

CITY OF DENTON CITY COUNCIL MINUTES

September 13, 2011

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, September 13, 2011 at 3:00 p.m. in the Council Work Session Room at City Hall.

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

ABSENT: Council Member King.

1. Receive a report, hold a discussion, and give staff direction on the FY 2011-12 Proposed Budget, Capital Improvement Program, and Five-Year Financial Forecast.

Bryan Langley, Chief Financial Officer, stated that staff had already had a number of meetings with Council regarding the budget. This was another opportunity for Council to discuss the budget. At the next meeting, Council would be considering approval of the budget and all of the ordinances and resolutions associated with the budget.

Mayor Burroughs asked when the budget had to be approved.

Langley stated that the new fiscal year would start on October 1st with September 20th being the last Council meeting prior to that date.

Mayor Pro Tem Kamp stated that there had been a lot of dialog regarding the bike and pedestrian plan. The Mobility Committee had just met regarding that issue and had learned that the City might be able to proceed with the plan based on a recent proposal.

Mayor Burroughs stated that he had a communication with Commissioner Coleman who indicated that he and Commissioner Eads might have an interest in putting up matching funds to assist with the implementation of the bike plan. Each Commissioner would put up \$50,000 if the City Council would commit that much for a total of \$150,000. There were two general propositions associated with the offer. One was a priority for connectivity to the DCTA facilities and Commissioner Coleman requested the provision for bike markings on Pennsylvania. The City would need to communicate as a follow-up to establish that funding. Right now there was only \$50,000 allocated to that program. Council could add to that amount by giving staff direction to include an additional \$50,000 out of the \$333,000 in the contingency fund.

Mayor Pro Tem Kamp suggested Council consider \$50,000 at this time from the \$333,000 extra funding and to have staff negotiate with the County.

Council Member Roden questioned where the revenue would come from and if the funding was limited to the \$333,000. He asked if it would be possible to take money from the streets fund to put in that account.

Langley stated it could be taken from the street fund but that Council had talked about putting more resource to the OCI.

Council Member Gregory stated that the Mobility Committee formally went through the bike linkage policy. That policy was part of a comprehensive system of routes from DCTA to UNT and called for bike facilities on Pennsylvania in the Southridge neighborhood. The request from

the County to participate matched what the plan called for. The City could meet another \$50,000 but did not want to say that was all that could be used. Once the entire Council had reviewed the plan there might be more interest to take more of that money.

Mayor Pro Tem Kamp stated that was not what she was suggesting. She was suggesting using an additional \$50,000 of the \$333,000 at this time but this was not a limit.

Council Member Watts stated that it was his understanding that the \$50,000 Downtown Incentive Grant program was suspended and suggested using that money for the additional \$50,000 which left the full \$333,000 to make a decision on how to use that money. There were lots of economic incentives throughout the City and the bike plan had been talked about for many years. It was now at a point to see it in a concrete form. He felt it would be a better use of the funds. That money was already there but was just not appropriated. He asked about the County condition that a priority be give to connect with DCTA.

Mayor Burroughs stated the allocation for those funds would be to meet those ends and the details needed to be worked out. The Downtown Incentive Grant was suspended because it was going through a vetting process for the policies of the program. He would rather not cut out that process and would not tie the bike program with the economic incentive grants. He suggested getting input from the Economic Development Partnership Board and then see how to process the funds.

Mayor Pro Tem Kamp stated that the TIF portion was not for those kinds of projects. It was for major kinds of projects and the number one priority was a parking garage for the area.

Council Member Watts stated that his point was that there were a lot of programs that a small amount of funds might be helpful for and the City had made a large commitment to the downtown area over the years. Several projects that received the grants were retroactive in nature. There were also other parts of the City that needed help as opposed to always being in the downtown area. He did agree with waiting and vetting it in the proper process. He asked if the allocation would now be \$100,000.

Langley stated that the \$333,000 would be reduced by \$50,000 and adding it to the bike plan for a total of \$100,000.

Council Member Engelbrecht stated that there was a list of people interested in the bike program and asked to have one representative to speak on behalf of them. He asked if the people on the list regarding the bike plan had some priorities regarding implementation of the plan such as Pennsylvania.

