

CITY OF DENTON CITY COUNCIL MINUTES

December 10, 2013

After determining in Open Session that a quorum was present, the City Council convened in Closed Session on Tuesday, December 10, 2013 at 3:00 p.m. in the Council Work Session Room.

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

ABSENT: None

1. Closed Meeting

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

1. Consultation with the City's attorneys regarding legal advice concerning the leasing of land and financing of a proposed Hotel/Convention Center facility of University of North Texas property located at I-35 and North Texas Boulevard where 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.
2. Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance 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/or impacts of federal and state law and regulations as it concerns municipal regulatory authority and matters relating to enforcement of the ordinance.

B. Certain Public Power Utilities: Competitive Matters - Under Texas Government Code, Section 551.086; and Consultation with Attorneys - Under Texas Government Code, Section 551.071.

1. Receive a presentation from Denton Municipal Electric ("DME") staff regarding certain public power competitive, financial and commercial information relating to issues regarding purchased power pricing and other public power information that is contained in the Purchase Power Agreement by and between the City of Denton, Texas who is selling power and electric energy services to the University of North Texas. Discuss, deliberate, consider a recommendation of approval of, and take final action on said Agreement. Consultation with the City's attorneys regarding legal issues associated and related to the Purchase Power Agreement 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.

Council considered approval of the above detailed agreement. Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to adopt Ordinance No. 2013-354. On roll call vote, Council Member King “aye”, Council Member Hawkins “aye”, Council Member Gregory “aye”, Council Member Engelbrecht “aye”, Council Member Roden “aye”, Mayor Pro Tem Kamp “aye”, and Mayor Burroughs “aye”. Motion carried unanimously.

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

1. Discuss, deliberate and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the James Perry Survey, Abstract No. 1040; John Scott Survey, Abstract No. 1222; John Bacon Survey, Abstract No. 1541; and the John Davis Survey, Abstract No. 326, City of Denton, Denton County, Texas, and generally located along Western Boulevard between Airport Road and Jim Christal Road. 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.
2. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the acquisition of real property interests located in (1) the James Edmonson Survey, Abstract Number 400, Denton County, Texas (located generally on Roselawn Drive, 600 feet east of South Bonnie Brae Street), in the City of Denton, Texas; and (2) in the James Edmonson Survey, Abstract No. 400, Denton County, Texas, located generally in the 3100 Block of South Bonnie Brae Street, in Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the real property interests 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. (Bonnie Brae Street Widening and Improvements project)

Following the completion of the Closed Session at 5:43 p.m., the City Council convened in a 2nd Tuesday Session.

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

Jon Fortune, Assistant City Manager, stated that he did not have a formal presentation. This was listed as a follow-up from any previous sessions where the item had been discussed. He was available for Council questions.

Council did not have any questions at this time.

2. Receive a report, hold a discussion and provide direction regarding options to improve pedestrian accessibility including the restriction of vehicle access in the 100 block of Walnut Street.

Mark Nelson, Director of Transportation, presented the information on the topic. A group of merchants and stakeholders had requested consideration of the closing of Walnut Street between South Locust and South Elm to vehicular traffic to create a pedestrian mall. Mayor Pro Tem Kamp met with the merchants and stakeholders to gauge the general interest in the idea or to look into other options that might include partial closure of the street. At that meeting, it was recognized that there were several issues involved such as financing of infrastructure, loss of vehicular parking and maintaining utility/service access that would need to be addressed.

Mayor Pro Tem Kamp requested staff review options for Walnut Street to improve pedestrian amenities or create a pedestrian plaza and to bring the item to the Mobility Committee to determine feasibility. Three initial options were considered by staff and presented to the Committee. They included (1) permanent street closure – conversion to a pedestrian plaza/mall with no vehicular access other than public safety vehicles, (2) limited closure – close Walnut Street to vehicular traffic during specified hours and reopen during normal business hours to allow access for utility service, merchant deliveries and maintain vehicle circulation around the Square during business hours, and (3) complete street – constrict Walnut to 20 feet wide allowing Fire Department access and expand sidewalk on one or both sides. The Mobility Committee considered these options on October 15th and requested staff to determine cost estimates for utilities in the corridor and present those to Council for consideration.

Current conditions on Walnut – pictures were shown of the current conditions showing utility services, grease traps, and solid waste containers in the street. The estimated cost of municipal utility expenses including electric, water, wastewater, solid waste, streets and sidewalk, and street lights was \$763,152.

Examples of street closures, limited closures, and a complete street concept were shown. The DTIP had listed Walnut as a mews street with sidewalks, raised crosswalks, medians and traffic calming devices.

Council Member Gregory asked if it would be the City's responsibility to provide ramps for service entrances and if that was included in the cost estimate.

Nelson stated it was not included in the cost estimate.

Council Member King asked if the same building materials would be used such as wooden stairs and just replace with wood.

Nelson replied that had not been determined at this time.

Council Member Roden asked about return on investment and whether there was talk from the businesses about the back of the building being the main entrance and if that would be viable.

Mayor Pro Tem Kamp replied that it had been discussed but the project would not be a re-orientation but rather an addition to an entrance. It would be similar to Sweetwater's on the corner. A discussion was needed by Council on the type of closure to consider – a full closure, partial closure or a build new streetscape. Utilities access was a major problem. Perhaps only one lane of vehicular traffic might be considered. Any type of ramps would have to be ADA accessible.

Council Member Gregory stated that the Mobility Committee also discussed the possibility of not having the road all the way through but maybe a quarter of the way down on either side so the Fire Department could get in if needed and would also be available for loading and unloading of merchant supplies.

Nelson stated that any of the options could maintain the 20 feet fire lane which could be used for utility access, pedestrians and still service the area.

Council Member Engelbrecht felt that access from two ends of the street might be a problem and there also could be problems with delivery vehicles blocking the access. He noted that the minutes of Mobility Committee indicated that the property owners would be in favor if they had to improve the facades. He questioned if that would be part of the program to have the property owners improve the facades.

Nelson stated that there was a comment from the audience that it would probably have to be done but there was no discussion.

Council Member Engelbrecht questioned if the loss of the 20 parking spaces was included in the cost estimate.

Nelson stated that approximately 23 on-street parking spaces would be lost.

Council Member Hawkins questioned the logistics of deliveries to the businesses and had that been discussed at the meetings.

Mayor Pro Tem Kamp stated that the original meeting had 40 people in attendance with varying degrees of people's desires and commitments. Some of merchants would get on board immediately while others would not. It would not be an all or nothing at the beginning. This project might be considered as a Better Block site. Right now, this was in a discussion phase on what to do or what was wanted to be seen in this area.

Council Member Gregory felt this would fit in with the big plan for Downtown and expand walkability of the area. As the project moved forward, a modification of the budget sheet would be needed to include the cost for landscaping, streetscape and a cost estimate to redo the service entrances and sidewalks on the north side of the street.

Mayor Burroughs felt that there needed to be engagement of the owners to bring enhancements to the street as well as the access to the street.

City Attorney Burgess stated that the City would be required to do the ADA requirements if the City were the one to initiate the improvements.

Council Member Roden stated that he was hearing the need for more green space environment and this might be a possible area. He cautioned to be aware of changes from one section to another and how that would affect the street.

Council Member King suggested getting more information on what exactly was being proposed and to get more information from those most affected by the proposed changes.

Mayor Pro Tem Kamp suggested being creative and looking at other options with the process.

Council Member Gregory suggested thinking of the project in terms of part of the study for green space and outdoor congregating space for people in the Downtown area. He also suggested looking at Austin and Pecan Streets.

Mayor Pro Tem Kamp suggested this might be a project for the Bond Committee to consider.

Following the completion of the 2nd Tuesday Session, the Council convened in a Special Called Session.

Ordinance No. 2013-334

1. Consider adoption of an ordinance approving the Denton Convention Center Project Master Development Agreement between the City of Denton, Texas (City), the University of North Texas (UNT), O'Reilly Hotel Partners Denton, LLC (OHPD), and O'Reilly Hospitality Management, LLC (OHM) and including Exhibits A through H thereof to wit: Exhibit "A" City-UNT Land Lease, Exhibit "B" City-OHPD Convention Center Sublease, Exhibit "C" OHPD-UNT Land Lease, Exhibit "D" Preliminary Site Plan, Exhibit "E" Professional Services Agreement for Construction-Manager-Agent (CMA), Exhibit "F" Professional Services Agreement-Architect or Engineer, Exhibit "G" Contractor Payment Guidelines, Exhibit "H" Hospitality Management Guidelines; and providing and effective date.

Jon Fortune, Assistant City Manager, presented the action item for council consideration. Staff and Council had been discussing this project for a number of months and the final documents were being presented for Council consideration. He reviewed the project overview in terms of the hotel and convention center and also included the convention center financing. He presented an illustration of the convention center feasibility and timeline for the project.

Mayor Burroughs asked where the final moment was when the city closed off any discretion and there was no more decision making to be made.

Fortuned stated it would be when the City issued the debt. There would be no going back after that. Once the debt was sold, the project was a go.

Council Member Gregory stated that there was an on-going debate from people opposed to the project that city taxpayers would be paying for the hotel and convention center. It had already been explained that the City was not paying for the hotel just for the convention center but he asked Fortune to review where the money coming from to retire the debt.

Fortune stated that \$29 million would be issued for the convention center debt service payment which would be paid from project revenue. Take the debt service, apply the hotel tax and that tax would also go towards the debt. The sales of food and beverages in the general sales tax would also go towards the debt plus property tax. A rent payment would make up the difference between the other revenues and the debt service.

Council Member Gregory questioned what would happen if the County and the DISD did not participate in the TIRZ.

Fortune stated that participation was not determined at this time but if it was less than determined, it would affect the rent calculation.

Mayor Pro Tem Kamp motioned, Council Member King seconded to adopt the substitute ordinance and the supporting documents. On roll call vote, Council Member King "aye", Council Member Hawkins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Council Member Roden "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

2. Consider nominations/appointments to the City's Boards and Commissions:

A. Citizens Bond Advisory Committee

Mayor Pro Tem Kamp appointed Jo Williams

Council Member Roden appointed Lilyan Prado-Carrillo

Council Member King appointed Karen Meredith

Council Member Engelbrecht appointed Mary Beth Cottingham

3. 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 Engelbrecht thanked city employees who worked in the recent bad weather.

Council Member Gregory requested a final report on the number of outages during the storm and after. City Manager Campbell stated that staff was currently working on such a report for Council.

Following the completion of the Special Called Session, the Council convened in a Closed Session at 7:00 p.m.

Closed Session

A. Deliberation regarding personnel matters - Under Texas Government Code Section 551.074.

1. Deliberate and discuss the evaluation, duties, discipline, procedures, and contracts of the Municipal Court Judge, City Attorney, and City Manager.

With no further business, the Council returned to Open Session and the meeting was adjourned.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS