

CITY OF DENTON CITY COUNCIL MINUTES

May 7, 2013

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, May 7, 2013 at 4:30 p.m. in the Council Work Session Room.

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

ABSENT: None

1. Citizen Comments on Consent Agenda Items

There were no citizen comments on Consent Agenda Items.

2. Requests for clarification of agenda items listed on the agenda for May 7, 2013.

Council Member Gregory stated that Consent Agenda Items O, P, and Q had been to the Public Utilities Board and asked for the recommendation from the Board.

City Manager Campbell stated that all were approved by the Public Utilities Board. He stated that the normal process for sanitary easements was that they would be signed by the owners prior to Council which was not the case with these. He stated that Items O and P needed to be considered but not Q. If staff did not get the signatures from the property owners he would not sign the agreements. However, Item Q needed to be pulled from consideration.

Council Member Roden stated that he had heard that there had been noise complaints with Content Agenda Item A.

Emerson Vorel, Director of Parks and Recreation, stated that there had been some complaints associated with the address in the past. However, there were no complaints with the events last year. He stated that staff would track these dates with the PD and any associated complaints. If the applicants wanted further dates, any complaints would be part of the dialog at that point.

Council Member Roden stated that this was a great community event. The requestors had moved the music into the corner of the wash bays for any noise problems.

John Cabrales, Assistant City Manager, stated that the activities would be moved into the car wash building and the music would be projected out to Bell Avenue which would not direct it to the residential area. If there continued to be noise problems, staff would recommend denial of any future events.

Council Member Engelbrecht asked if the approval of the events could be rescinded if that became the case.

Cabrales stated correct.

Council Member Watts asked if Consent Agenda Item M was listed on the agenda because it did not fit into the categories of the delegation of authority.

City Manager Campbell stated that was correct.

Following the completion of the Work Session, the Council convened in a Closed Session at 4:40 p.m. to consider the items listed below.

1. Closed Meeting:
 - A. Consultation with Attorneys - Under Texas Government Code Section 551.071.
 1. Consult with City's attorneys regarding status and possible disposition of litigation styled Zavov, et al. v. City of Denton, Cause No. 1010-40410-362, currently pending in the 362nd District Court, Denton County, Texas.
 2. Consult with, and provide direction to, the City's attorneys regarding a proposed enforcement action related to sanitary sewer overflows, where a public discussion of such legal matters would conflict with the duty of the City's attorneys to the City of Denton, Texas and the City Council of the City of Denton, Texas under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.
 3. 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.
 4. Consult with City's attorneys with regard to Item # 5A May 7, 2013 Regular Meeting Agenda, as it concerns legal issues associated with that item where a public discussion of this legal matter would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

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

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. Motorcycle Safety & Awareness Month

Mayor Burroughs presented the proclamation for Motorcycle Safety Awareness Month.

2. Presentation of GFOA Certificate of Excellence in Financial Reporting

Chuck Springer, Director of Finance, presented the award to the City on behalf of the GFOA. This was Denton's 26 year in a row that it had received the award.

3. Drinking Water Week in Denton

Mayor Burroughs presented the proclamation for Drinking Water Week in Denton.

4. Green Power Partner Proclamation

This proclamation was not done at this time.

3. CITIZEN REPORTS

A. Review of procedures for addressing the City Council.

B. Receive citizen reports from the following:

1) Barbara Owens regarding a utility issue.

Ms. Owens stated that she had an issue with an old utility bill from when she lived in Denton several years ago. She suggested Council consider a citizen advisory committee to listen to various citizens who were having problems with their utility bills. This would be a utility advisory board to deal with extenuating circumstances.

4. CONSENT AGENDA

Mayor Burroughs indicated that Item Q had been pulled from consideration.

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

Approved the request for noise exception as noted below.

A. 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 corners of McKinney Street and Railroad Avenue on the following Friday and Saturday nights: May 10, 11, 24, 25; June 14, 15, 28, 29; July 12, 13, 26, 27; August 2, 3, 16, 17, 30, 31; September 13, 14, 27, 28; and October 11,12, 25 and 26, from 9:00 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 approving the noise exception for the dates listed.

Approved the acceptance of the public art noted below.

- B. Consider approving the acceptance of public art entitled, "The Recital," an etching by the late Susan Medler donated by her daughter, Stacy Medler, pursuant to the City of Denton Criteria to Accept Public Art policy. The Parks, Recreation and Beautification Board recommends approval (6-0).

Ordinance No. 2013-115

- C. Consider adoption of an ordinance approving a sponsorship in an amount not to exceed \$10,000.00 of in-kind services for the Third Annual Susan G. Komen for the Cure, North Texas, to be held in South Lakes Park and the surrounding neighborhoods on September 28, 2013.

Approved the request for a noise exception as noted below.

- D. Consider a request for an exception to the noise ordinance for the purpose of playing music and operating a public address system during the Juneteenth Celebration. The event will be located in the Fred Moore Park on Friday, June 14, 2013, beginning at 4 p.m. and concluding at 11:30 p.m.; and on Saturday, June 15, 2013, beginning at 10 a.m. and concluding at midnight. This request is for an exception to the hours of operation and for an increase in sound decibels from 70 to 75 decibels for the amplified sound. Staff recommends approving the requests.

Resolution No. R 2013-013

- E. Consider approval of a resolution by the City of Denton, Texas, authorizing the City Manager to sign and submit to the Department of Housing and Urban Development a 2013 Action Plan for Housing and Community Development with appropriate certifications, as authorized and required by the Housing and Community Development Act of 1974, as amended, and the National Affordable Housing Act of 1990, as amended; and providing for an effective date.

Ordinance No. 2013-116

- F. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a contract through the Buy Board Cooperative Purchasing Network for the acquisition of fifteen (15) solar compacting trash and recycling units for the Solid Waste Division; and providing an effective date (File 5229-Purchase of Fifteen (15) Solar Compacting Trash and Recycling Units awarded to Adrite in the amount of \$113,284.80 of which \$60,014.90 will be paid by North Central Texas Council of Governments Regional Solid Waste Grant funds). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-117

- G. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of Schweitzer Engineering Laboratories, Inc. (SEL) ICON equipment, factory set up and testing, and on-site training from Schweitzer Engineering Laboratories,

Inc., 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 5224-Purchase of SEL ICON Equipment for Denton Municipal Electric in an amount not-to-exceed \$261,902.75). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-118

H. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving a three (3) year expenditure of funds for the purchase of a Geographic Information/Facilities Management System (GIS) software products for core operations, enhanced web-based GIS, and a new Outage Management System from Telvent USA, LLC, 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 5225-Purchase of GIS Software Products, Enhanced Web-Based GIS, and Outage Management System in the not-to-exceed amount of \$491,813.75). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2013-119

I. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of electric utility underground and substation cable for Denton Municipal Electric in a five (5) year not-to-exceed amount of \$24,000,000; providing for the expenditure of funds therefor; and providing an effective date (RFP 5062-awarded to Techline, Inc. in the not-to-exceed amount of \$20,000,000 and Stuart C. Irby Company in the not-to-exceed amount of \$4,000,000).

Ordinance No. 2013-120

J. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of substation control buildings for Denton Municipal Electric in a three (3) year not-to-exceed amount of \$3,090,000; providing for the expenditure of funds therefor; and providing an effective date (RFP 5156-awarded to Stuart C. Irby Company). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2013-121

K. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the rental of twelve (12) fifteen-passenger vans for the City of Denton Parks and Recreation Department Summer Camp Programs and four (4) cargo vans for the Summer Food Service Program (City will be reimbursed through Texas Department of Agriculture grant funding) in a three (3) year not-to-exceed amount of \$172,365; providing for the expenditure of funds therefor; and providing an effective date (RFP 5196-awarded to EAN Holdings, LLC dba Enterprise Rent-A-Car).

Ordinance No. 2013-122

- L. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of three (3) John Deere 1600 Turbo Series II Commercial Wide Area Mowers for the City of Denton Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 5213-awarded to Lawn-Land in the amount of \$135,816).

Ordinance No. 2013-123

- M. Consider adoption of an ordinance finding that a public use and necessity exists to acquire fee simple to a 0.418 acre tract situated in the Gideon Walker Survey, Abstract No. 1330, located in the City of Denton, Denton County, Texas, as more particularly described on Exhibit "A", attached to the ordinance and made a part thereof, located generally at 781 and 801 South Mayhill Road (the "Property Interests"), for the public use of expanding and improving the City of Denton Landfill, a permitted municipal solid waste disposal facility; authorizing the City Manager or his designee to make an offer to (1) Shiron Investments, LLC, a Texas Limited Liability Company; Jorge Maldonado, Maricela Maldonado and Victor Maldonado; and Charles Bloodworth and Merideth Mitchell (collectively, the "Owner"); (2) successors in interest to the owner to the property interests; or (3) any other owners of the property interests, as may be applicable, to purchase the property interests for the purchase price of One Hundred Forty Two Thousand Dollars and No Cents (\$142,000.00), and other consideration, as prescribed in the Contract of Sale (the "Agreement"), as attached to the ordinance and made a part thereof; authorizing the expenditure of funds therefor; authorizing relocation expenditures; and providing an effective date.

Approved the minutes listed below.

- N. Consider approval of the minutes of:
April 1, 2013
April 2, 2013
April 9, 2013
April 16, 2013

Ordinance No. 2013-0124

- O. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute an Easement Purchase and Abandonment Agreement, between the City of Denton, Texas ("City") and Atmos Energy Corporation, a Texas and Virginia Corporation ("Atmos"), contemplating (i) the abandonment of a portion of a certain Public Utility Easement (the "Existing Easement") dated on or about May 22, 1972, from Lone Star Gas Company to the City of Denton, Texas, recorded in Volume 648, Page 138, Deed Records, Denton County, Texas, abandoning the existing easement insofar as said existing easement covers and encumbers that certain 0.093 acre tract, located in the Hiram Sisco Survey, Abstract 1184, Denton County, Texas (the "Abandonment Tract"); and (ii) the grant of a Sanitary Sewer Easement and Temporary Construction, Grading and Access Easement (collectively, the "Separate Easement), from Atmos to the City, covering and encumbering 0.293 acre, located in the Hiram Sisco Survey, Abstract No. 1184, all said tracts located generally at the 100 block of North Bradshaw Street;

providing for the expenditure of funds; providing a severability provision; and providing an effective date. (Pecan Creek Sanitary Sewer Interceptor - Phase II)

Ordinance No. 2013-125

P. Consider adoption of an ordinance authorizing the City Manager of the City of Denton, Texas ("City") to execute, for and on behalf of the City, an Easement Grant and Abandonment Agreement ("Agreement"), by and between the City and J & S WOOD, L.P., a Texas limited partnership ("Owner"), providing for (a) the granting to the City of an easement (herein so called) for public utility purposes, encumbering a 0.045 acre tract being more particularly described in the easement, being attached to and made a part of the agreement; and (b) the partial abandonment ("Abandonment") by the City of (i) that certain Sanitary Sewer Easement, dated on or about December 20, 1960, from Henry C. Taliaferro and wife, Katheryn Taliaferro to the City, recorded in Volume 464, Page 194, Deed Records, Denton County, Texas; (ii) that certain Public Utility Easement, dated on or about August 7, 1980, from Calusa Development, Inc. to the City, recorded at Volume 1029, Page 480, Deed Records, Denton County, Texas; (iii) that certain All Purposes Public Utility Easement, dated on or about May 14, 1982, from RepublicBank Dallas, National Association to the City, recorded in Volume 1143, Page 125, Deed Records, Denton County, Texas; and (iv) that certain 16' Public Utility Easement shown on Lot 1, Block A of the final plat of the James Wood AutoPark Addition, an addition to the City of Denton, Texas, as recorded in Cabinet R, Page 42, Plat Records, Denton County, Texas (collectively, the "Affected Easements"), insofar and only insofar as the affected easements encumber a 0.234 acre tract and a 0.064 acre tract, both tracts being more particularly described in the Abandonment and Release, attached to and made a part of the agreement, all tracts of real property being located in the M.E.P. & P.R.R. Company Survey, Abstract No. 950, Denton County, Texas and being generally located at the 3900 Block, South Interstate Highway 35 East; providing a savings clause; and providing an effective date. (State School Sanitary Sewer Interceptor - Phase II)

This item was not considered.

Q. Consider adoption of an ordinance authorizing the City Manager of the City of Denton, Texas ("City") to execute, for and on behalf of the City, an Easement Grant and Abandonment agreement ("Agreement"), by and between the City and 52241, L.P., a Texas limited partnership ("Owner"), providing for (a) the granting to the City of (i) a public utility easement (herein so called) for public utility purposes, encumbering a 0.786 Acre tract, being more particularly described in the public utility easement, being attached to and made a part of the Agreement; and (ii) a Temporary Construction, Grading and Access Easement ("Temporary Easement"), encumbering 0.488 Acre of land, being more particularly described in the Temporary Easement, being attached to and made a part of the Agreement; and (b) the partial abandonment and release ("Release") by the City of (i) that certain Sanitary Sewer Easement, dated on or about January 1, 1961, from Walter M. Lea and wife, Jane C. Lea to the City, recorded in Volume 464, Page 188, Deed Records, Denton County, Texas; (ii) that certain Public Utility Easement, dated on or about August 7, 1980, from Calusa Development, Inc. to the City,

recorded at Volume 1029, Page 480, Deed Records, Denton County, Texas; (iii) that certain All Purposes Public Utility Easement, dated on or about May 14, 1982, from RepublicBank Dallas, National Association to the City, recorded in Volume 1143, Page 125, Deed Records, Denton County, Texas; and (iv) that All Purpose Public Utility Easement, dated on or about October 6, 1981, from Leon McNatt Motor Co. to the City, recorded in Volume 1106, Page 73, Deed Records, Denton County, Texas (collectively, the "Affected Easements"), insofar and only insofar as the Affected Easements encumber a 0.095 Acre tract and a 0.489 acre tract, both tracts being more particularly described in the Release, attached to and made a part of the Agreement, all tracts of real property being located in the M.E.P. & P.R.R. Company Survey, Abstract No. 950, and the Gideon Walker Survey, Abstract No. 1330, Denton County, Texas and being generally located at the 4000 Block, South Interstate Highway 35 East; providing a savings clause; and providing an effective date. (State School Sanitary Sewer Interceptor - Phase II)

Ordinance No. 2013-126

R. Consider adoption of an ordinance of the City of Denton, Texas, 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 Denmiss, L.L.C., a Mississippi limited liability company (the "Owner"), and the City of Denton (the "City"), regarding the sale by Owner and purchase by the City of fee simple to a called 4.620 acre tract of land, being situated in the Gideon Walker Survey, Abstract No. 1330, and being all of Lot 1-R, Block A, Phase One of Ronjon Group Business Park, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet Q, Page 350, Plat Records Denton County, Texas, located generally along the 1000 block of S. Mayhill Road, north of Gayla Drive, for the public use of expanding and improving the City of Denton Landfill, a permitted municipal solid waste disposal facility, for the purchase price on one million two hundred fifty thousand and no/100 dollars (\$1,250,000.00), and certain costs, as prescribed in the Contract of Sale; authorizing the expenditure of funds therefor; authorizing relocation expenses, if applicable; and providing an effective date.

Ordinance No. 2013-127

S. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager, or his designee, to execute a Purchase Agreement (herein so called), as attached hereto and made a part hereof as Exhibit "A", by and between Milton B. Clearman and wife, Anita A. Clearman (collectively, the "Owner"), and the City of Denton (the "City"), regarding the sale by Owner and purchase by the City of fee simple to a called 1.52 acre tract of land and certain easements encumbering .80 acre, more or less, all lands being situated in the A.N.B. Tomkins Survey, Abstract No. 1246, City of Denton, Denton County, Texas, as more particularly described in the Purchase Agreement, located generally in the 2100 block of South Bonnie Brae Street, for the public use of expanding and improving Bonnie Brae Street, a municipal street and roadway, for the purchase price of Three Hundred Thirty Thousand and No/100 Dollars (\$330,000.00), and certain costs, as prescribed in the Purchase Agreement; authorizing the

expenditure of funds therefore; and providing an effective date. (Bonnie Brae Widening and Improvements project - Parcel 21)

5. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Rural Residential (RD-5) zoning district classification and use designation to an Employment Center Industrial (EC-I) zoning district classification and use designation for approximately 27.76 acres of land, generally located north of University Drive and west of Masch Branch Road and legally described as Lot 2, Block 1 of the Marriott Gardens Addition, in the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing a severability clause and an effective date. The Planning and Zoning Commission recommends approval (7-0). (Z12-0014, Masch Branch Rezoning) The City Council postponed this item to the May 7, 2013 Council meeting (5-1).

Council Member Gregory motioned, Council Member Roden seconded to postpone consideration of this item until a date certain of May 14, 2013. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

- B. Consider nominations/appointments to the City's Boards & Commissions.

- 1) Public Art Committee

Council Member Gregory nominated Tristen Bynum to the Public Art Committee.

Council Member Gregory motioned, Council Member Engelbrecht seconded to approve the nomination. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, 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. 2013-129

- 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 Sanitary Sewer Easement encumbering 0.376 acre of real property, and (ii) a Temporary Construction, Grading and Access Easement encumbering 0.360 acre of real property, for the public use of expanding and improving the municipal sanitary sewer system; generally located in the 300 Block of Frame Street, and both tracts being situated in the Buffalo Bayou, Brazos & Colorado Railroad Company Survey, Abstract Number 185, City of Denton, Denton County, Texas, as more particularly described in Exhibit "A" and Exhibit "B", respectively, each

attached thereto 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 therefor; making findings; providing a savings clause; and providing an effective date. (Pecan Creek Sanitary Sewer Interceptor - Phase II)

Mayor Burroughs noted that Council had received an alternate ordinance to consider.

Paul Williamson, Real Estate Manager, presented the details of the proposal. He displayed the location of the new sanitary sewer line. This was the last outstanding parcel for consideration of the project. As the motion was being made, he would page through the exhibits in order to meet legal requirements.

Mayor Pro Tem Kamp motioned "I move that the City of Denton, Texas authorize the use of the power of eminent domain to acquire (1) a sanitary sewer easement encumbering 0.376 acre of real property; and (2) a temporary construction, grading and access easement encumbering 0.360 acre of real property; generally located in the 300 block of Frame Street, both tracts being situated in the Buffalo Bayou, Brazos and Colorado Railroad Company Survey, Abstract No. 185, 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 expanding and improving the municipal sanitary sewer system in the City of Denton, Texas." Council Member King seconded to adopt the ordinance. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – "aye". Motion carried unanimously. Real property description is attached as Exhibits A and B.

7. PUBLIC HEARINGS

Ordinance No. 2013-129

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, adopting Standards of Care for Youth/Teen Programs administered by Denton's Parks and Recreation Department pursuant to Texas Human Resources Code Section 42.041 (b)(14); and providing an effective date. The Parks, Recreation and Beautification Board recommends approval (6-0.)

Kathy Schaeffer, Parks Special Projects/Fiscal Operations Manager, stated that the ordinance would approve the standards of care for the City's various youth camps. They were intended to be minimum standards by which the City of Denton Parks and Recreation Department would operate the City's Youth/Teen Programs. The programs operated by the City under the Standards of Care were recreational in nature and were not day care programs. The State required a public hearing each year on the standards of care and they had not changed from last year.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

Mayor Burroughs asked about the standards for behavioral issues. He presumed that the staff considered those events and determined if the rules were adequate. He asked about the process for reviewing incidents and how that related to the standards.

Schaeffer stated that each year staff reviewed the number of incident reports, disciplines and incidences and made sure that any responses were in line with the right amount of warnings and procedures. Staff focused on positive discipline and felt that it was important to have communication with the youth and staff. Parents were also included when necessary.

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

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for approval of a detailed plan for 6.199 acres located within Planned Development 120 (PD-120) zoning district; generally located on the south side of Loop 288, west of the intersection of F.M. 2164/Locust Street and Loop 288, in the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission recommends approval (5-1). (PDA12-0006, Gardens of Denton Phase 2)

Brian Lockley, Director of Planning and Development, presented the details of the proposal. He stated that the proposal was for a detailed plan located within PD-120. He reviewed the location of the property, the zoning map, proposed detailed plan, and land uses surrounding the property. The PD had two sites for multi-family. One was a moderate activity center and one was low intensity units. The proposed Gardens of Denton Phase II combined with Phase I of the Gardens of Denton would have a combined maximum density of 17.1 dwelling units per acre. This would be a three story development with landscaping around the outside of the property. The proposed building elevations were presented. The Planning and Zoning Commission along with the Development Review Committee recommended approval. One member of the Planning and Zoning Commission had a concern regarding the proposed density of Phase 2. A concern was also expressed regarding the compact density of the development. The applicant had expressed a concern about the property due to the amount of dedication that was necessary and the location of an existing channel with overhead power lines and utility lines. Phase 1 was developed to accommodate what could be placed on the property and the applicant was now trying to make up the density that was not possible in Phase 1. The Commissioner also had a concern with the quality of the development compared to Phase 1 due to the higher density and the compact nature of the site design plus a concern with the design of the central building with two central courtyards which could be conducive to criminal activity.

Mayor Burroughs asked if there was any other acreage under the PD permitted for multi-family.

Lockley stated that the west side had 25 acres but that was not owned by the proposed developer.

Mayor Burroughs asked how much acreage was left that was not multi-family.

Lockley stated that single family had 147 acres and general retail had 20.74 acres.

Council Member Roden stated that the PD allowed 18 units per acre and when the calculation was combined with Phase 1 it came to 17 units per acre. He questioned if the PD allowed for that combined analysis.

Lockley stated that it allowed for some flexibility to provide a different project as long as it met the average density for that section.

Council Member Roden stated that when there were multiple owners in PD as in this case, the race would be whoever got there first would get the highest density.

Lockley stated that if the property were not owned by the same person, the answer would be yes.

Council Member Roden questioned what would have to be done if higher density were desired.

Lockley stated that the PD would have to be amended.

Council Member Gregory asked if the averaging was just for the multi-family or did it included general retail and other zoning

Lockley stated that the concept plan approved the density for the multi-family only.

Council Member Gregory asked about the density for Phase 1 and Phase 2.

Lockley stated that Phase 1 was 11.62 units per acre and Phase 2 was 33.3 units per acre.

Council Member Gregory stated that the 25 acres to the west would be left with 16.52 units per acre. He questioned if it would be possible for the developer to subdivide the 25 acres.

Lockley stated that it could be replatted as long as the requirements of the PD for units per acre were met.

Council Member Watts stated that he had pulled the 1986, 1998 and 2010 ordinances. This was the first time he had seen the concept of averaging as Council did not do many PDs. The documents he pulled did not refer to a phasing in of density. He felt the averaging was more of a concept and procedure that staff used on this project to accommodate the request of the developer with the second phase. He expressed a concern with the density on this parcel especially with other parcel not owned by the same owner. He questioned if the PD was silent on the averaging concept.

Lockley replied correct.

Council Member King asked if the averaging was allowed within the planning rules.

Lockley stated that it was not a violation of the PD.

Council Member Roden asked if the property owner of the other parcel of land would have a takings claim given the fact that he bought the property with the appearance of having 18 units per acre.

City Attorney Burgess stated that staff would research that and provide Council a response. Staff had been reviewing the minutes of the prior meetings on this PD but had inadequate time to review the discussion.

Council Member Watts asked if the averaging concept written in the Development Code or any zoning ordinances to allow for that. He questioned if it was an interpretation of the regulations.

Lockley stated that it was not expressly written.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

Joshua Jezek, representing the property owner, spoke in favor. He indicated that with Phase 1, there were several infrastructure requirements that had to be done on the development tract such as right-of-way for Bill Street and a large channel for off-site drainage. There was also an existing 70-75 foot electrical easement on west side of the property. Phase 2 had the dedication of additional right-of-way for a service collector street plus all the improvements from Phase 1. There was a limited developable area for Phase 2 and the owner was trying to maximize the 18 units per acre for the entire development. The developer was working with the adjacent property owner for permission for additional easements and had accepted tying Bill Street into the property. The adjacent property owner was the only one who approved the response to the proposal and that property owner knew all along what was happening with the property. There was a limited ability throughout the project to look at density due to the right-of-way for the property.

Council Member Gregory asked if the right-of-way and topography of the property was unusual to him.

Jezek stated that there was less developable area for this project plus the added infrastructure. They had to put all of the right-of-way on their property instead of only half.

Brian Bentley requested to speak. He indicated that he was a member of the Planning and Zoning Commission.

Mayor Burroughs stated that a presentation by a Planning and Zoning Commission member was a violation of the Boards and Commission rules.

City Attorney Burgess stated that the Board and Commission rules were clear and Council heard from Boards and Commissions through formal reports to the Council.

Council Member Gregory stated that a few years ago when Council was considering the Fry Street development, a Planning and Zoning Commission member who was a dissenting vote was allowed to speak to Council.

Mayor Burroughs noted that the Council's rules and Board and Commission rules had changed since that time to clarify that issue.

Council Member Watts stated that if someone came up and did not announce he/she was on a board or commission, there would not be a problem. The invoking of this provision presumed that the individual was speaking in the capacity of that board or commission.

City Attorney Burgess stated that the boards and commissions were appointed by Council to act in an advisory capacity. Council wrote the rule on how information would be passed on to Council; specifically the provision was in rules regarding individuals who were acting on the voice of the board or commission. It did not address a private citizen who wanted to address the Council.

Council Member Roden stated that the Public Art Committee members were invited to present to Council in that capacity and questioned how the rules applied in that situation.

Mayor Burroughs noted that was not a public hearing and the members were invited to present. Council had asked for input from those members.

Mayor Pro Tem Kamp stated that members could still provide notes to Council or emails indicating their objection to an issue.

City Attorney Burgess stated that was correct and it did happen in this instance.

Pati Haworth, spoke in opposition.

The petitioner did not request a rebuttal.

The Mayor closed the public hearing.

Council Member Gregory felt the flexibility was stretched was a bit with this proposal. He had issues with the averaging especially when one area was 11 units per acre and another 33 units per acre.

Council Member Engelbrecht stated that he was on the Planning and Zoning Commission when this was done. One big issue at that time was the density. In this case, the Commission agreed to increase the density from 12 to 18 units because of the required dedications. His perspective was that he always liked to have the same density throughout the area.

Mayor Burroughs stated that prior discussions regarding PDs before they were no longer used, was that density trading was done as long as there was greater parkland than what was required. He wanted to make sure the overall density was not out of range. Council would be zoning property, not people. It was the property that was being zoned and not which person owned which property. To him the trade off of density was clearly something that was discussed.

Council Member Roden noted that there was no DCTA line there. His concern in this issue was that he did not like the combined analysis and interpretation for flexibility. The density was out of line with the surrounding area. There was just too much density.

Council Member King felt it was the planning process. He felt more and more people liked multilevel story apartments. These types of developments were done in the outer areas. He felt it was the property owner's call. The property owner would take the risk if it would work or not. If the proposal was allowed and fit within the scheme it was hard just saying someone did not like three story units.

Council Member Gregory stated that he was undecided on his view of the proposal. If the concept on averaging was not codified, someone in the future could come back and want to average with single-family homes.

Council Member Engelbrecht felt that the issue raised could have someone zone dense on one little piece next to single-family. He did not feel that was the goal the City would want to do. The higher density proposed was along Loop 288 which in some cases made sense. In regards to letting the market decide, he was ok with that except if it did not work and the City then was stuck with it. He questioned the design and questioned what would happen if the proposal did not work.

Mayor Burroughs noted that Loop 288 was a major thoroughfare and the challenge was what to put next to it. Certain uses would not be appropriate such as single-family. Some businesses would be appropriate or multi-family would be appropriate. From his perspective, multi-family was most appropriate to have there. The other multi-family property was not designed and did not know the units would be on the property next to NR-6. The detail plan would have to come to Council for consideration. He felt there was adequate protection with the process for that instance. To him, this was the way the PD was designed to be developed. The concept was to build in some flexibility.

Council Member Gregory questioned if park land or school property had been dedicated with the PD. He did not see any indication of that. He questioned what type of landscaping requirements or tree canopy requirements applied to this proposal.

Lockley stated that landscaping was at 10% and tree mitigation was not part of the PD ordinance at that time.

Council Member Watts expressed a concern as he saw this as a case of first impression. It might be different had he seen this averaging of the densities before and needed to know about guiding principles of it. He felt the original phase process had not been vetted very clearly. He was reluctant to support the disparity of what was currently there and what was proposed.

Mayor Burroughs felt that it would be prudent to ask the developer about the timing of the project and if there would be a problem asking for time to work out some of these issues. Perhaps hold a work session to discuss PDs and what flexibility there was concerning PDs.

Jezek stated that they had all of their approvals from the City including TxDOT. They were planning to start TxDOT work within the next couple of weeks and were working on placing the final plat on the May 22nd Planning and Zoning Commission agenda. However, they would prefer the next Council meeting rather than a denial. They were working on another project in the City where the zoning was split through the site.

Mayor Pro Tem Kamp motioned, Council Member Engelbrecht seconded to postpone consideration of the item until the June 4, 2013 Council Meeting. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Motion carried unanimously.

Ordinance No. 2013-130

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, amending Subchapter 3 ("Procedures") of the Denton Development Code by adding new Section 35.3.13 ("Development Criteria Manual Procedure") establishing criteria for the amendment of Development Criteria Manuals; and by amending Section 35.3.4.A adding a new action item that is required to follow the Zoning Amendment Procedure; and providing for the ratification of existing criteria manuals; and providing for severability and an effective date.

PS Arora, Wastewater Division Manager, presented the details on the proposal. This proposal would adopt an ordinance which would allow for the amending of the criteria manuals. The Development Criteria Manual Procedure was adopted by the Denton Development Code (DDC) and adopted the seven development criteria manuals by reference. The manuals included Application Criteria Manual, Construction Criteria Manual, Drainage Criteria Manual, Site Design Criteria Manual, Site Plan Criteria for Municipal Solid Waste and Recyclables Storage and Enclose Requirements, Transportation Criteria Manual and Water and Wastewater Criteria Manual. As new products came into the market, new specifications were developed, improvements made to existing products, new methods of construction were advanced, and these needed to be incorporated into the Development Criteria Manuals to stay current. However, the Denton Development Code did not provide a procedure for making administrative amendments to these manuals. Staff was proposing to amend the procedures section of the DDC by adding a new section that would establish criteria for the amendment of these criteria manuals and by adding a new action item that was required to follow the Zoning Amendment procedure.

The changing of Subchapter 3 would accomplish (1) the adoption of the seven development manuals as they currently existed, and (2) the administrative amendment procedure for keeping the development criteria manuals current. Staff would discuss the proposed amendments with stakeholders that included the development community comprising of developers, engineering architects, etc. The proposed amendment would be posted on the web site and at City Hall at the location for posting notices of all public meetings for a period of not less than 30 days. During this 30 day period, comments of interested persons and written protests or requests for review would be received by staff. All proposed amendments would become final unless review was requested or a written protest was filed within the 30 day period.

The City would make an attempt to resolve all protests or requests for review and consider all comments filed with the 30 day period. If the protests or requests for review could not be resolved, the amendment would be processed as an ordinance. Staff presented these changes to the Planning and Zoning Commission in a public hearing on November 14, 2012. Staff had proposed that the changes be discussed with stakeholders, get their input, and then post for 30 days. If there was a disagreement on any proposed change, and staff and the stakeholders could not come to an agreement, then only that change would be brought to the Planning and Zoning

Commission and then to the City Council in a public hearing. However, the Planning and Zoning Commission recommended that all proposed changes be brought to the Commission prior to public posting after presentation to the stakeholders.

Staff recommendation was to present the proposed changes to the stakeholders, achieve consensus, post the changes for 30 days and then adopt the criteria manual changes. If consensus could not be achieved, then the item would be taken to the Planning and Zoning Commission and the City Council only for those changes where there was disagreement between staff and stakeholders.

Council Member Engelbrecht asked about phasing in the amendments so that the development community could respond.

Arora stated that the development community had been engaged initially when the amendments were presented. The ground work had already been laid for the changes and had already been discussed with the development community.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

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

8. CITIZEN REPORTS

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

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 Roden reminded voters that the election was on Saturday.

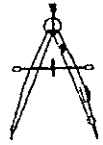
- B. Possible Continuation of Closed Meeting under Sections 551.071-551.086 of the Texas Open Meetings Act.

There was no continuation of the Closed Meeting.

With no further business, the meeting was adjourned at 9:03 p.m.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS



Arthur Surveying Co., Inc.
Professional Land Surveyors

P.O. Box 54 ~ Lewisville, Texas 75067
 Office: (972) 221-9439 ~ Fax: (972) 221-4675

**30' SANITARY SEWER EASEMENT
 0.376 ACRES
 CITY OF DENTON, DENTON COUNTY, TEXAS**

BEING all that certain lot, tract or parcel of land situated in the Buffalo Bayou, Brazos and Colorado Railroad Company Survey, Abstract Number 185, City of Denton, Denton County, Texas, and being a part of that certain tract of land described in deed to Khosrow Sadeghian, recorded under Instrument Number 2002-99899 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the east line of said Sadeghian tract and the west line of that certain tract of land described in deed to Landy L. Mulkey Irrevocable Family Trust, dated May 22, 1984, Patricia Klammer, Trustee, recorded under Instrument Number 2005-41779 of the Real Property Records of Denton County, Texas, and from which a 1/2 inch iron rod found at the southeast corner of said Sadeghian tract and the northeast corner of that certain tract of land described in deed to Gustavo Torrez and wife, Luz V. Torrez, recorded under County Clerk's File Number 97-R0082959 of the Real Property Records of Denton County, Texas, bears South 00 degrees 21 minutes 28 seconds West, a distance of 62.48 feet;

THENCE over, across and through said Sadeghian tract the following two (2) calls:

South 67 degrees 44 minutes 45 seconds West, a distance of 313.67 feet to a point for corner;

North 79 degrees 33 minutes 27 seconds West, a distance of 231.92 feet to a point in the east line of Frame Street, a public roadway;

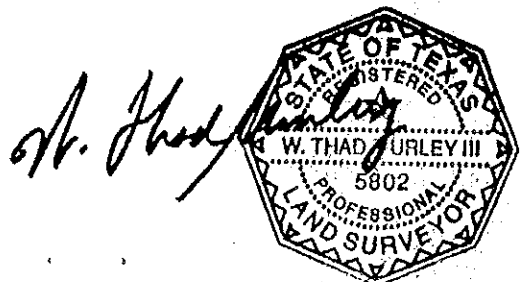
THENCE North 00 degrees 09 minutes 16 seconds West, with the east line of said Frame Street, a distance of 30.52 feet to a point for corner;

THENCE over, across and through said Sadeghian tract the following two (2) calls:

South 79 degrees 33 minutes 27 seconds East, a distance of 228.74 feet to a point for corner;

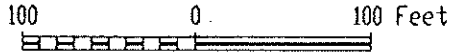
North 67 degrees 44 minutes 45 seconds East, a distance of 317.37 feet to a point in the west line of said Mulkey Family Trust tract;

THENCE South 00 degrees 21 minutes 28 seconds West, with the west line of said Mulkey Family Trust tract, a distance of 32.50 feet to the **POINT OF BEGINNING**, and containing 0.376 acres of land, more or less.



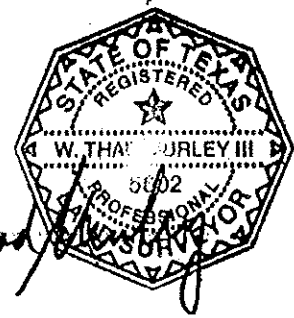
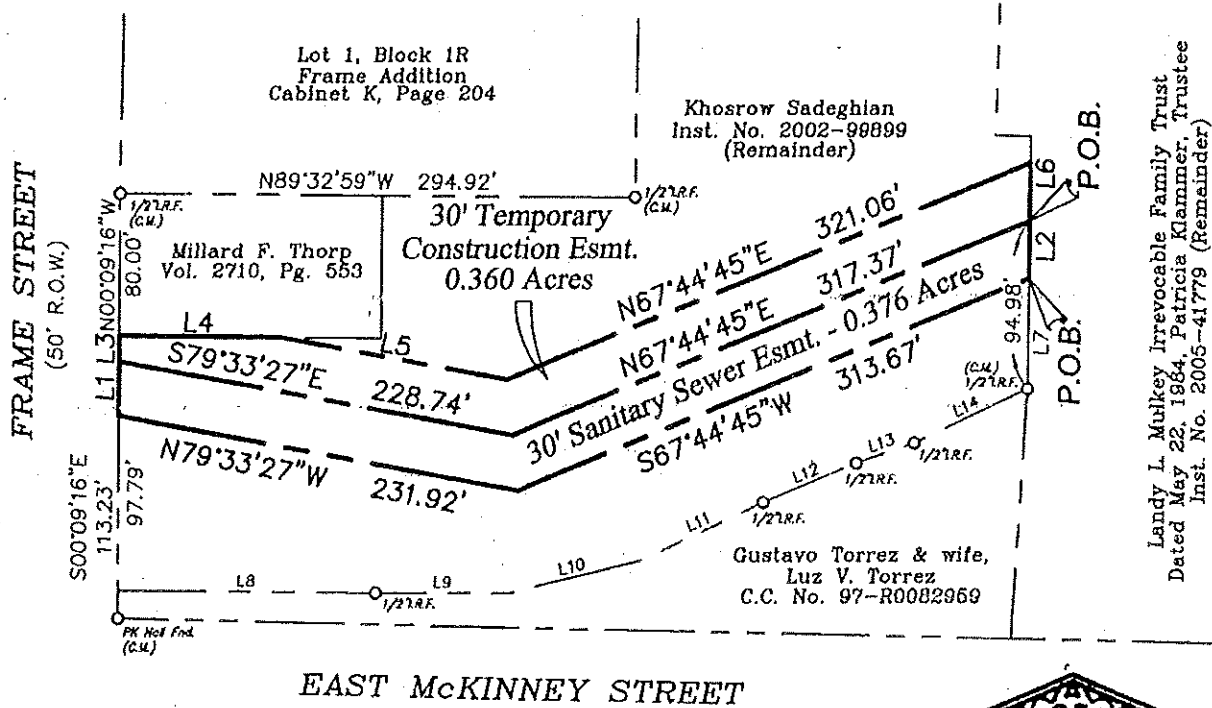


NORTH



Basis of bearing is based on the City of Denton GIS network.

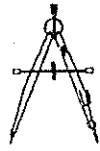
LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°09'16"W	30.52'
L2	S00°21'28"W	32.50'
L3	N00°09'16"W	14.59'
L4	S89°22'24"E	91.84'
L5	S79°33'27"E	132.13'
L6	S00°21'28"W	32.50'
L7	S00°21'28"W	62.48'
L8	S89°26'01"E	147.09'
L9	S89°51'48"E	76.57'
L10	N76°40'09"E	76.97'
L11	N64°39'10"E	76.16'
L12	N67°23'25"E	57.41'
L13	N71°34'53"E	35.18'
L14	N64°46'00"E	70.74'



W. Thad Curley III

Buffalo Bayou, Brazos & Colorado Railroad
Company Survey, Abst. No. 185
City of Denton
Denton County, Texas
- 2010 -

Arthur Surveying Co., Inc.
Professional Land Surveyors
972-221-9439 ~ Fax 972-221-4675
220 Elm Street, Suite 200 ~ P.O. Box 54
Lewisville, Texas 75067



Arthur Surveying Co., Inc.
Professional Land Surveyors

P.O. Box 54 ~ Lewisville, Texas 75067
 Office: (972) 221-9439 ~ Fax: (972) 221-4675

**30' TEMPORARY CONSTRUCTION EASEMENT
 0.360 ACRES
 CITY OF DENTON, DENTON COUNTY, TEXAS**

BEING all that certain lot, tract or parcel of land situated in the Buffalo Bayou, Brazos and Colorado Railroad Company Survey, Abstract Number 185, City of Denton, Denton County, Texas, and being a part of that certain tract of land described in deed to Khosrow Sadeghian, recorded under Instrument Number 2002-99899 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the east line of said Sadeghian tract and the west line of that certain tract of land described in deed to Landy L. Mulkey Irrevocable Family Trust, dated May 22, 1984, Patricia Klammer, Trustee, recorded under Instrument Number 2005-41779 of the Real Property Records of Denton County, Texas, and from which a ½ inch iron rod found at the southeast corner of said Sadeghian tract and the northeast corner of that certain tract of land described in deed to Gustavo Torrez and wife, Luz V. Torrez, recorded under County Clerk's File Number 97-R0082959 of the Real Property Records of Denton County, Texas, bears South 00 degrees 21 minutes 28 seconds West, a distance of 94.98 feet;

THENCE over, across and through said Sadeghian tract the following two (2) calls:

South 67 degrees 44 minutes 45 seconds West, a distance of 317.37 feet to a point for corner;

North 79 degrees 33 minutes 27 seconds West, a distance of 228.74 feet to a point in the east line of Frame Street, a public roadway;

THENCE North 00 degrees 09 minutes 16 seconds West, with the east line of said Frame Street, a distance of 14.59 feet to a point for the southwest corner of that certain tract of land described in deed to Millard F. Thorp, recorded in Volume 2710, Page 553 of the Deed Records of Denton County, Texas;

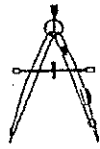
THENCE South 89 degrees 22 minutes 24 seconds East, with the south line of said Thorp tract, a distance of 91.84 feet to a point for corner;

THENCE over, across and through said Sadeghian tract the following two (2) calls:

South 79 degrees 33 minutes 27 seconds East, a distance of 132.13 feet to a point for corner;

North 67 degrees 44 minutes 45 seconds East, a distance of 321.06 feet to a point in the west line of said Mulkey Family Trust tract;

Property Interests - EXHIBIT "B"

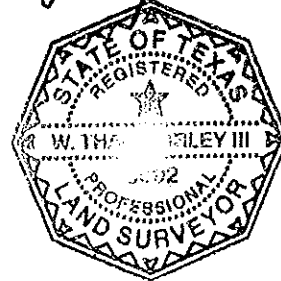


Arthur Surveying Co., Inc.
Professional Land Surveyors

P.O. Box 54 ~ Lewisville, Texas 75067
Office: (972) 221-9439 ~ Fax: (972) 221-4675

THENCE South 00 degrees 21 minutes 28 seconds West, with the west line of said Mulkey Family Trust tract, a distance of 32.50 feet to the **POINT OF BEGINNING**, and containing 0.360 acres of land, more or less.

Ar. Had. Mulkey

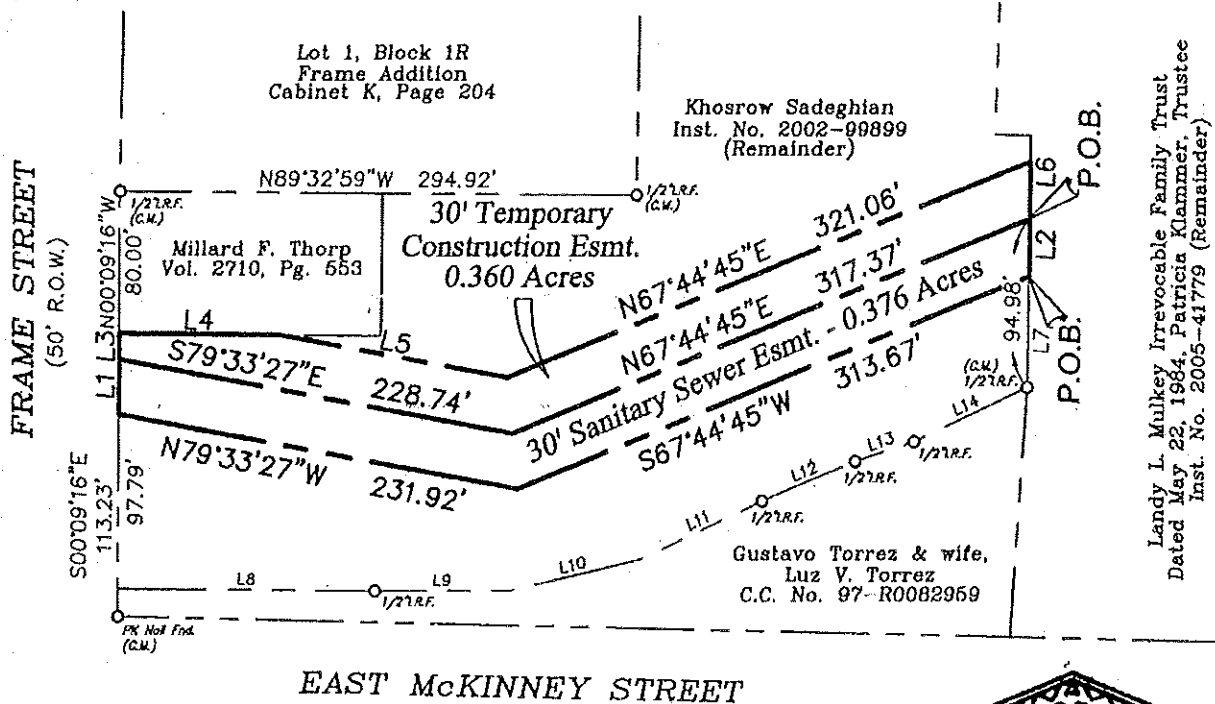




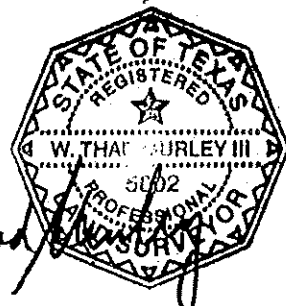
100 0 100 Feet

Basis of bearing is based on the City of Denton GIS network.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°09'16"W	30.52'
L2	S00°21'28"W	32.50'
L3	N00°09'16"W	14.59'
L4	S89°22'24"E	91.84'
L5	S79°33'27"E	132.13'
L6	S00°21'28"W	32.50'
L7	S00°21'28"W	62.48'
L8	S89°26'01"E	147.09'
L9	S89°51'48"E	76.57'
L10	N76°40'09"E	76.97'
L11	N64°39'10"E	76.16'
L12	N67°23'25"E	57.41'
L13	N71°34'53"E	35.18'
L14	N64°46'00"E	70.74'



Landy L. Mulkey Irrevocable Family Trust
 Dated May 22, 1984, Patricia Klammer, Trustee
 Inst. No. 2005-41779 (Remainder)



W. Thad Burley III

Buffalo Bayou, Brazos & Colorado Railroad
 Company Survey, Abst. No. 185
 City of Denton
 Denton County, Texas
 - 2010 -

Arthur Surveying Co., Inc.
 Professional Land Surveyors

972-221-9439 ~ Fax 972-221-4675
 220 Elm Street, Suite 200 ~ P.O. Box 54
 Lewisville, Texas 75067