Amber Briggie stated that she was not sure of the presentation made by Devin Taylor at the last meeting but looked at the core of the city.

Mayor Burroughs stated that Taylor's presentation did not go below I35.

Council Member Engelbrecht stated that this group was still requesting \$250,000 for the bike plan. He felt that there was a considerable group of citizens of all ages who were interested in

seeing the bike plan move forward. He also felt it was appropriate to address the funding in this budget. He would still like to have \$250,000 recognizing that there was already \$50,000 set up for that. Part of the County money would go to an area which would not be a first priority for the organized group.

Council Member Watts stated that he would like staff to look at the presentation by Mr. Taylor to see if the numbers and locations compared with the bike plan in the initial stages. They should also look at the presentation in terms of what the costs would be and if the costs would be in line with what was presented. He questioned if Council Member Engelbrecht was suggesting using \$50,000 from the \$333,000 to get to the \$250,000 excluding the County's contribution plus take another \$50,000 from the fund.

Council Member Engelbrecht stated that \$50,000 of the County money was committed and that the other funds could be used in all of the areas.

Council Member Gregory stated that he had talked with Commissioner Coleman who indicated he would allocate \$50,000 for sure but wanted to make sure Commissioner Eades was also going to allocate funds. Commissioner Coleman did not want the funds to be used for studies or staffing. He wanted it to be used for facilities. The Council had received a flood of emails over a year ago regarding the issue on Pennsylvania. There would be significant money left over from the Pennsylvania Drive project for other projects. He was comfortable with that and the fact that priorities could be shifted around for the most efficient use of the funding.

Mayor Burroughs stated that an additional \$50,000 could accommodate the offer by the County and clearly represent that the Council would revisit the prioritization of the unappropriated funds for bikes and get more breakouts of the costs for each of the elements.

Council Member Roden asked if the \$50,000 would be included in future budgets.

Langley stated that the \$333,000 was a re-occurring cost that would be available for future years.

City Manager Campbell stated that the funding would become the current level of service and would continue unless the Council decided to change it.

Council Member Gregory stated that he eventually would like the total amount of \$262,000 for the bike plan which was the amount that it would take to fund the program over a 10 year period.

2. Receive a report, hold a discussion and give staff direction regarding drafting a new Planned Development (PD) ordinance for inclusion within the Denton Development Code (DDC), with associated development standards. The discussion will include a general overview of the outline of the draft PD Ordinance that will be included in the DDC.

Mark Cunningham, Director of Planning and Development, stated that in March Council directed staff to proceed with the drafting of a new ordinance to establish a process and development standards governing PD districts.

PD History in Denton – the City’s first PD regulations were approved between the adoption of the 1966 and 1969 zoning ordinances. There were 200 PDs in Denton in 2002 when the Denton Development Code was adopted. The Denton Development Code and city-wide rezoning was adopted in 2002 which eliminated the PD district option, and only 15 PD districts were retained in the Denton Development Code as part of Section 35.1.5.B. There were several reasons for the elimination of PDs which included (1) below par guidelines, (2) disparity in guidelines from PD to PD which caused difficulty with interpretation and enforcement, (3) did not have timelines for development and often became no longer compatible with adjacent districts plus the infrastructure was below par, (4) developments with high standards were not necessarily achieved, (5) PDs became a means to circumvent conventional code requirements, (6) many PDs were not consistent with the Denton Plan, and (7) great administrative difficulty tracking the paperwork and amendments to the PDs. In 2007 the City adopted the MPC district which was intended to accommodate large-scale, unified, comprehensively planned developments. There were four MPCs approved in Denton. PDs and MPCs made up about 25% of the city land area.

Purposed PD Ordinance – the purpose of a PD zoning district was to (1) provide for development of contiguous land as an integral unit that may vary from the established regulations of other zoning districts within the Development Code; (2) encourage flexibility under controlled conditions; (3) allow for creative planning with regards to design, building placement, and the inclusion of densities and intensities that also ensured compatibility of land uses; and (4) provide for a development model that was superior in attractiveness, quality, and efficiency and effective use of land in its natural state.

Mayor Burroughs asked if it could be contiguous land with different ownership.

Cunningham stated that it could be but it was not necessary. The goals of a PD district included (1) enhance the City’s physical character and promote public health, safety, and general welfare, (2) create developments that were designed in accordance with sound site planning principles and development techniques, (3) produce more effective, highly aesthetic and desirable developments, (4) provided for development regulations that were tailored to the opportunities and constraints of the environment, (5) create viable economic development opportunities though a balance of land-uses and job creation; and (6) should not be used as a tool to achieve a de-facto use variance, nor should they be used as a means of circumventing the administration of the conventional zoning regulations that were established in the Development Code

PD approval process – the first step was the PD Concept Plan which was non-binding. It would familiarize both the developer and the City with each other’s intentions with respect to the intended PD district and familiarize the developer with the process of obtaining a PD district rezoning and to discuss potential issues that should be considered in planning the project. The PD Concept Plan would demonstrate a general statement on how the proposed PD district would relate to the Denton Plan and how the proposed PD district would achieve the established purpose and intent.

Step Two involved a Community Input Meeting and City Council Work Session which would present the proposed PD Concept Plan to the community and provide a public forum for input and discussion to formulate resolutions for community concerns and development constraints.

The PD Concept Plan would not be retained on file longer than 24 months after the date of its initial pre-application meeting unless a PD District Development Plan had been submitted to the City for review and approval. If a PD District Development Plan was not submitted by the established deadline, the PD Concept Plan would be discarded.

The third step was the PD Development Plan and City Council approval. The PD Development Plan application was the official submission to staff for approval. The application would include (1) the PD District development regulations; (2) PD phasing map (if necessary); (3) PD Development Plan map; and (4) would include a master transportation, water, wastewater, and drainage study for the entire PD area with details to identify the major public infrastructure facilities needed by each phase, the connection of those facilities to the existing public infrastructure, and any off-site improvements required. It would be in conformance with all other applicable City codes, regulations and ordinances.

Mayor Burroughs questioned that if a development were submitted in phases, would Item 4 have to be done for the all phases.

Cunningham stated that it would have to be for the whole entire development.

Mayor Burroughs stated that some of the larger developments might be 20 years in developing and would definitely change over the course of time. He questioned if the development was done in phases, if there would be a way to submit a certain level of detail but further out do generalities. He felt the farther out, the more unreal the plan would be.

Cunningham stated that the City would need some idea of what might be required so it could move forward with infrastructure.

Council Member Engelbrecht stated that he would like to see this vetted very carefully with the development community with regards to what specifics would be needed at this level.

Council Member Watts felt that there needed to be a balance and also include how the project would be paid.

PD Development Phasing Plan - when a PD District was to be developed over multiple phases, a PD Phasing Plan should be submitted with the PD District Development regulations. Additionally, (1) when critical infrastructure improvements were tied to certain phases of a PD, the City could enforce the development phasing sequencing to prevent avoidances or delays in construction of vital infrastructure, amenities, or public or private facilities; (2) the PD Development Phasing Plan should reflect that multi-family development must follow other land-uses in the phasing; multi-family housing should not be the first land-use constructed or the primary land-use constructed in any phase of the proposed development.

Mayor Burroughs stated that if the multi-family were done first, then the public infrastructure would have to be done.

Cunningham stated that the Phasing Plan should include a schedule indicating the approximate time-frame in which construction or development was expected to begin, and the duration of time required for completion of the development.

Council Member Engelbrecht questioned if another way to go around the PD would be to have part of it expire if it all wasn't built in the time frame.

Cunningham stated that vested rights could not be ignored. If just one piece was developed and then the rest went away, it could work the system.

Mayor Burroughs stated that economics could change rather than trying to go around the system. He felt a time line couldn't be held when a developer couldn't get funding for the project.

Council discussed time limits of a PD and when vested rights might go away.

Cunningham continued with the expiration of the PD District Development Plan. He stated that the PD District Development Plan should automatically expire on the 2nd anniversary of the date of its approval without any further action of the city or the applicant, unless a PD Detailed Plan had been approved for the PD district, or a portion thereof; and a Final Plat had been recorded for the PD Detailed Plan, or a portion thereof. Prior to expiration, the PD Development Plan may be granted a one-time six month extension by the Council.

PD Districts – three types of PD districts were proposed. (1) Small scale would consist of 5 contiguous acres or greater but not to exceed 15 contiguous acres. It should be designed, constructed and maintained in a single phase. It would include a schedule indicating the approximate timeframe when construction or development was expected to begin and the duration of time required for completion of the development. It would not necessitate an amendment to the Comprehensive Plan or Mobility Plan. (2) Mid Scale would be greater than 15 but less than 125 contiguous acres and provide a range of housing opportunities and choices. Mid-Scale PDs that were 50 acres or larger should be designed as a mixed-use district and constructed in an orderly and creative arrangement of all land-uses; should provide employment opportunities and commercial services to achieve a balanced community for families of all ages, sizes, and levels of income.

Council Member Gregory asked if this would reduce the number of specific use permits.

Cunningham stated that it might or might not depending on what the developer chose to use. He continued that a mid-scale development should have a cost impact analysis done by an independent contractor engaged by the City at the applicant's expense, or be subject to a CIA model administered by the City. It would provide a Job: Housing balance of 1:1.3-1.7 and provide passive and active open space areas. A Large Scale PD District which would provide a combination of land uses on sites that were 125 contiguous acres or greater. It would be required to meet all the requirements of the Mid-Scale PD district that was 50 acres or larger and provide adequate educational, medical, and cultural facilities for all segments of the community.

Another PD District specific requirement was abandonment of the project. In order to protect the City from potential negative financial consequences that could result from abandoning a PD

district, the applicant should provide a development agreement acceptable to the City for the completion of all required infrastructure, utilities and municipal services according to the approved plans and any other documents of record. Possible cash out provisions might be available based on a declining percentage of the total amount required relative to the amount of development completed.

Council Member Engelbrecht stated that staff should look at these processes and address them with the developer during the phasing of the development.

Council Member Watts felt that in larger developments, commercial would be built in and it was a higher level policy issue concerning Job to Housing balance which could be addressed in a comprehensive plan revision. While it was a valid concern and a worthy goal, it was a different venue than the PD.

Cunningham stated that the job: housing balance indicated that for each house 1.3-1.7 jobs would be created within the PD which was an attempt to keep the vehicles off the street and local to the development.

Mayor Burroughs felt there were lots of problems with this which was forcing the PD to be used only for mixed use development. He like mixed use development but it should not be a requirement for the job-housing ratio. Some developments do not need either commercial or housing in it.

Cunningham stated that the intent was to prohibit a PD of a particular size from being all residential.

Both Mayor Burroughs and Council Member Watts felt that was not a good idea to predetermine that.

Council Member Engelbrecht stated that a staff report could indicate what the proposal did for commercial services, etc.

Mayor Burroughs noted that he did not know how a cost impact analysis could be accurate if done far out in advance. It would be more meaningful if it were provided at the time of each phase or in five year increments. He questioned why a PD would be limited to mixed ages. Doing that would prevent the development of a senior community with a PD.

Cunningham stated that it was not a requirement. The wording was "should" and not "shall". There was a need to determine what was wanted to achieve balance between residences, shopping, jobs, etc.

Mayor Burroughs noted that if it were a community goal then it would make sense.

Due to a time constraint, this item was held over to an upcoming meeting.

3. Receive a report, hold a discussion and give staff direction regarding the Aesthetic Study that the Texas Department of Transportation (TxDOT) is preparing for the IH-35 expansion project.

Mayor Pro Tem Kamp stated that she had met with Bill Hale, TxDOT District Engineer and asked TxDOT for a 30 day extension. Hale had agreed to the extension which would provide time to have the Public Art Committee involved in the process.

Mayor Burroughs indicated that staff would provide further details as the project developed.

4. Receive a report, hold a discussion, and give staff direction regarding the status of the routing of the Northeast Electric Transmission Line Re-Build Project in the City of Denton.

Phil Williams, DME General Manager, presented a summary of the two public hearings that already had been held. He showed examples of the old transmission lines and the proposed new lines. He also showed the existing line and indicated that the rebuild project had been in the capital budget for several years. The project was needed due to the growth of the City. The original line was built to the standards at that time with 30 feet of right-of-way. As staff went further into the project, they learned that there would be a need for 75 feet of right-of-way. If that would have been done in an existing neighborhood it would have taken many homes. Staff knew that they needed to get out of the neighborhoods and into open field areas. Activities to date included (1) the project was approved in the CIP budget, (2) identified the need for property acquisition assistance, (3) held two neighborhood meetings on July 18 and August 8, (4) updated the City Council on September 13th and (5) set a tentative date to discuss the staff recommendation at second neighborhood meeting on October 1st. At the second neighborhood meeting staff discussed alternate routes trying to get to open fields.

One option, the Red Route, impacted several homes which prompted staff to look at further options. Option B, the Green Route, had an issue getting over to Mack Park. When using parkland which was partially funded with State funds which Mack Park was, there was the issue that any land displaced with transmission lines would have to be replaced. Besides the additional cost of going through the park, this route would impact 14 homes. Another option would have stayed on the TMPA route but there was an apartment complex there which would not allow for the expansion of the right-of-way. One of the neighborhood meetings suggested combining the two options going up as far as possible in open land and then cut over at Paisley. That route would only impact 3 homes but would require an additional crossing of Highway 380 and an additional railroad crossing. North of Highway 380 the other issue was with Kings Row and TxDOT right-of-way which came right up to the homes. There was the issue of whether the city could overhang TxDOT or have to cross over to the other side. The substation itself was moved. Going north out of the substation, the exiting line went through some very tight areas with limited right-of-way. An option would be to go more along Loop 288, come down Sherman and north to Hercules. Most of Hercules, however, was too tight and couldn't be done in some areas. One other route was Loop 288, cross it and go over on to school property then go back over Loop 288 and come in on north side.

Planned activities forward included (1) publish a staff recommendation within two weeks on the city's website, (2) hold a 3rd neighborhood meeting on October 3rd, (3) conduct two public hearings on October 18th and November 15th with approval of the route on or after November 15th.

Council Member Gregory thanked staff for all work done and for listening to the neighbors. He suggested staff find a route with the least possible negative effect on the neighborhoods.

Council Member Engelbrecht suggested that when a recommendation on a route was completed, it should be posted on the city's website.

Council Member Roden asked about the aesthetics to the utility lines. The current corridor had high lines which would be replaced with lower lines. He asked if the higher parts of the poles would be removed.

Williams indicated that an issue was other entities such as Verizon using the poles. The challenge was to wait for those entities to move their lines off the City's poles.

Council Member Watts requested a cost estimate on the different alternatives.

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

1. Closed Meeting:

A. Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086.

1. Receive competitive public power information from staff in the form of a proposed operating budget for Denton Municipal Electric ("DME") for the upcoming fiscal year, including without limitation, revenues, expenses, commodity volumes, and commitments, and the direction of DME; and discuss, deliberate, consider adoption of the budget and other matters, and provide staff with direction regarding such matters.

This item was not considered in the Closed Session.

B. 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 acquisition or condemnation of tracts of real property pertaining to the routing of the Northeast Electric Transmission Line Re-Build Project in the City of Denton,

Denton County, Texas; and 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 duties of the City's attorneys to the Denton City Council under the Texas Rules of Disciplinary Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceedings or potential litigation.

This item was not considered in the Closed Session.

2. Discuss, deliberate, and receive information from Staff and provide Staff with direction pertaining to the acquisition or the condemnation of fee simple tracts, permanent drainage easement tracts and temporary construction easement tracts for the Mayhill Road Widening and Improvements project, affecting real property tracts in the D. Hough Survey, Abstract No. 646, the M.E.P. & P.R.R. Surveys, Abstract Nos. 927 and 950, the D. Lambert Survey, Abstract No. 784, the G. Walker Survey, Abstract 1330, and the J. Brandon Survey, Abstract No. 1515, in the City and County of Denton, Texas. 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 Denton City Council and the City of Denton, Texas under the Texas Rules of Disciplinary Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceedings or potential litigation.

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

1. Consult with, and provide direction to, City's attorneys on legal rights, restrictions, obligations, and issues associated with the proposed annexation of DH-12, 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, and where such matters may become an issue in potential litigation.

This item was not considered in the Closed Session.

With no further business, the meeting was adjourned.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS