABSENT: Council Member King

1. Citizen Comments on Consent Agenda Items

There were no citizen comments on Consent Agenda items.

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

Council Member Gregory asked about Consent Agenda Items M and N. He stated that the ordinance for these legal contracts did not contain specific language for a price not to exceed. The attachment from the attorney had recommended prices with not to exceed amounts for each project. He questioned if the Council was authorizing that not to exceed figure or did that need to be included in the ordinance.

City Attorney Burgess stated that the ordinance did not provide a cap on the amount of fees as it was an estimated budgeted amount suggested by the attorneys. It was difficult to put a specific amount for the legal work.

Council Member Gregory stated that when there was a provision of fees not to exceed a certain amount, he could understand that they might exceed that amount but staff came back to Council and thus they would be notified. He would be more comfortable if the ordinance was adjusted to the amount of fees not to exceed as noted in the attorney's letters.

City Attorney Burgess stated that the changes would be made and ready for the Council's Regular Session.

Mayor Burroughs stated that Consent Agenda Item E had three or four bids and one local firm and noticed the bid was three times the low bid. This usually suggested there was something wrong with the bid reading or interpreting and questioned why the local bid was so high.

Elton Brock, Purchasing Agent, stated that Calvert had not previously done this type of work so he assumed that was why the bid was high.

3. Receive a report, hold a discussion, and give staff direction regarding funding options for the planned construction of the Linda McNatt Animal Care and Adoption Center.

Scott Fletcher, Captain-Denton PD, stated that this information had been presented at a recent Animal Shelter Foundation Board meeting. During the update staff discussed the project milestones that had been achieved over the course of the project. Staff also outlined a timeline of key dates for the project moving towards construction and a review of the comprehensive project

budget. The project was in the final stages of the development review process and finalization of bids. It appeared that there was revenue and projected costs have to have sufficient funds on hand to issue the bid. The total project was \$7 million with the purchase of the land already completed. The City funds totaled \$4.4 million, the Foundation cash and pledges were at \$1.5 million. Additional money had been set aside for furniture, equipment, etc. When added, there was a deficit of \$1.8 million. The Foundation also received in-kind offers for services that totaled under \$505,000. From a planning standpoint in-kind amounts could not be added in until the services were received. Because the bids for the Public Training Facility were lower than anticipated, money could be taken from that project to assist with any deficit in funding for the animal facility. Any remaining funding needed could be pulled from the 2013 facility improvements. Once the bids were received there would be a better look at what the costs would be.

Council Member Watts questioned how long it would take to get the bids back if they went out in early April.

Elton Brock, Purchasing Agenda, stated it usually took about thirty days.

Council Member Watts stated that at the Foundation meeting the plans were for May or June for the bids so he appreciated that moving up in the time line. He felt that in May it would be known if there was any kind of a gap for funding.

Mayor Pro Tem Kamp stated that she attended the Foundation meeting and thanked everyone who worked on the project. This was a \$7 million project and the Foundation would probably have a \$1.2 or \$1.3 million of the funding. This would be a city project that would be owned by the citizens of Denton.

Council Member Roden asked when the new facility would be open.

Fletcher stated that it would be about a year from the start on construction. It probably would be July of next summer for the opening of the facility.

Consensus of the Council was to proceed with the funding proposal as outlined by staff.

4. Receive a report, hold a discussion, and give staff direction regarding the procurement process associated with the 2013 Streets Bond Program.

Jim Coulter, General Manager of Wastewater and Streets, stated that last November the citizens of Denton approved a streets bond program. He noted that there were six different annual contracts used for the last issue which produced a successful bond project. Staff was proposing to move forward with same process for this project. Eleven segments had been cleared with Utilities and were ready to go. The Bond Committee was looking forward to getting the projects started.

Following the completion of the Work Session, the Council convened in a Closed Session to discuss the following:

1. Closed Meeting:
 - A. Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.
 1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the Gideon Walker Survey, Abstract No. 1330, City of Denton, Denton County, Texas, and located generally along the 1000 block of S. Mayhill Road, north of Gayla Drive. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and condemnation of the real property described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.
 - B. Consultation with Attorneys - Under Texas Government Code Section 551.071.
 1. 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.

Regular meeting of the City of Denton City Council at 6:30 p.m. in the Council Chambers at City Hall, 215 E. McKinney, Denton, Texas.

1. PLEDGE OF ALLEGIANCE

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

2. PROCLAMATIONS/PRESENTATIONS

- A. Proclamations/Awards

Mayor Burroughs presented the proclamation for National Community Development Week.

3. CITIZEN REPORTS

A. Review of procedures for addressing the City Council.

B. Receive citizen reports from the following:

1) Robert Donnelly regarding Mayhill Road and city use of condemnation.

Mr. Donnelly asked the City to not take four acres of the middle of his property needed for public use. The City had asked to purchase an acre of land in 1997 which he sold for the expansion of Mayhill along the existing road. There was right-of-way for the expansion from that. The current mobility plan tied Mayhill into Quail Creek Road. It did not tie in for over a mile but that was known when the schematics were done. The City needed to work within the parameters provided by the engineering designers rather than the City determining where the road would be located.

4. CONSENT AGENDA

Council Member Gregory asked that Item M and N be pulled for individual consideration.

Council Member Gregory motioned, Mayor Pro Tem Kamp seconded to adopt the Consent Agenda and accompanying ordinances and resolutions with the exception of Items M and N. On roll call vote: Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-077

A. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a contract through the State of Texas for the purchase of temporary labor services for various City departments as awarded by the State of Texas Contract 962-M3; and providing an effective date (File 5215-Purchase of Temporary Labor Services awarded to TIBH Industries, Inc. (Central Non-Profit Agency) in the estimated annual amount of \$150,000)

Ordinance No. 2013-078

B. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a contract through the Buy Board Cooperative Purchasing Network for the acquisition of one Bucket Truck for the Electric Operations division; and providing an effective date (File 5209-Purchase of Bucket Truck awarded to Southwest International Trucks, Inc. in the amount of \$191,038.91. The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-079

C. Consider adoption of an ordinance authorizing the City Manager to execute an Interlocal Cooperative Purchasing Program Agreement with the City of Frisco, Texas under Section 271.102 of the Local Government Code, to authorize mutual

participation in various City of Frisco and City of Denton contracts for the purchase of various goods and services; authorizing the expenditure of funds therefor; and declaring an effective date (File 5214-Interlocal Agreement with City of Frisco).

Ordinance No. 2013-080

- D. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute a Professional and Personal Services Agreement by and between the City of Denton, Texas and W&M Environmental Group, Inc. for engineering services and personal services pertaining to the completion of a leaking petroleum storage tank closure request, Voluntary Cleanup Program project management, and miscellaneous action items needed to obtain a Voluntary Cleanup Program Certificate of Completion and site closure for a two (2) acre tract of land situated generally at the southeast corner of Oakland Street and East McKinney Street, in Denton, Texas; authorizing the expenditure of funds therefor; providing an effective date (File 5204 in an amount not-to-exceed \$154,000).

Ordinance No. 2013-081

- E. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the clearing of sanitary sewer easements and installation of gates at multiple locations as specified in Bid 5171-Sanitary Sewer Easement Clearing and Gate Installation; providing for the expenditure of funds therefor; and providing an effective date (Bid 5171-awarded to the lowest responsible bidder meeting specification, DCI Contracting, Inc. in the not to exceed amount of \$318,860.00). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-082

- F. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for water and wastewater improvements as specified in Bid 5181-Cooper Creek Interceptor III; providing for the expenditure of funds therefor; and providing an effective date (Bid 5181-awarded to the lowest responsible bidder meeting specification, Condie Construction Company, Inc. in the amount of \$990,958). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-083

- G. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of High Density Polyethylene Pipe (HDPE) for use in the City of Denton Landfill in a three (3) year amount not to exceed \$150,000; providing for the expenditure of funds therefor; and providing an effective date (RFP 4892-awarded to Gajeske, Inc.). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2013-084

- H. Consider approval of an ordinance finding that a public use and necessity exists to acquire fee simple to a 4.620 acre tract situated in the Gideon Walker Survey, Abstract No. 1330, located in the City of Denton, Denton County, Texas, as more

particularly described on Exhibit "A", attached to the ordinance and made a part thereof, located generally at 1001 South Mayhill Road (the "Property Interests"), for the public use of expanding and improving the City of Denton Landfill, a permitted municipal solid waste disposal facility; authorizing the City Manager or his designee to make an offer to (1) Denmiss Corporation, a Mississippi corporation, Dynamic Color Images, Inc., a Texas corporation, d/b/a Gameguard Camouflage and Elite Creative Solutions, L.L.C., a Texas limited liability company (collectively, the "Owner"); (2) successors in interest to the owner to the property interests; or (3) any other owners of the property interests, as may be applicable, to purchase the property interests for the purchase price of One Million Two Hundred Fifty Thousand Dollars and No cents (\$1,250,000.00), and other consideration, as prescribed in the Contract of Sale (the "Agreement"), as attached to the ordinance and made a part thereof; authorizing the expenditure of funds therefor; authorizing relocation expenditures; and providing an effective date.

Approved the Noise Exception requested below.

- I. Consider a request for an exception to the Noise Ordinance for the purpose of the Texas Tea Music Fest hosted by RedStarr Entertainment, LTD to be held at the North Texas State Fairgrounds on Friday and Saturday, May 24 and 25, 2013, beginning at noon and concluding at 11 p.m. The exception is requested for extension of the hours of operation. There is no request to exceed the allowable 70 decibels. Staff recommends approval of the requested exception to the noise ordinance.

Ordinance No. 2013-085

- J. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a contract through the National Intergovernmental Purchasing Alliance Company (National IPA) for the purchase of gasoline and diesel fuels for the City of Denton as awarded by Contract#09-0112; and providing an effective date (File 5208-Purchase of Gasoline and Diesel Fuels awarded to Martin Eagle Oil Company, Inc. in the annual estimated amount of \$5,500,000).

Ordinance No. 2013-086

- K. Consider adoption of an ordinance abandoning and vacating (1) a portion of a 2.322 acre drainage easement (herein so called) granted to the city of Denton, Texas, pursuant to that certain drainage easement, accepted by the city of Denton on March 15, 2007, from D.R. Horton - Texas, Ltd., and recorded as Instrument No. 2007-30855, Real Property records, Denton County, Texas, and (2) a 0.693 acre public drainage easement (herein so called), granted to the city of Denton, Texas, pursuant to that certain public drainage easement, accepted by the city of Denton on September 21, 2011, from D.R. Horton - Texas, Ltd., and recorded as Instrument No. 2011-91225, Real Property records, Denton County, Texas (the 2.322 acre drainage easement and the 0.693 acre public drainage easement are collectively referred to herein as the "drainage easements"), said drainage easements located in the William Roark survey, abstract no. 1087, Denton

County, Texas; and declaring an effective date. (Meadows of Hickory Creek Subdivision)

Approved the tax refund listed below.

- L. Consider approval of a tax refund for the following property taxes:
Name – Target Corporation
Reason – Supplemental Change
Tax Year - 2012
Amount - \$6,882.83

Ordinance No. 2013-087

- M. Consider adoption of an ordinance of the City Council of the City of Denton, Texas authorizing the City Manager to execute an engagement arrangement with Burford & Ryburn, L.L.P. for legal services regarding condemnation matters related to the Bonnie Brae Street Widening and Improvements project; authorizing the expenditure of funds therefor; and providing an effective date.

Council Member Gregory stated that he had pulled these two items due to the fact that the ordinance did not limit the amount of money to be spent. The accompanying contract stated that information but the amounts were not included in the ordinance.

Paul Williamson, Real Estate Manager, stated that there were two elements to the scope of work for the engagements. One was for work during the condemnation phase and the other was for the filing of lawsuits and judicial scope in case something went to trial. Those added together reflected what would be added to the ordinance. Council had been provided updated ordinances for consideration.

Mayor Pro Tem Kamp motioned, Council Member Engelbrecht seconded to adopt the ordinances for both M and N. On roll call vote: Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-088

- N. Consider adoption of an ordinance of the City Council of the City of Denton, Texas authorizing the City Manager to execute an engagement arrangement with Burford & Ryburn, L.L.P. for legal services regarding condemnation matters related to the Mayhill Road Widening and Improvements project; authorizing the expenditure of funds therefor; and providing an effective date.

This ordinance was approved with the motion for Item M.

5. ITEMS FOR INDIVIDUAL CONSIDERATION

Ordinance No. 2013-089

- A. 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 the details regarding the item. He noted that this was a request for specific use permit to locate a DME substation on the property. He reviewed the zoning map and noted that the use of the property for a substation required a specific use permit. He noted that the original proposal included a 100 foot buffer to include a Type C buffer along the western property line and a 10 foot masonry wall. Council directed staff to meet with the neighborhood to consider additional improvements so they would feel comfortable supporting the proposal. The new proposal included the 100 foot buffer area with a Type D buffer which would extend to the east at the north property line and a perimeter masonry wall to be constructed with a minimum height of 10 feet. Notices received from the mailings represented 13.87% which did not necessitate a super majority vote.

Phil Williams, General Manager-DME, presented an update on the neighborhood meeting. From that meeting it was determined that a Type D buffer would provide more trees and more landscaping for the area than a Type C buffer. The following was a list of several of the neighborhood requests: (1) a Type D buffer, (2) extension of the buffer, (3) more than 45% evergreens in the buffer, (4) specific tree requests, (5) a gate to prevent unauthorized access, and (6) noise concerns.

Staff indicated that a gate at to the entrance of the access road would be installed to prevent unauthorized access. Another issue was a noise concern. DME agreed if a citizen had a concern regarding noise; it would try and assist the citizen. However, there needed to be a differentiation between the Loop traffic noise and the substation noise.

Council Member Watts questioned if the trees planted would be conducive to the Texas climate.

Williams indicated that the City Urban Forester was consulted and she recommended Texas native trees.

Council Member Gregory stated that he had read an email from a citizen in the area indicating support of the meeting that DME held.

Williams stated that there were about 17 residents at the meeting. After a lengthy discussion one of them called for a vote on whether they were in favor of the proposal or not. All there were in favor.

Council Member Gregory asked if there would be more evergreens for the winter months.

Williams replied correct. There was nothing specific set about the type of trees as they would be planted at the end of the project. The residents would help decide which type of trees to plant.

Tim May, Landscape Architect for Teague, Nall and Perkins, reviewed the plan for the plantings in the area. Live oaks would be present with a variety of other trees in the area. All of the trees would be irrigated. He also noted that there were existing trees in the area and if they were not in the way of the transmission lines or clear zone, they would save the trees. The tree planting would create a double row of trees with all of the trees being native to Texas or on the approved list by the City Urban Forester. The shrubs that would be used were also on the City approved plant list.

The following individuals submitted Speaker Cards:

Richard Hayner - spoke in opposition

Alan Breese - spoke in support

A Comment Card was submitted by Jean Ellen Rogers in support.

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to adopt the ordinance with the following conditions: (1) a 100 foot wide buffer area would be maintained on the western property line, adjacent to the existing single family subdivision. In the 100 foot buffer there would be a Type D buffer using existing and new plantings. The Type D buffer would include a 30 foot planted strip with a combination of 8 evergreen and deciduous trees and 20 shrubs per on-hundred linear feet. The remaining 70 feet would be grass/ground cover only. (2) the Type D buffer would extend to the east along the northern property line approximately 250 feet, (3) a gate would be erected at the entrance of the access road to prevent unauthorized access, and (4) a perimeter masonry wall would be constructed with a minimum height of 10 feet. On roll call vote: 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. 2013-090

- A. Hold a public hearing in accordance with Chapter 26 of the Texas Parks and Wildlife Code and consider adoption of an ordinance authorizing the City Manager or his designee to execute on behalf of the City of Denton, Texas an Agreement, contemplating a real estate conveyance from the City of Denton to the State of Texas, of a 5,689 square foot tract of real property, located in the M.E.P. & P.R.R. Co. Survey, Abstract No. 950, Denton County, Texas, being a portion of Lot 1, Block 1, of the Briercliff Park Addition, an addition to the City of Denton, Denton County, Texas, recorded under County Clerk's Number 2009-6 of the Official Records of Denton County, Texas and being a portion of the tract conveyed by deed to the City of Denton, recorded under County Clerk's Number 2004-56699 of the official records of Denton County, Texas, and generally located at 3200 State School Road, Denton, Texas; authorizing execution of a Deed Without Warranty conditionally effectuating such real estate conveyance; and providing an effective date. The Parks, Recreation and Beautification Board recommends approval (7-0.)

Jim Mays, Parks Superintendent, presented the details of the item. The Texas Department of Transportation was requesting to purchase 5,689 square feet of parkland in order to widen State School Road, at Briercliff Park. Chapter 26 of the Texas Parks and Wildlife Code required a public hearing to determine that there was no feasible alternative to the use or taking of the parkland and that the project included all reasonable planning to minimize harm to the land. The proposal would assist with the widening of State School Road. The expansion of the road was anticipated during the renovation of Briercliff Park and significant effort was made to locate park infrastructure outside of the proposed right-of-way expansion. Staff felt that all due diligence had been completed as required by the State.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

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

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Rural Residential (RD-5) zoning district classification and use designation to an Employment Center Industrial (EC-I) zoning district classification and use designation for approximately 27.76 acres of land, generally located north of University Drive and west of Masch Branch Road, legally described as Lot 2, Block 1 of the Marriott Gardens Addition, in the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing a severability clause and an effective date. (Z12-0014, Masch Branch Rezoning) The Planning and Zoning Commission recommends approval (7-0).

Brian Lockley, Director of Planning and Development, presented the details of the proposal. The request was a zoning change from a Rural Residential 5 (RD-5) zoning district to an Employment Center Industrial (EC-I) zoning district. Rezoning the property would allow continued use of the current industrial uses and bring existing uses into conformance (including existing light manufacturing). The proposal would also allow new uses by right in the EC-I district. The location of the proposal, the future land use and the current zoning was reviewed. The current zoning of Rural Residential-5 was a result of the annexation of the property. The chronology of the annexation process for the property was presented. The property was voluntarily annexed into the City as a result of an agreement between the property owner and the City. The agreement indicated that if the uses within the property were expanded beyond the building footprint that existed at the time of the agreement, the City would have the right to voluntarily annex the property. The City began the annexation proceedings when it was determined that the property owner violated the agreement. The Planning and Zoning Commission as well as the Development Review Committee recommend approval.

Council Member Roden stated that in 2008 part of the zoning request was for heavy industrial uses which would not be allowed with the current request. He questioned what changed between 2008 to make staff think there was not currently heavy industrial there.

Lockley stated that staff had reviewed the actual activity in the located sites. It was clarified that existing uses which were thought to be heavy manufacturing were more in line with light manufacturing.

Council Member Watts stated that his objections were the same as in 2008. At the time of annexation the restrictive covenant indicated that there would be no material expanding uses as defined unless the property was zoned. After the agreement, 154,000 of additional square feet was built. He questioned if in 2008 was the additional 154,000 square footage subject to City regulations when built.

Lockley stated they did not because the property was not located in the City limits.

Council Member Watts stated that they did not have to follow any of the building codes, street repairs, right-of-way, etc. If those improvements were done today, they would have to conform to City codes.

The Mayor opened the public hearing.

Patricia Adams, representing the property owner, spoke in favor. She indicated that currently if they had a space to finish out, they got a permit from the City and followed City codes.

Council Member Watts questioned Adams regarding the time frame when the additional square footage was constructed.

Adams stated she did not know and that the property owner was also vague about when the additional property was built. He only knew it was somewhere around 2004 but not was definite.

Council Member Watts stated that part of his concern was that in 2004, 154,000 square feet was developed, that if it occurred today, City codes would have to be followed. Masch Branch Road was inadequate and the developer was not being held responsible for any of the improvements. The property was developed 1½ times the size at the time of the annexation agreement and was done outside code. There was also the question of some of the buildings being located in the flood plain.

Council Member Gregory asked why the applicant was asking for a zoning change as the property was already built out. He questioned what would be the benefit if approved or the harm if not approved.

Adams stated that the housekeeping issue was to have proper zoning. This was a practical matter for a Certificate of Occupancy. The change would give a realtor the ability to market more effectively and moved the certificate of occupancy process along.

Council Member Gregory felt that Council was being asked to bless something that was inappropriate in the first place.

Adams stated that she understood that but they wanted now to get into compliance. They had been getting City permits for everything they had been doing.

Council Member Watts asked Adams if the applicant would consider some kind of agreement regarding infrastructure improvements that would have been required if the property had been in the city limits when it was expanded. He stated that he had a concern for health and safety out there because the buildings were not in the City when constructed and the City's fire codes did not apply. He questioned Ms. Adams if the property owner would consider making the property more consistent with the codes in place at the time the additional footage was built.

Adams stated that had not been discussed. In the past the property owner had dedicated land for the County yard and easements to the City. They wanted to be a good neighbor and she could talk with the owner about those suggestions.

The Mayor closed the public hearing.

Council Member Watts stated that he was open for a dialog to postpone the request to give the owner a chance to have discussions with staff look at code issues. He wanted to make sure the City did not take on all of the responsibilities of road repair and public safety issues that would have been the developer's responsibilities.

Mayor Pro Tem Kamp stated that other than the voluntary annexation, Council could not stipulate conditions to the applicant.

City Attorney Burgess stated that as this was a zoning case, the Council had the option to either grant or not grant the zoning.

Mayor Pro Tem Kamp stated that there were lots of non-industrial uses in this area. The property was annexed into City and had complied with everything since then.

Council Member Gregory felt that the applicant was trying to make it right so he could continue to do his business. He was open to making it right and felt that if the applicant really wanted the zoning change, he would take some additional steps. He expressed concern about the conditions of the structure for the people working there, for customers and emergency responders. He would want assurances that the building was properly designed as it should have been if done correctly from the start.

Council Member Watts stated that it was the spirit of what happened. 154,000 square feet was developed without City knowledge. This was a zoning case so stipulations could not be included but he felt that it would not be correct for Council to not have a conversation on what could be done to correct the situation.

Council Member Roden stated that the annexation agreement indicated that if the property owner built out beyond the area in the agreement, the property would be annexed. He asked if there

was any additional language in agreement that addressed the need to come up to code if the annexation were done.

Lockley stated that it did not go into that great detail. There were only general requirements similar to any other type of annexation.

Council Member Roden noted that the City had the opportunity to foresee and address these types of concerns in the agreement but did not put it in the agreement at that time. The main thrust of the agreement was that if it was not followed, the property would be annexed. He questioned on what basis more conditions could be added.

Council Member Watts stated that the covenants specifically described what the landowner was restricted to with the language that the existing space of the property would not materially be expanded unless the property was zoned to allow for other uses after annexation. He felt that was the wording that would extend the other regulations. When property was developed 1½ times the space agreed on, there was a question mark on the codes to be included. Some of those issues included health and fire, a sprinkler system, the ability to get fire trucks to the area, parking requirements, etc. Although not expressly stated, it would be expected that the codes would be followed.

Mayor Burroughs asked when the property owners would have been required to meet city codes during the annexation process.

City Attorney Burgess stated that the annexation process would have to be completed for the City's codes to apply.

Mayor Burroughs stated that so no matter when the additional construction was discovered the City codes could not have been applied until the completion of the annexation. He questioned if additional remedies for violation of the agreement could have been in place other than just the annexation.

City Attorney Burgess stated that she had never seen a non-annexation agreement with penalties other than subjection to immediate voluntary annexation.

Council Member Roden asked what triggered conformance to new code regulations.

Lockley stated that there was an administrative certificate of occupancy if there was a change from owner to owner. There was a full certificate of occupancy if there was a change in use. The Fire Department inspected for a new use based on the business.

Council Member Roden stated that it was possible over the past five years that there were some changes in the businesses. He questioned if Council had the ability to apply conditions to zoning cases.

City Attorney Burgess stated that as a zoning case Council would want to see what voluntarily came forward and then look at those issues as it came back.

Council Member Engelbrecht stated that a statement had been made that the zoning could be changed to EIC and then move the property into compliance. He felt that process was backwards. He felt the property should be in compliance and then get the zoning.

Lockley stated that the applicant could do that.

Mayor Burroughs asked if staff had any idea of what codes would have applied that were not in compliance when the structure was built.

Lockley stated nothing outside the change in zoning.

Mayor Burroughs suggested identifying what codes were in existence at the time of construction and had the development been done properly would have been imposed. Once those were identified determine what were reasonable to implement. Because the process was done backwards, conditions that normally would have been discussed before construction was done, were not imposed.

Council Member Watts motioned, Mayor Pro Tem Kamp seconded to continue the request to a date certain of May 7, 2013. On roll call vote: Council Member Watts, Council Member Gregory, Mayor Pro Tem Kamp, Mayor Burroughs, and Council Member Roden – “aye”; Council Member Engelbrecht “nay”. Motion carried with a 5-1 vote.

Ordinance No. 2013-91

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a Comprehensive Plan Amendment from "Employment Center" Future Land Use Designation to "Existing Land Use" Designation on approximately 8.532 acres of land located east of Loop 288 and north of University Drive (US 380); within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations, thereof, severability and an effective date. (CA12-0004, Spring Valley Estates) The Planning and Zoning Commission recommends approval subject to conditions (7-0).

Mayor Burroughs noted that Items C and D would be presented together.

Brian Lockley, Director of Planning and Development, presented the details of the proposal. Item C was a Comprehensive Plan Amendment from Employment Centers future land use to the Existing Land Use. The property was located north of University and east of Loop 288. He reviewed the details of the current zoning map, the current land use map and the objectives of an employment center. The property owners of the Spring Valley Neighborhood petitioned staff to assist with this rezoning. The property owners felt that this zoning was more appropriate to prevent intrusion and development of incompatible uses while also allowing existing residences to conform to the NR-3 zoning district standards and regulations. The Planning and Zoning Commission recommended approval of Comprehensive Plan Amendment as did the Development Review Committee. Item B was a request of the neighborhood to rezoning the area from an Employment Center Industrial to Neighborhood Residential 3 (NR-3). The current zoning map, proposed zoning map, exiting future land use map, and proposed future land use

map were reviewed. Both the Planning and Zoning Commission and the Development Review Committee recommended approval of the rezoning.

The Mayor opened the public hearing for both Items C and D.

The following individuals spoke during the public hearing:

John Burnett, 1902 Spring Valley, Denton, 76208 - favor

Helen Reed – address not given - favor

The Mayor closed the public hearing for Item C and D.

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

Ordinance No. 2013-092

- D. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from Employment Center Industrial (EC-I) zoning district classification and use designation to a Neighborhood Residential 3 (NR-3) zoning district classification and use designation on approximately 8.532 acres of land located east of Loop 288 and north of University Drive (US 380), within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations, thereof, severability and an effective date. (Z12-0009, Spring Valley Estates) The Planning and Zoning Commission recommends approval subject to conditions (7-0).

The public hearing for this item was held with Item C.

Mayor Pro Tem Kamp motioned, Council Member Engelbrecht seconded to adopt the ordinance as recommended by the Planning and Zoning Commission. On roll call vote: Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-093

- E. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from Regional Center Commercial Downtown (RCC-D) zoning district classification and use designation to Regional Center Residential 2 (RCR-2) zoning district classification and use designation, on 6.963 acres, located on the north and east sides of Shoreline Drive, west of Unicorn Lake Boulevard, in 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. (Z12-0012, Unicorn Lake Multifamily) The Planning and

Zoning Commission recommends approval (4-3).

Brian Lockley, Director of Planning and Development, stated that the request was for a rezoning from Regional Center Commercial Downtown (RCC-D) to Regional Center Residential 2 (RCR-2) zoning district. He reviewed the current zoning map, proposed zoning map, future land use map and the approved ADP site plan. The purpose of the rezoning was to allow for the construction of a multi-family development without the provision of the ground floor commercial uses required per Limitation L(6) in the existing zoning district. The applicant maintained that the area could not support additional commercial storefronts. Commercial businesses located in the Unicorn Lake area were currently struggling to survive and some had recently closed. The addition of the proposed multi-family development would provide a built-in customer base for the commercial uses located at Unicorn Lake. Multi-family would act as a catalyst for development and more commercial was not needed at this time.

The Planning and Zoning Commission recommended approval as did the Development Review Committee. A question had been asked regarding the vote by the Commission. It was noted that a question had come up regarding the 380 agreement provided to the property in terms of meeting the requirements of the agreement. Staff indicated that this proposal was in full compliance with the 380 agreement.

Council Member Gregory asked how the original approved plan differed from the proposed plan.

Lockley stated that the main difference was the connection to Unicorn Lake. The original plan had the walkways going interior to the development while the proposed plan had the connection outside the multi-family with wider sidewalks.

Council Member Roden stated that it was important to consider the economics in the area. If the goal was to get more residents in the area, he questioned the difference in previous units to the proposed units.

Lockley stated that the applicant had proposed the density figures.

Council Member Engelbrecht asked if there were space requirements for bike space parking.

Lockley stated that there were no requirements for bike parking.

The Mayor opened the public hearing.

The following Speaker Cards were submitted:

Steve Homeyer, Engineer on project - favor
Mark Martin, 521 S. Loop 288, Denton, 87205 - favor

Council Member Gregory stated that he understood about not wanting to have retail on the first floor of the multi-family development at this time. He asked if a transition could be made to retail in the future if desired.

Martin stated at this point in time they were just considering residential.

Council Member Gregory asked about an estimated canopy percentage for the sidewalk area.

Homeyer stated that on the east side 11 trees were required, on the west side 11 trees were required and 9 trees would be allowed on Shoreline. He stated that individual densities had been questioned. Under the current RCC-D, 100 units per acre would be allowed which would equate to almost 700 units. The proposed zoning would allow 40 units per acre which would equate 280 units per acre. Their proposal was for 205 units.

Council Member Roden asked if it would be possible to design the ground floor up to retail specifications but put in residential until more retail in the area might be needed.

Martin stated that could be done but it would be more costly.

Council Member Watts asked about the marketing for the units.

Lee Ramsey with the development group stated that the marketing would be geared towards young professionals and not students. The development would have amenities a young professional would like.

Council Member Watts stated that the idea would be to not rent by bedroom.

Ramsey stated they would not be doing that.

Council questioned the developers regarding DCTA bus stops in the area, setbacks from the street and green space, economic viability in the area, the layout of the three levels in terms of interior corridors, bike storage areas, covered bike parking and consideration of older professionals for the marketing.

Bob Dickson, 9480 Stanton, Lantana - favor

Alex Payne, 1517 Centre Place Drive, Denton, 76205 - favor

Marsha Atchison - favor

The Mayor closed the public hearing.

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

7. CITIZEN REPORTS

There were no citizen reports for this section of the agenda.

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 either a Work Session or Informal Staff Report regarding the annexation agreements and the provisions included in the agreements.

Mayor Burroughs stated that he had previously asked about identifying appropriate zoning for newly annexed property and offering that zoning to the property owners when annexing. He suggested a discussion regarding that concept being combined with non-annexation agreements and include appropriate zoning established with those agreements.

- 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 9:24 p.m.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS