

CITY OF DENTON CITY COUNCIL MINUTES

January 13, 2015

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, January 13, 2015 at 3:00 p.m. in the Council Work Session Room at City Hall.

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

ABSENT: None

- A. ID 15-047 Receive a report, hold a discussion regarding the 2013 Return on Investment Report of Economic Development Incentives for the City of Denton.

Aimee Bissett, Director of Economic Development, stated that the City of Denton developed its original Tax Abatement Policy in 1989 to attract new businesses to Denton and to encourage existing businesses to expand. The intent was to establish public/private partnerships that would, in the long term, result in a diversified and expanded tax base for the City. The report covered the 2013 time frame. She stated that although Denton was a growing city it was also an older city with older infrastructure which made return on investment challenging.

Chapter 380 of the Local Government Code gave cities the authority to provide grants or loans of city funds or services in order to promote economic development. The City had awarded these Chapter 380 grants based on performance in generating property tax or sales tax. The 2013 Return on Investment Report provided an overall look at what the City of Denton received in the way of direct benefits (property and sales tax revenues) as well as the indirect benefit of new jobs created by those companies and developments that received incentives.

The 2013 report was expanded to include the ad valorem revenue for Denton County, which included both the incentives that the County had partnered with the City as well as the revenue from the incentives that the County did not invest in. The percentage abated or rebated and the terms for the County incentives may vary from the City's incentive terms. Other tools included PID, TIRZ, and TIF.

Incentive Summary - Eight property tax abatements had been granted since 1998, five property tax rebates since 2004 and six sales tax rebates since 2004. The methodology for determining the incentive was cumulative sales tax and property tax revenues minus incentive payments. The two most recent property tax abatements were Peerless Manufacturing Expansion and Tetra Pak Materials Expansion. The most recent Property Tax Rebates were Safran Labinal Relocation to Denton and Mayday Manufacturing Expansion. The two most recent Sales Tax Rebates were Rayzor Ranch - Phase 2 and Golden Triangle Mall.

Council discussed the various incentives and rebates. A suggestion was made to add information on what was spent on infrastructure improvements to provide a better picture of the figures.

Bissett reviewed more details of the Golden Triangle Mall incentive. To date the Mall had not requested any of the incentive although they were probably were eligible to do so at this point in time. The term of the incentive began on the date that they started receiving funding.

Council questioned if there were guiding principles on whether to provide the incentives. Bissett stated that those would be reviewed in next work session item.

Council discussed whether some of the incentives for sales tax involved a shift from an old store to a new store and if the sales were truly new sales and not cross over sales.

Bissett reviewed the Return on Investment Report for the City of Denton. That report included cumulative property valuation, cumulative property tax generated, cumulative sales tax generated, net property and sale tax revenue, return on investment percentage and number of new jobs created. She also reviewed the benefits that other entities had such as the State, DCTA, and Denton County.

Council Member Gregory suggested including the DISD in the figures for next year's report.

- B. ID 15-061 Receive a report, hold a discussion and give staff direction regarding the creation of an Economic Development Incentive Fund for the City of Denton.

Aimee Bissett, Director of Economic Development, stated that the objectives for her discussion would be to review the incentive policy and authority under Chapter 380 of the Texas Local Government Code, discuss options for the creation of an Incentive Fund, receive initial direction from Council regarding the best path forward for bringing additional information and possible future discussion topics.

Chuck Springer, Director of Finance, presented the Accounting Standards that would be used for a proposed Economic Development Incentive Fund. The Governmental Account Standards Board set the rules for the City's use of General Fund Balance or designation of Special Revenue Funds. The Council could commit a portion of the General Fund Balance for economic development incentives or restrict/commit specific revenues for economic development incentives. He reviewed committed fund balance procedures, special revenue fund procedures, revenue options and impacts.

Council questioned if there was a set amount needed for such a fund.

Bissett stated that some competing cities might have \$9 million or more set aside due to their 4A or 4B sales tax fund which Denton did not have. Anything set aside would be better than what currently was not available. It was a matter of the Council's comfort level on what to set aside.

Next steps in the process included direction from Council on if/how they wanted to proceed, preferred options, a target amount annually/cap for fund total, and specific benchmarks/requirements for eligibility.

Mayor Watts stated he was in favor of such a program as it was the difference between being chosen for a new development project and not being chosen. There was a difference between choosing a project and being chosen by a project. Such a fund would minimize the effect on the General Fund at the beginning to set up the fund.

Mayor Pro Tem Engelbrecht stated that he was in favor of targeting those companies with higher paying jobs to encourage higher types of housing.

Council Member Johnson stated that the objective was to have another tool to get development to look at Denton and have that money available when needed.

Council Member Hawkins stated that he would be in favor of developing such a fund in order to have the same tools as other cities in order to compete for new developments.

Council Member Gregory suggested that future reports might be looked at in terms of retention of current businesses or how to support companies here who might want to grow.

Council direction was to create the fund partially from the mixed beverage sales tax above projections for growth, have a policy discussion to make sure the fund was protected and used only for projects the City wanted rather than developers coming to the City for funding, contribute to current businesses, and encourage high wage jobs. A future report was requested on expansion and retention efforts.

Council Member Gregory suggested building the fund with the expiring 380 agreements as opposed to dedicated revenue fund.

Mayor Watts recapped that staff should look for an initial way to have the least impact on the General Fund through funding such as the liquor tax, expiring 380 agreements or other expiring incentives. Staff should present a menu of different types of options, suggestions, and recommendations on an amount and the impact moving forward on the General Fund. Guiding principles to work from should also be developed.

- C. ID 15-049 Receive a report, hold a discussion and give staff direction regarding aesthetics related to the 35Express Project.

Mark Nelson, Director of Transportation, stated that staff was looking for direction from Council regarding the aesthetic components for public art and the intersection and pedestrian crossing at the North Texas Blvd. bridge. His report would cover a review of the project, aesthetic concepts, pedestrian enhancements and next steps.

The North Texas Blvd. bridge was the only bridge to be constructed to the ultimate design in Phase I. He reviewed the meetings that were held where the designs had been discussed and showed the original TxDOT color scheme at the Gateway corridor. A representation of the proposed branding located on the bridge with the city name and UNT was shown. TxDOT was not sure that back lighting could be done on the names on the bridge. The pictures of the Denton medallion were also shown. Staff was looking to get to the 85% design phase and forward to a vendor to get it completed.

The base line TxDOT treatment for pedestrian infrastructure was shown as well as the North Texas Blvd. bridge enhancements which included brick veneer pedestrian barrier wall-through lanes, bollards for a Texas Turnaround, pedestrian lighting and brick banding and smooth center pathway.

Consensus of the Council was to proceed with the staff proposal.

- D. SI15-0001 Receive a report; hold a discussion, and give staff direction regarding proposed criteria for Tree Fund Expenditures and initial tree planting projects.

Haywood Morgan, Urban Forester, presented information on tree fund expenditure criteria and proposed planting projects. The tree code consisted of presentation and mitigation. Mitigation included tree planting, tree fund, tree trusts and alternative tree plan.

Tree Funds - the permitted uses of the tree fund as noted in the Denton Development Code were reviewed as well as the administration of the fund. The development of the criteria for tree fund expenditure was vetted with the Planning and Development Department, Keep Denton Beautiful, and Parks and Recreation. Eight general considerations/criteria were developed with special considerations based on permitted uses. A survey was sent to the DFW area and other larger cities to determine the effectiveness of other cities' tree fund programs and how they managed their expenditures.

Tree Fund Proposed Expenditure Criteria 1 - Full Project Cost including tree cost, water tap, water impact fees, irrigation system, installation labor and materials and ongoing maintenance.

Council Member Johnson questioned why the City was paying a tap fee and impact fee. That was paying the city by the city and was not part of why the fee was in place.

Jim Coulter, General Manager-Water Administration, stated that the impact fee was for new demand on the system and if not collected, it would have to be distributed across the City to the ratepayers.

City Manager Campbell stated that it could be waived but would still have to be paid. The City could pay the fee through the General Fund to the Water Fund instead of using the tree funds.

Council Member Gregory felt that the tree plantings would only have to be irrigated for a few areas. The trees should be native to the area and once established should be able to have the irrigation turned off. He questioned how much impact fee there would be for a temporary tap.

Morgan stated that the watering would only be needed to get the trees established but if there was a period with no rain, even mature trees would be affected as well as new trees. With a system already in place it could be used in those circumstances.

Council Member Roden requested examples of impact fee on x number of trees and what public property would be used which might already have the infrastructure in place.

Council Member Gregory stated that he would also like to see costs where trees were not practicable but instead had an irrigation bag around the tree that were manually filled until the tree no longer needed the additional water.

Mayor Watts asked if ongoing maintenance would be taken out of tree fund for parks.

Morgan stated that possible costs might be done through a private contractor as opposed to the Parks Department performing the maintenance. Staff was looking at contracting out the work to get the trees planted to expedite the process.

Proposed Criteria 2 – Other Efforts - Sources Leveraged- the use of grants and neighborhood association contributions towards an adjacent parks or an anticipate project by a city partner.

Proposed Criteria 3 – Community Involvement – projects that had the support and involvement of neighborhoods and/or community groups would be considered.

Proposed Criteria 4 – Residential requests - the number of requests from local residents for a specific project would be considered.

Proposed Criteria 5 – Staff-identified needs - projects identified by staff for shade for recreation/mobility paths or traffic calming measures.

Proposed Criteria 6 -Consistency with Existing Plans – alignment with other approved city plans such as the Denton Comprehensive Plan or Sustainability Plan.

Proposed Criteria 7 - Community Impact - residential benefits of the project.

Proposed Criteria 8 - Tree Fund Expenditure Distribution - biannual distribution of existing and future tree fund dollars such 75% tree planting and maintenance, 15% for wooded property to preserve, 5% city-wide tree inventory and 5% education of citizens and developers.

Council Member Gregory stated that before he would want to commit to those percentages, he would like a meeting with Real Estate to see if there were any tree stands already identified to preserve. If there was not enough to purchase a substantial piece of property, then the percentages might have to be changed.

Mayor Pro Tem Engelbrecht stated that 75% was about \$2 million and questioned how many trees could be purchased for that amount of money. He questioned the total cost per tree and how many trees could plant for that amount.

Morgan stated that the 75% was determined from a previous council discussion which was a 3-1 or 4-1 ratio.

Council Member Johnson stated that at the current pace, the fund was growing \$600,000 per year so Council needed to think about what it would look like in future years. The money needed to be spent at a rate that would be coming in and not maintain a high balance.

Council Member Ryan suggested having a not to exceed amount for the bottom two areas and keep funding for other two areas.

Council Member Hawkins stated that he would like to do all of the proposed projects which were included in the materials.

Morgan continued with Special Consideration by Permitted Uses which was composed of several components.

Component A - Tree planting and maintenance through partnership efforts with other entities such as Keep Denton Beautiful, the National Arbor Day Foundation and the American Forest. Compliance would be achieved with approved species and recommendations.

Component B – Purchase of wooded property to preserve in strategic locations adjacent to wooded environmentally sensitive areas, park land and trails. Species composition of property to be preserved should be oak and cedar elms versus mesquite and locust trees.

Component C - Perform and maintain a city-wide tree inventory; reduce city liability by identifying dead or hazardous trees; assist in planning for future insect and disease management; and improve maintenance efficiencies and thoroughness of in-house tree work.

Council Member Roden stated that the last Council discussion was to not pay the cost for an inventory and that the sense was that the survey was connected to a city-wide assessment of canopy and species. This current recommendation was for a survey of trees on city property with maintenance and disease control and was a different concept from before.

Morgan stated correct and that these would be some of the benefits from an inventory.

Council Member Roden stated that if an amount was needed, Council would need to know whether the survey would be an inventory or maintaining city controlled trees.

Morgan stated that the last discussion was overarching but these were benefit guidelines.

Mayor Watts stated that the last time the survey was for an entire city inventory and questioned if the suggestion now was for city owned property or for only public property.

Morgan stated that it would be more focused on city owned property which had to be maintained by the city.

Council Member Roden stated that was a different scope and suggested exploring partnerships with UNT for a tree inventory to get back to the original scope of the inventory.

Morgan stated that staff had discussed with UNT the possibility of a small inventory to see what kind of data could be derived.

Mayor Pro Tem Engelbrecht felt that it was important to get some handle on what was available city-wide if the goal was to increase the city canopy.

Component D - Educate citizens and developers on the benefits and value of trees by expanding existing programs or events, partnering with DISD to incorporate educational programs for DISD students, communicating with stakeholders, and building off of industry best practices for developing with trees.

Council Member Johnson stated that if trees were important, there was a need to be flexible with development standards in order to preserve tree stands in a large residential development.

Mayor Pro Tem Engelbrecht suggested looking at particular aspects such as shade for the parking lots, look at practicable aspects for what the trees would be used for.

Council Member Gregory suggested including bike/walking trails on the list of other places for trees.

Morgan continued that a Tree Fund Expenditure Analysis template provided consistent documentation of proposed projects and would be managed within the proposed standardized parameters to promote proactive management of the Fund.

Proposed Planting Projects- (1) Carl Young Park with the planting of 43 trees at a cost of \$52,000; (2) North Pointe Park with the planting of 37 trees at a cost of \$41,000; (3) North Lakes Park with a planting of 75 trees at a cost of \$79,000; and (4) South Lakes Park with the planting of 115 trees at a cost of \$176,000.

Mayor Watts stated that the first three projects cost over \$1000 per tree and questioned how they were different from South Lakes Park. He felt it seemed excessive in the costs.

Morgan stated that some of the costs were distributed over more trees than on a smaller project.

Mayor Watts stated that he would like to see what went into the projected costs for the projects.

Mayor Pro Tem Engelbrecht suggested an experiment to take a plot of 30 trees and not do anything with them in terms of water and look at inventive ideas on how to do this project.

Morgan stated that another consideration was the costs coming from a contractor.

Mayor Watts requested an Informal Staff Report on the costs of the tree plantings.

Council Member Hawkins stated that he liked the idea of volunteers to form a tree club to help get the tree costs down for the plantings.

Proposed Expenditure Authorization – Morgan stated that the proposal also included a fifth Tree Fund Expenditure to authorize \$100,000 funding for FY 14-15 for funding for fall planting projects that were yet to be determine; assist Keep Denton Beautiful in expanding Denton's Arbor Day events, the Denton Redbud Festival and Children's Arbor Day programs events this spring; and the purchase of educational materials as needed.

Council Member Gregory suggested modifying the funding to use money to give away trees to the citizens instead of only once a year. He requested an Informal Staff Report on the money in the tree fund from January 2014 to present. He also suggested spending \$750,000 on planted trees by the end of 2015 with documentation of a breakdown of projects per tree costs. Modify the \$750,000 on the planting of trees to include free residential trees.

Mayor Pro Tem Engelbrecht requested that part of the report include the optimum tree planting times. He also requested to include getting with Keep Denton Beautiful for a program of 200-300 trees with monitoring of the trees for at least 3 years to monitor health of the trees.

Council Member Ryan suggested to also consider a rebate program with tree plants. Buy local to encourage planting of local trees.

Mayor Watts stated that he would like to see a report on the cost per tree.

Council Member Gregory stated that he would like to see a breakdown first before making a decision on how much of the fund to use.

Morgan stated that the staff report would include (1) costs for each of the proposed projects, (2) possibly increasing the amount of funding, (3) exploring an option on how to facilitate trees on private property, and (4) a possible rebate program.

Council Member Ryan suggested setting up a pump for irrigation at North Lakes and South Lakes Park.

Emerson Vorel, Director of Parks and Recreation, stated that there might be a water rights issue as the water belonged to Dallas plus a return flow issue.

Mayor Watts requested an idea on the dollar amount needed for educational materials as well.

Council Member Roden also suggested considering the East Hickory Street Project and street trees in the downtown area and not just trees in the parks.

Council recessed the Work Session to convene into the Public Hearing at 6:50 p.m.

- A. DCA14-0009b Continue a public hearing on Tuesday, January 13, 2015, and consider an ordinance amending Subchapters 5, 7, 16 and 22 of the Denton Development Code, relating to Gas Well Drilling and Production, Definitions and Procedures; amending Ordinance No. 2013-248, relating to planning and development fees and road damage remediation fees relating to gas well drilling and production activities; adding new Subchapter 22A to the Denton Development Code, relating to Oil and Gas Pipelines, Definitions, Procedures; providing a cumulative clause; providing a severability clause; providing for a penalty; and providing for an effective date.

Mayor Watts stated that this was a continuation of the public hearing from January 6, 2015.

City Manager Campbell stated that the item continues as a public hearing as a result of no recommendation from the Planning and Zoning Commission to Council. Staff was suggesting to continue the item to the February 3rd Council meeting in anticipation of a recommendation. If there was no recommendation by that time the public hearing would need to be continued again.

Council Member Roden asked if a citizen could speak a second time at this public hearing.

