

CITY OF DENTON CITY COUNCIL MINUTES
December 4, 2012

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Work Session on Tuesday, December 4, 2012 at 3:30 p.m. in the Council Work Session Room at City Hall.

PRESENT: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden.

ABSENT: Mayor Pro Tem Kamp, Mayor Burroughs.

1. Citizen Comments on Consent Agenda Items

There were no citizen comments presented on Consent Agenda items.

2. Requests for clarification of agenda items listed on the agenda for December 4, 2012.

Council Member Watts stated that for Item 6C, he would have to recuse himself from the meeting and someone would need to chair the meeting during that particular item.

City Attorney Burgess stated that the Council policies had a provision which allowed them to elect a chair under these circumstances.

Council Member Roden asked about Consent Agenda Item N – if this request for exception to the noise ordinance was for one year.

Emerson Vorel, Director of Parks and Recreation, stated that the original request was for an exception for every Friday for a one-year period, but Council had never approved a request for that amount of time. Staff felt a six week trial period should be approved, after which time the request could be re-evaluated based on neighborhood input.

Council Member Watts asked about Consent Agenda Item B – the HVAC system at the MLK Recreation Center. He asked about the fact that most of the bids were around the same price but the low bid was about 25% lower than the other bids.

Elton Brock, Purchasing Manager, stated that they had met with the contractor and the contractor had confirmed that they would be able to meet all specifications of the bid.

Council Member Gregory asked about Consent Agenda Item P – the Waide Road Bridge and what we were going to do with it.

City Manager Campbell stated that staff had identified a location in the North Lakes Park area. He stated that the County Judge had suggested placing it in Quakertown Park but it was not feasible to do at this time due to the flood plain.

Council Member King arrived at the meeting at 3:40 p.m.

Council Member Watts asked about Public Hearing Item 5A – modification to the vested rights section of the Development Code. He thought that there should be an avenue for an appeals process.

City Attorney Burgess stated that she recommended leaving the initial administrative review with the City Manager. If there needed to be an appeals process, she recommended that appeal be to the Zoning Board of Adjustment.

Following the completion of the Work Session, the City Council convened in a Closed Meeting to consider the following:

1. Closed Meeting:

A. Consultation with Attorneys - Under Texas Government Code Section 551.071.

1. Consult with City's attorneys regarding legal rights, restrictions and obligations associated with real and personal property located at the Denton Municipal Landfill, and with the potential lease of such real and personal property to third parties, where a public discussion of such legal matters would conflict with the duty of the City's attorneys to the City of Denton, Texas under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. To the extent that discussion of the lease of such real property to third parties might place the City at a disadvantage in negotiations, that component may be excepted under Section 551.072 as well.
2. Consult with the City's attorneys regarding legal issues associated with the exercise of eminent domain to acquire real property interests for public use, including without limitation, statutory procedural requirements related to the initiation of an eminent domain action, 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.
3. Consultation with the City's attorneys regarding legal issues associated with the potential condemnation of real property interests located in the O.S. Brewster Survey, Abstract No. 56, located generally in the 1700 Block of South Bonnie Brae Street, 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; and Deliberations regarding Real Property - Under Texas Government Code Section 551.072.

1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the acquisition of a tract of fee land for public purposes situated in the Gideon Walker Survey, Abstract Number 1330, in the City of Denton, Denton County, Texas, generally located at south Mayhill Road north of Gayla Drive. Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the tracts referenced above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and 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 proceedings or potential litigation regarding expanding and improving the City of Denton Landfill, a permitted municipal solid waste disposal facility. (Wilson - Landfill)
 2. 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 T.M. Downing Survey, Abstract No. 346, City of Denton, Denton County, Texas, and located generally along the south side of East McKinney Street, approximately 0.3 miles east of Woodrow Lane. 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. (Vela - 69kV DME)
 3. 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 M.E.P. & P.R.R. Co. Survey, Abstract No. 1475, City of Denton, Denton County, Texas, and located generally along the 2500 block of East McKinney Street. 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. (Dillard - 69kV DME)
- C. Consultation with Attorney - Under Texas Government Code Section 551-071, Deliberations regarding Economic Development Negotiations - Under Texas Government Code Section 551.087.
1. Receive a report and hold a discussion with the city's attorneys regarding the creation of a Tax Increment Reinvestment Zone on property located north of Airport Road near the Denton Airport where such discussion involves legal

issues on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary rules of Professional conduct of the State Bar of Texas clearly conflicts with the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. Also hold a discussion regarding financial information the City Council will review, including the potential offer of financial or other incentives, concerning the development of an industrial park on approximately 700 acres located north of Airport Road near the Denton Airport.

The Closed Meeting adjourned at 6:00 p.m.

The City Council convened in a Regular Meeting at 6:30 p.m. in the Council Chambers.

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

1. Presentation by the American Heart Association to Denton as a Fit Friendly Employer.

Amy Johnson with the American Heart Association presented the Fit Friendly Employer award to Council Member Watts and Scott Payne, Risk Manager.

2. Police Appreciation Day

Council Member Watts presented the Police Appreciation Day Proclamation to Police Chief Lee Howell, Officers Jason Kolba, Ryan Rigdon, Ryan Kane, Shane Kizer, Orlando Hinojosa, Paul Willenbrock, and Jim Bryan, and Gary Steele with the Citizens Police Academy and Alumnae Association.

3. CITIZEN REPORTS

There were no citizen reports.

4. CONSENT AGENDA

Approved the minutes listed below.

- A. Consider approval of the minutes of:

November 5, 2012
November 6, 2012
November 13, 2012
November 19, 2012

Ordinance No. 2012-322

- B. Consider adoption of an ordinance accepting bids and awarding a public works contract for the renovation of the Heating Ventilation and Air Conditioning (HVAC) System at the City of Denton Martin Luther King Recreation Center; providing for the expenditure of funds therefor; and providing an effective date (Bid 5020-awarded to Integrity Texas Construction LTD. in the amount of \$116,431).

Ordinance No. 2012-323

- C. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of Cem-Lime from Texas Industries Inc. (TXI), which is 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; and providing an effective date (File 5048-Purchase of Dry Cem-Lime and Cem-Lime Super Slurry for Street Department in the annual estimated amount of \$300,000 for a five year estimated total of \$1,500,000).

Ordinance No. 2012-324

- D. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of LifePak 15 Defibrillators from Physio Control, 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; and providing an effective date (File 5123-Purchase of Defibrillators for the City of Denton Fire Department in the estimated amount of \$560,000 for the replacement of fourteen units over a five (5) year period).

Ordinance No. 2012-325

- E. 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 Cooperative Purchasing Program for the purchase of Polymer for the City of Denton Pecan Creek Water Reclamation Plant as awarded by the State of Texas Contract 885-M1(885-77); and providing an effective date (File 5025-Polymer for Pecan Creek Water Reclamation Plant awarded to Polydyne Inc. in the unit price amount of \$1.07/lb for an estimated annual amount of \$90,000 with four (4) one year renewal options). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-326

- F. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of Fiber Optical Ground Wire (OPGW) for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5030-Supply of Electric Utility OPGW Transmission Conductor awarded to Techline, Inc. in the not to exceed amount of \$630,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-327

- G. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of 69kV and 138kV Substation Switches for Denton Municipal

Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5071-Supply of Electric Utility 69kV and 138kV Substation Switches awarded to Southern States, LLC in the not to exceed amount of \$5,850,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-328

H. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of Polymer Insulators for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5075-Supply of Polymer Insulators awarded to Techline, Inc. in the not to exceed amount of \$590,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-329

I. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of porcelain station post insulators for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5023-Supply of Porcelain Station Post Insulators awarded to Victor Insulators, Inc. in the not to exceed amount of \$280,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-330

J. Consider adoption of an ordinance accepting competitive proposals and awarding contracts for the purchase of electric utility 69kV and 138kV instrument transformers for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5064-Supply of Electric Utility 69kV and 138kV Instrument Transformers awarded to ABB HVIT in the not to exceed amount of \$2,290,000, Alstom Grid, Inc. in the not to exceed amount of \$200,000, and Trench Limited in the not to exceed amount of \$50,000 for a total award amount not to exceed \$2,540,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-331

K. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of Phase Over Phase 138kV Pole Mounted Gang Operated Air Break (GOAB) Switches for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5065-Supply of Phase Over Phase 138kV Pole Mounted Gang Operated Air Break (GOAB) Switches awarded to Stuart C. Irby Company in the not to exceed amount of \$470,000). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2012-332

L. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of electric utility transmission conductor (Cumberland and Lupine) for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5066-Supply of Electric Utility Transmission Conductor (Cumberland and Lupine) awarded to Stuart C. Irby Company in the not to exceed amount of \$1,410,000). The Public Utilities Board recommends approval (6-0).

Second Reading

- M. Consider adoption of an ordinance on second reading granting to Oncor Electric Delivery Company LLC a non-exclusive franchise for the purpose of constructing, maintaining, and using an electric delivery utility system in the City of Denton; regulating the construction work done by the grantee in the City; requiring joint use of poles, trenches, and conduits in certain instances; prescribing the relationship and relative rights between grantee and others with respect to construction in the City and location of facilities; prescribing the duties, responsibilities, and rule making authority of the City Manager and the City with respect to administration of this franchise; requiring certain records and reports and providing for inspections and location of principal offices; reserving to the governing body of the City the right to set charges and rates of grantee; providing the rights and responsibilities of the governing body in setting the rates; providing for enforcement of the franchise; prescribing the compensation to the City from the grantee for the franchise privilege; providing for assignment of the franchise; providing indemnity of the City and its employees; providing for good faith effort; providing for insurance; setting forth the term of the franchise and its renewal; repealing Ordinance No. 2001-405 as amended; providing for acceptance of the franchise by grantee; finding that the meeting at which this Ordinance is passed is open to the public; providing for severability; and providing an effective date. (Second Reading)

Approved the request listed below.

- N. Consider a request for an exception to the Noise Ordinance for the purpose of performing live music by the SuperEstrellas at the La Estrella Mini Market, on the corner of McKinney Street and Railroad Avenue, for each Friday night beginning December 7, 2012, through January 11, 2013, from 8:00 p.m. until midnight. This request is for an extension of hours from 10 p.m. to midnight for amplified sound. The amplified sound will remain at the allowable 65 decibels. Staff recommends the exception be granted until midnight.

Ordinance No. 2012-333

- O. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a contract of sale (herein so called), as attached to the ordinance and made a part thereof as Exhibit "A", by and between the City of Denton (the "City"), and Gary Dennis Dillard (the "Seller") contemplating the sale by Seller and purchase by City of a 3.480 acre tract of land, more or less, being generally located in the 2500 block of east McKinney street and situated in the M.E.P. & P.R.R. CO. Survey, Abstract Number 1475, City of Denton, Denton County, Texas (the "Property Interests"); for the purchase price of Three Hundred Ninety Thousand and No/100 Dollars (\$390,000.00); authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transaction contemplated by the contract of sale; authorizing the expenditure of funds therefore; authorizing, to the extent applicable, relocation expenditures; and providing an effective date. (69kV Transmission Line Re-build Project)

Ordinance No. 2012-334

- P. Consider adoption of an ordinance authorizing the Mayor to execute an Interlocal Cooperation Agreement between Denton County, Texas, and the City of Denton, Texas

accepting Denton County's donation of the Waide Road Bridge and agreeing to accept the financial responsibility for any relocation, storage, refurbishing, and transportation expenses necessitated by this agreement and associated with the bridge; and providing for an effective date.

Council Member Gregory motioned, Council Member King seconded to approve the Consent Agenda and accompanying ordinances and resolutions. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

5. PUBLIC HEARINGS

Ordinance No. 2012-335

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, amending Subchapter 35.3.8 of the Denton Development Code concerning the adoption of the vested rights determination revisions. (DCA12-0007)

Darren Groth, Gas Well Administrator, stated that the request was to delete and replace the current Denton Development Code Section 35.3.8 with a new section that was more consistent with Chapter 245 of the Texas Local Government Code. The City of Denton’s current vested rights provision was adopted in 2002 and provided broader vested rights protection than Chapter 245 of the Texas Local Government Code.

Upon application, the Director might allow an application to be processed under pre-existing land development regulations if certain conditions applied. The second part of that was whether the applicant could demonstrate a project in progress pursuant to state law (i.e., Chapter 245). The current provisions allowed an applicant to claim vested rights protection earlier than the project’s filing date. What the amendment would do was replace the entire language in the current Development Code with a newly written section. The amended language would eliminate the “pre-existing, investment-backed, good faith expectation” protection to be consistent with Texas Local Government Code Chapter 245.

The amendment would outline a process where an applicant had the onus to demonstrate that the project contained one or more vested rights protections consistent with the City Council’s view of vested rights. The applicant must file a petition containing information that addressed the nine criteria listed in the new amended language. The Director must then determine whether the application was complete per the DDC. Once complete, the application would be forwarded to the City Manager and City Attorney for their respective reviews. The City Manager might request a pre-determination conference with the applicant. The City Manager would then render a final administrative determination that granted the relief or denied the relief with 30 days of the date the petition was complete.

Groth explained that this was the recent change to the language in the exhibit based on the discussion during the Work Session. The City Manager’s decision must be made within 30 days of the date the petition was completed. The City Manager could grant or deny relief. The City Manager’s decision must include a statement of the nature and scope of the project and the

reasons for the decision, and should identify those current regulations applicable to the project, and those prior existing regulations applicable to the project, if any. Once that decision was made it would be filed in the project's file. An appeal of the City Manager's decision should be to the Board of Adjustment. Notwithstanding the final decision, the City and applicant could enter into an agreement that modified the final decision and the applicable regulations to be applied to the project. Staff recommended approval of the proposed amendment.

Council Member Roden asked Groth to confirm that this did not apply to gas well applications only.

Groth stated that was correct.

Council Member Watts opened the public hearing.

Tavia Russell, 2302 Jacqueline Drive – spoke regarding the item.

Council Member Watts closed the public hearing.

Council Member Gregory motioned, Council Member Roden seconded to approve the ordinance with the revisions discussed. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2012-336

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a Comprehensive Plan Amendment from a "Neighborhood Centers" future land use designation to a "Community Mixed Use Centers" future land use designation on approximately 2.2 acres of land located on the west side of Teasley Lane (2181), between Hickory Creek Road to the north and Old Alton 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 and an effective date. (CA12-0003)
The Planning and Zoning Commission recommends approval (7-0).

Brian Lockley, Interim Director of Planning and Development, stated that there were two requests which he would be making a joint presentation for. He stated that the first item was a public hearing for a Comprehensive Plan Amendment to change the future land use designation from Neighborhood Centers designation to Community Mixed Use Centers designation. The second part of the presentation would deal with the re-zoning, and that would be from NR-6 to CM-G. The subject property was located on the west side of Teasley Lane, between Hickory Creek Road to the north and Old Alton Road to the south.

The property currently consisted of a single-family residence. It was approximately 20 acres in size. The future plans for this property included a subdivision of the property with the front half of the property being platted out into a 2.2 acre parcel that could be used for future retail or commercial development. The future land use designation was Neighborhood Center. The proposed future land use would change that designation to Community Mixed Use.

The criteria for approval of a Comprehensive Plan amendment had been met: the goals and objectives of the Denton Plan; the future land use element of the Denton Plan; the balance of land uses in the City; and adequate public facility elements of the Denton Plan, and how the proposed change would affect the provision of the services anticipated in the Denton Plan.

The public notification process included thirteen notices to property owners within 200 feet and 52 notices were sent to property owners within 500 feet. No notices in opposition to this request were received.

The Planning and Zoning Commission recommended approval of the amendment as did the Development Review Committee.

In conjunction with this request, a request had been made for a rezoning from Neighborhood Residential 6 to Community Mixed Use General zoning district. The rezoning conformed to the Future Land Use element of the Denton Plan; and the proposed rezoning facilitated the adequate provisions of transportation, water, sewers, schools, parks, other public requirements and public convenience.

The public notification process included thirteen notices to property owners within 200 feet and 52 notices were sent to property owners within 500 feet. No notices in opposition to this request were received.

The Planning and Zoning Commission recommended approval of the amendment as did the Development Review Committee.

Council Member Watts opened the public hearing for Item 5B and 5C.

Bob Shelton, 2308 RanchHouse Drive, stated that he was the applicant and would answer any questions the Council had.

Council Member Watts closed the public hearing.

Council Member King motioned, Council Member Roden seconded to approve the ordinance for Item 5B. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2012-337

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 6 (NR-6) zoning district and use classification to a Community Mixed Use General (CM-G) zoning district and use classification on approximately 2.2 acres of land located on the west side of Teasley Lane (2181), between Hickory Creek Road to the north and Old Alton 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 and an effective date. (Z12-0007) The Planning and Zoning Commission recommends approval (7-0).

Council Member King motioned, Council Member Roden seconded to approve the ordinance for Item 5C. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

6. ITEMS FOR INDIVIDUAL CONSIDERATION - CONSIDERATION OF THE USE OF EMINENT DOMAIN TO CONDEMN REAL PROPERTY INTERESTS

Ordinance No. 2012-338

- A. Consider adoption of an ordinance finding that a public use and necessity exists to acquire through the exercise of the right of eminent domain (I) a utility and slope easement encumbering 0.05 acre of real property; and (II) a temporary construction, grading and access easement encumbering 0.08 acre of real property, for the public use of expanding and improving Bonnie Brae Street, a municipal street and roadway located in the City of Denton, Texas, generally located in the 1700 block of South Bonnie Brae Street, and situated in the O.S. Brewster Survey, Abstract Number 56, City of Denton, Denton County, Texas, as more particularly described in Exhibit "A" and Exhibit "B", respectively, each attached to the ordinance and made a part thereof (collectively, the "Property Interests"); authorizing the filing and prosecution of eminent domain proceedings to acquire the Property Interests; authorizing the expenditure of funds therefore; making findings; providing a savings clause; and providing an effective date. (Parcels 7 and 8 - Martin - Bonnie Brae Widening and Improvements project)

Council Member Gregory motioned, Council Member King seconded the following:

“I move that the City of Denton, Texas authorize the use of the power of eminent domain to acquire (1) a utility and slope easement encumbering 0.05 acre of real property; and (2) a temporary construction, grading and access easement encumbering 0.08 acre of real property; generally located in the 1700 block of South Bonnie Brae Street, located in the O.S. Brewster Survey, Abstract 56, and being more particularly described in Exhibit “A” and Exhibit “B”, respectively, to the ordinance now under consideration and on the overhead screen being now displayed to the audience, for the public use of Bonnie Brae Street improvements and expansion, a street or roadway in the City of Denton, Texas.”

Real property description is attached as Exhibit 1 to Minutes.

On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2012-339

- B. Consider adoption of an ordinance finding that a public use and necessity exists to acquire through the exercise of the right of eminent domain (I) fee simple title to the surface estate, with waiver of surface use related to the mineral estate, of an approximate 7.36 acre tract of real property; (II) a slope easement encumbering 0.33 acre of real property; (III) a drainage easement encumbering

1.35 acres of real property; and (IV) a temporary construction, grading and access easement encumbering 0.03 acre of real property, for the public use of expanding and improving Bonnie Brae Street, a municipal street and roadway located in the City of Denton, Texas, generally located in the 3100 block of South Bonnie Brae Street, and situated in the James Edmonson Survey, Abstract Number 400, City of Denton, Denton County, Texas, as more particularly described in Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "D", respectively, each attached to the ordinance and made a part thereof (collectively, the "Property Interests"); authorizing the filing and prosecution of eminent domain proceedings to acquire the Property Interests; authorizing the expenditure of funds therefore; making findings; providing a savings clause; and providing an effective date. (Parcel 35 - Parkes - Bonnie Brae Widening and Improvements project)

Council Member Roden motioned, Council Member King seconded the following.

"I move that the City of Denton, Texas authorize the use of the power of eminent domain to acquire (1) fee simple to the surface estate, with waiver of surface use related to the mineral estate of 7.36 acres of real property; (2) a slope easement encumbering 0.33 acre of real property; (3) a drainage easement encumbering 1.35 acres of real property; and (4) a temporary construction, grading and access easement encumbering 0.03 acres of real property; generally located in the 3100 block of south Bonnie Brae Street; located in the James Edmonson Survey, Abstract 400, and being more particularly described in Exhibit "A", Exhibit "B", Exhibit "C", and Exhibit "D", respectively, to the ordinance now under consideration and on the overhead screen being now displayed to the audience, for the public use of Bonnie Brae Street improvements and expansion, a street or roadway in the City of Denton, Texas."

Real property description is attached as Exhibit 2 to Minutes.

On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – "aye". Motion carried unanimously.

Council Member Watts recused himself from the meeting due to a conflict of interest.

Council Member Engelbrecht presided over the meeting.

Ordinance No. 2012-340

- C. Consider adoption of an ordinance finding that a public use and necessity exists to acquire through the exercise of the right of eminent domain (I) fee simple to the surface estate, with waiver of surface use related to the mineral estate, of an approximate 0.07 acre tract of real property; (II) a utility and slope easement encumbering a 0.07 acre tract of real property; (III) a utility and drainage easement encumbering a 0.01 acre tract of real property; (IV) a drainage easement encumbering a 0.03 acre tract of real property (V) a slope easement encumbering a 213 square foot tract of real property; and (VI) a temporary construction, grading and access easement encumbering a 0.08 acre tract of real property, for the public use of expanding and improving Bonnie Brae Street, a

municipal street and roadway located in the City of Denton, Texas, generally located in the 2200 block of South Bonnie Brae Street, and situated in the O.S. Brewster Survey, Abstract Number 56, City of Denton, Denton County, Texas, as more particularly described in Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D", Exhibit "E" and Exhibit "F", respectively, each attached to the ordinance and made a part thereof (collectively, the "Property Interests"); authorizing the filing and prosecution of eminent domain proceedings to acquire the Property Interests; authorizing the expenditure of funds therefore; making findings; providing a savings clause; and providing an effective date. (Parcel 24 - Watts - Bonnie Brae Widening and Improvements project)

Council Member King motioned, Council Member Gregory seconded the following.

“I move that the City of Denton, Texas authorize the use of the power of eminent domain to acquire (1) fee simple to the surface estate, with waiver of surface use related to the mineral estate, of an approximate 0.07 acre tract of real property; (2) a utility and slope easement encumbering 0.07 acre of real property; (3) a utility and drainage easement encumbering 0.01 acre of real property; (4) a drainage easement encumbering 0.03 acre of real property; (5) a slope easement encumbering 213 square feet of real property; and (6) a temporary construction, grading and access easement encumbering 0.08 acre of real property, generally located in the 2200 block of South Bonnie Brae Street, located in the O.S. Brewster Survey, Abstract 56, and being more particularly described in Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D", Exhibit "E" and Exhibit "F", respectively, to the ordinance now under consideration and on the overhead screen being now displayed to the audience, for the public use of Bonnie Brae Street improvements and expansion, a street or roadway in the City of Denton, Texas.”

Real property description is attached as Exhibit 3 to Minutes.

On roll call vote: Council Member King, Council Member Gregory, Council Member Engelbrecht, Council Member Roden – “aye”. Motion carried unanimously.

7. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report and hold a discussion regarding the status of the widening of U.S. Highway 380.

Frank Payne, City Engineer, made a presentation regarding the Highway 380 Utility Relocation project from Bonnie Brae to Elm Street and Egan Road to I-35 N.

Payne stated that TxDOT was widening Highway 380 from Elm Street to the Wise County line in three separate projects. TxDOT received bids in November for the U.S. 380 “In-Town” project, which was from Bonnie Brae to Elm Street. Low bid was Jagoe Public. This project had a completion time of approximately two years. Construction was expected to begin sometime in October 2013.

Payne stated that TxDOT had received bids in July 2012 for the “Urban” project, which was from I-35 west approximately .4 miles west of F.M. 156 with a low bid from Texas Sterling

Construction. This project had a completion time of approximately three years. Construction was expected to begin in January or February 2013. Construction was also expected to begin at the Wise County line and proceed east in order to give the City additional time to clear its water and wastewater utilities.

Payne stated that City staff was working to clear utilities from both sections of roadway in advance of the TxDOT projects. The US 380 "In-Town" project was being done in two phases. The first phase was primarily from Elm Street west to Carroll Boulevard with some additional work at Gay Street in order to assist with the timing of the construction of the Wash Factory facility. This work was designed in-house and was being constructed by a combination of City crews and annual bids for construction. Work began in June 2012 and was expected to be completed by the end of the year.

The second phase was from Carroll Boulevard west to Bonnie Brae Street. This work was designed by in-house and consultant personnel and was currently in the bid phase. Bids were scheduled to be received in December 2012. The City had communicated to TxDOT that we expected construction to begin in March 2013 and to be completed in March 2014. In addition to the utility work in this area, the City would be clearing medians and placing temporary pavement between Bonnie Brae Street and Hinkle with reimbursement by TxDOT. He also stated that the City had communicated to TxDOT concerns about the overlapping timeframe of this job and TxDOT's project over the same area.

The US 380 "Urban" project was going to be cleared in three phases. The first phase consisted of protecting a wastewater line on the south side of U.S. Highway 380 between Egan Road and Willow Lane. This work was designed in-house and constructed by City crews. Work began in November 2012 and was expected to be completed in early December 2012. The second phase consisted of water line construction between I-35 and Masch Branch Road. This work was designed in-house and would be constructed by City crews and annual bids for construction. Work was scheduled to begin in early December 2012 and was expected to be completed by June 2013. The third phase consisted of wastewater line construction between I-35 and Masch Branch Road. This work was designed in-house and would be constructed by City crews and annual bids for construction. Work was scheduled to begin in March 2013 and be completed in May 2013.

Council Member Roden stated that University Drive was, from some people's perspective, an obstacle to walkability and bikeability. He asked what benefits the widening project would have as far as changing signals, etc. to make University Drive more walkable and/or bikeable.

Payne stated that as far as crossing Highway 380, once TxDOT installed the new signals they would have to look at the timing for the new roadway conditions. He stated that they had already made adjustments at some cross streets to allow more time for bicyclists to cross Highway 380.

Council Member Gregory asked if there would be good sidewalk connectivity along University Drive.

Payne stated that the plans showed sidewalks along University Drive.

Amber Briggie, 1315 Dartmouth Place, asked that the Council find a safe way for children in this neighborhood to get to school.

Adam Briggie, 1315 Dartmouth Place, proposed that they narrow Highway 380 and replace it with a nice tree-lined bike path with limited automobile access in off-peak hours. He stated if they chose to not go with his suggestions then make it a complete pedestrian and bike access street. Make it have safe crossings, maybe elevated crossings. Lower the speed limit-maybe to 25. Make it clear that it was a street in a community not a highway through a nowhere.

- B. Receive comments from the public and hold a discussion regarding the Phase II amendments of the City's Gas Well Ordinance.

Darren Groth, Gas Well Administrator, stated that this was an opportunity for Council to receive comments from the public regarding the proposed amendments to the gas well ordinance.

Council Member Roden stated that in the backup it was noted that the Planning and Zoning Commission recommended approval with conditions, but he could not find what the conditions were in the backup.

Groth stated that the motion by the Planning and Zoning Commission was to recommend approval with the condition that knowing there was still some work to be done, approval was conditioned upon the insight and knowledge and the expertise of the City Council to act in favor of the City.

The following individuals spoke.

John Russell, 2302 Jacqueline Drive, spoke in opposition

Sharon Wilson, 1121 Belvedere Drive, Allen, spoke in opposition

Rhonda Love, 1921 Hollyhill Lane, spoke in opposition

Vickie Oppenheim, 600 Windfields Street, spoke in opposition

Morgan Larson, McCormick Street, spoke in opposition

Laura Abril, 2424 W. Oak Street, spoke in opposition

Gilbert Horton, 1209 CR 1304, Bridgeport, with Devon Energy, spoke in opposition

Cathy McMullen, 805 Ector, spoke in opposition

Mary Maxwell, 516 W. Oak Street, spoke in opposition

Megan Storie, 804 W. Hickory, spoke in opposition

Tara Linn Hunter, 804 W. Hickory, spoke in opposition

Kelsey Fryman, 1103 Bernard Street, spoke in opposition

Adam Briggie, 1315 Dartmouth Place, spoke

Amber Briggie, 1315 Dartmouth Place, spoke

Eamon Danzig, 2300 W. Oak Street, spoke in opposition

Phyllis Wolper, 2616 Hereford Road, spoke in opposition

Collin Shaw, spoke in opposition

Chris Klabunde, 1604 N. Elm Street, spoke in opposition

Comment cards were received from the following individuals:

Jason Stroud, 816 W. Sycamore Street, opposition
Lydia Alexander, 2043 Scripture Street, opposition
Scott Campbell, 420 Sherman Drive, opposition
Elise Petrosky, 1604 N. Elm Street, opposition
Maria Rocha, 1604 N. Elm Street, opposition
Andres Rocha, 1604 N. Elm Street, opposition
Wes Sandefor, Clean Resources, 5601 Bridge Street, Fort Worth
Chelsea Bacher, Clean Resources, 5601 Bridge Street, Fort Worth

8. CITIZEN REPORTS

There were no citizen reports.

9. 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 an update on the study for the intersection of Welch and Eagle Drive for the signal light and crosswalk.

- 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 8:31 p.m.

CHRIS WATTS
COUNCIL MEMBER AND ACTING CHAIR
CITY OF DENTON, TEXAS

JANE RICHARDSON
ASSISTANT CITY SECRETARY
CITY OF DENTON, TEXAS