Mayor Watts stated that the public should speak on any changes. He felt that before a date was set again to consider this item, everything should be ready to be considered. Do all at once rather than in pieces.

City Attorney Burgess stated that the Planning and Zoning Commission had closed their public hearing and Council was just waiting for their recommendation.

Mayor Watts questioned that since the Planning and Zoning Commission had closed their public hearing, if they were to have any additional amendments would those have to be considered in an additional public hearing at the Commission level.

City Attorney Burgess stated that the public hearing at the Commission level was closed. If any additional amendments were within the issues currently covered in the ordinance, the matters could move forward. Some of the items might not be zoning items and not have to go to the Commission.

Council Member Gregory stated that other public hearings that had been considered multiple times had been placed on future agendas under Individual Items to Consider and anyone could speak even if they had spoken at the public hearing.

City Attorney Burgess stated that was correct and that there would be other opportunities to participate.

Council Member Gregory stated that he had compiled a list of various comments on what needed to change. He felt that the current ordinance addressed some of those items but some of the amendments he wanted would require wording changes. He did not want to do that during a meeting and would like time to have items addressed to amendments to the ordinance. Rather than continue the item to a certain date, he suggested continuing it to an event certain such as when the Planning and Zoning Commission provided a recommendation rather than a date. Once Council closed the public hearing he was not sure Council would be ready to act as they might want to add more amendments. He would not be comfortable closing the public hearing, making amendments and then not allowing speakers on those amendments.

Council Member Johnson stated that he did not disagree but this was one public hearing and he did not want to set a precedent at one public hearing that citizens could speak more than the allotted time so that in the future at any given topic citizens would have the have right to speak multiple times at a public hearing.

City Attorney Burgess stated that from the perspective of procedure and fairness, she would suggest leaving the public hearing open to any changes that might come forward. With regard to issues concerning the Council's rules, Council had flexibility in the application of those rules. Should Council desire to allow additional comments they were within the description to do so.

Council Member Roden felt that the community had seen the suggested ordinance and Council had held a meeting with the Commission. He agreed that at some point policy issues needed to be vetted. He suggested making a placeholder on every work session to allow any changes to be discussed and not have it on the regular session until it was felt that Council had vetted the information and was ready to present it back to the public for their input.

Mayor Pro Tem Engelbrecht stated that this was not a typical zoning case and was not a fixed situation. There were court activates, legislative actives, Council and citizens gathering more information as it became available. He agreed to get a recommendation from Planning and Zoning. Council could make any modifications it deemed appropriate and present that to citizen as a whole packet.

Mayor Watts felt that this was not a result of substance but a result of process. Council had a joint meeting with Planning and Zoning due to a timing issue which went outside the normal process. If citizens had spoken in the past this was a unique situation to allow them to speak

again. Council could not take formal action until they had a recommendation from Planning and Zoning.

Council Member Roden stated that citizens who spoke before would be able to do so again.

Mayor Watts stated yes that would be the process.

The following individuals spoke during the public hearing:

Sharon Wilson, 101 Greenville, Allen, 75013 – require ventless flowback tanks, vapor recovery, establish setbacks, require gas buster emissions be routed through flare, require third party air monitoring paid for by a gas company, prohibit waste pits, and no flaring unless emergency conditions as determined by the Railroad Commission.

Carol Soph, 1620 Victoria, Denton, 76209 – spoke in favor with conditions

Ed Soph, 1620 Victoria, Denton, 76209 - need peer review and engineering studies for poorly regulated drilling; no health providers were consulted and better regulations were needed than those listed in the proposed ordinance, strengthen public safety and health

Mark McCord, 616 Colorado, Celina, 75009 - not in favor of the provision that the Planning and Zoning Commission had final authority for waiver on a variance and that provision should rest with the Council as they were the elected officials. If the Commission denied a variance it should go to Council for a 3/4 supermajority vote.

Taylor Cole, 6376 Jim Christal, Denton, 76206 - against the proposed setbacks for existing well sites

Cathy McMullen, 805 Ector, Denton, 76201 – consider opposing a new bill in the Energy Committee that would make it difficult for cities to regulate oil and gas in the future, ordinances needed to be ones that could live with forever as the City would not be able to change it later, in favor of vapor recovery, no pits, no venting, flaring valves, and consideration of health impacts.

Comment cards were received from:

Diana Robinson, 2508 Rockwood, Denton, 76209
Ken Gold, 2512 Natchez Trace, Denton, 76210
Rhonda Love, 1921 Hollyhill, Denton
Teralynn Hunter, 118 Bernard, Denton

Council discussed setbacks in industrial setting and industrial setting with associated office uses. Council Member Gregory motioned, Council Member Roden seconded to continue the public hearing to an event certain, that being the next regular meeting following the recommendation from the Planning and Zoning Commission. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Council returned to the Work Session Room and reconvened the Work Session discussions.

- E. ID 15-058 Receive a report, hold a discussion, and give updated staff recommendation regarding a transportation user fee.

Jim Coulter, General Manager - Water Administration, stated that Denton was currently experiencing an annual 2.5% population growth rate. While street funding was beginning to stabilize deterioration of city streets, the growing population was increasing the impact of wear on the street system. The effect of that was quantified using an Overall Condition Index (OCI) score. OCI scores ranged from 0 (worst) to 100 (brand new). The current funding level practice would stabilize OCI in the upper 50s. Bond funding in the 2014 program provided \$24 million for reconstructing existing streets. Remaining funds were allocated to roadway widening, traffic signals, etc. There was also funding from the 2012 bond program which could only be used for reconstruction and not for overlaying, micro seal or crack seal. Bond funds would help with failed streets but not for maintenance.

Council discussed the using of franchise fees for part of street maintenance. Coulter reviewed streets funding as a percent of total General Fund by decade. Council discussed the funding the street maintenance over the years, the need for funding as the OCI rating went down, and inflation in terms of needed funding to maintain the OCI. Coulter noted that street funding had slipped below both Planning and Libraries funding by the year 2010.

Coulter presented four options for street funding. They included (1) maintain streets at the established OCI level, (2) reallocate funding, (3) raise revenue via an existing system and (4) raise revenue via a Transportation User Fee. The pros and cons for reallocating funding by reversing the trend of diminishing streets investments was reviewed. Option 3 involved raising revenue by using existing systems. Using property tax might not equitably distribute street costs to users, sales tax was capped due to state law and prior decisions to fund DCTA and Return on Investment/Franchise Utility Fees passed fees on to utility customers through increased rates. Option 4 which was to raise revenue with a transportation user fee had its own set of pros and cons. Those pros and cons were reviewed for Council.

Council Member Gregory requested an Informal Staff Report regarding cost estimates on how to set up the program, ongoing costs and the tie in with the drainage fee.

Council Member Johnson questioned how the costs to the users of the streets were determined.

Coulter stated that the Manual for Trip Factors was used to determine what a residential unit, gas station, business, etc. would generate. The Trip Generation Manual served as the standard reference for calculating impact based on trip generation.

Council Member Johnson questioned what percent of every dollar that came in would be for maintaining the program.

Coulter stated that it was in the 15% range.

Council Member Johnson felt that not enough money was asked for with the bond program and now staff was coming back with a tax to make up the difference. If more money was needed for streets, staff needed to indicate what was needed and do a bond. All this was doing was raising the cost of doing business in the city and was essentially another tax.

Council Member Roden stated that this was not a tax as it did not have the legal criteria for a tax. If Council went to the voters with too much for street repair it would increase property tax. He suggested a hybrid system which would look at revenue from a franchise fee and develop a plan to ultimately dedicate to a maintenance fund plus a user fee. Reallocate a franchise fee and look at user fee.

Council Member Hawkins stated that some sacrifices might need to be made in order to find funding and take away from other areas. He was not sure if he was in favor of a fee at this time.

Council Member Gregory suggested going to the voters regarding a road maintenance fee and if they voted it down, then reallocate funds.

Mayor Pro Tem Engelbrecht stated that the issue should be divided into street maintenance and street rebuilding. Rebuilding was done with bond money which could not be used for street maintenance and that was a way to present the issue to the public.

Council Member Johnson stated that technically this was a tax so call it a tax and not a fee. He felt it needed to go to the citizens as they just voted for bonds.

City Attorney Burgess stated that there were legal opinions noting problems in sending issues to voters for a non-binding referendum.

Council Member Johnson stated that he was not saying it should be non-binding but rather let them vote on it.

Council Member Roden stated that he was in favor of continuing to explore the options.

Mayor Watts stated that he was not in favor of this type of a fee. There was a problem with the streets which had to be fixed but felt that to solve the problem with such a tax was not appropriate. Streets had always been under General Fund funding and to put it on a utility bill was too easy and took the pressure off on how to prioritize funding. He felt this was the last resort. If streets were the number one priority per the citizens it needed to be shown in the budget. He could only support this as a last resort as concrete ways for other funding had not been explored.

Council Member Hawkins agreed with the Mayor and stated that it was a difficult decision on where to cut other funding. If streets were at the top cuts would need to come from different places.

Mayor Pro Tem Engelbrecht was not sure how much fund shifting could be done.

Council Member Gregory stated that the real question was who paid. Either let the roads deteriorate or someone had to pay. Pay either by raising taxes, charging a fee or taking away

services. When cutting services, those users of that service would be the ones paying for the streets. When using a user fee, the cost would be shared.

Council Member Johnson felt that the discussion should be about where to spend the increase instead of where cuts were needed. He saw it as not cutting but rather where to put more of the increase and that would be to streets. Council's job was to determine where to spend more rather than where to cut.

Council Member Roden suggested making a clear goal with the OCI rating to set a standard. At the end of the discussion develop a 10-15 year plan to reach that goal with identified funding on how to get there.

Consensus of the Council was to look at all options available with analysis before looking at a user fee. They were not in favor of a user fee at this time.

- F. 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.

This item was not considered.

Following the completion of the 2nd Tuesday Session, the City Council convened in a Closed Meeting at 9:50 p.m. to consider the specific items listed below under the Closed Meeting section of this agenda.

Closed Meeting

- A. ID 15-048 Certain Public Power Utilities: Competitive Matters - Under Texas Government Code, Section 551.086.

Receive a presentation from Denton Municipal Electric ("DME") staff regarding public power competitive and financial matters pertaining to plans, strategies, opportunities, and developments for generation improvements to the DME system; discuss and deliberate strategies relating to selecting and acquiring generation resources for the City; discuss and deliberate opportunities and strategies for the City to acquire purchased power and enter into agreements regarding the same, in order to meet its future energy needs. Discuss, deliberate and provide Staff with direction.

- B. ID 15-063 Deliberations regarding consultation with the City Attorney - Under Texas Government Code Section 551.071, Deliberations regarding Economic Development Negotiations - Under Texas Government Code Section 551.087.

Receive a report and hold a discussion regarding legal and economic development issues regarding an incentive agreement with Metzeler Schaum, GmbH. This discussion shall include commercial and financial information the City Council has received from Metzeler Schaum, GmbH which the City Council seeks to have locate, stay, or expand in or near the territory of the city, and with which the City Council is conducting economic development negotiations; including the offer of financial or other incentive where the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

- C. ID 15-067 Consultation with Attorneys - Under Texas Government Code Section 551.071; and Deliberations regarding Real Property - Under Texas Government Code Section 551.072.

Consult with the City's attorneys regarding the present status of pending litigation styled Linda Marie Casias Roth, et al v. City of Denton, Texas, Cause No. 2012-60839-393, now pending before the 393rd Judicial District Court of Denton County, Texas; and discuss, deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matter. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. Relating to this same issue, discuss, deliberate, and receive information from staff, and provide direction pertaining to the acquisition of real property interests located in the R. Beaumont Survey, Abstract Number 31, located generally in the 1200 block of North Bonnie Brae Street, City of Denton, Denton County, Texas.

- D. ID 15-066 Consultation with Attorneys - Under Texas Government Code, Section 551.071

Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with the current Gas Well Ordinance, and proposed Gas Well Ordinance amendment, regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including: Constitutional limitations, statutory limitations upon municipal regulatory authority; statutory preemption and vested rights; impacts of federal and state law and regulations; impacts of gas well drilling upon protected uses and vice-versa; current and proposed extension to, moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance, both current and proposed; settlement matters concerning gas well drilling in the City; surface development issues involving surface and mineral estates; and legal matters associated with a citizen's initiative ordinance and pending litigation styled Jerry Patterson, Commissioner, Texas General Land Office v. City of Denton Texas, Cause

No. D-1-GN-14-004628 currently pending in the 53rd District Court of Travis County and Texas Oil and Gas Association v. City of Denton, Cause No. 14-09833-431 currently pending in the 431st District Court of Denton County regarding hydraulic fracturing where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

With no further business, the Council reconvened in Open Session at 11:53 p.m. and adjourned the meeting.

CHRIS WATTS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS