

CITY OF DENTON CITY COUNCIL MINUTES

April 19, 2011

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, April 19, 2011 at 3:00 p.m. in the Council Work Session Room at City Hall.

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

ABSENT: None

Mayor Burroughs stated that Council would be going into Closed Session.

1. Closed Meeting:

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

2. Receive a status report regarding the litigation entitled: The University of North Texas, Appellant v. The City of Denton, Texas, Appellee, Cause No. 02-09-00395-CV, before the Fort Worth Court of Appeals, reversed and remanded to the 158th Judicial District Court in and for Denton County, Texas; and discuss, deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matter. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Council returned to Open Session at 3:40 p.m.

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 April 19, 2011.

Council Member Watts asked about Consent Agenda Item 4A and whether there were two vehicles or one vehicle with a cab.

Mike Ellis, Fleets Superintendent, stated that there were two vehicles.

Council Member Engelbrecht asked if the city had a policy in regards to fuel consumption.

Ellis stated that in 2006 the Council approved a clean fleet ordinance which stated that the City would purchase the cleanest vehicle available to the City.

Council Member Engelbrecht asked if when trading out the fleet, was the overall price looked at in terms of best price when it would be sold.

Ellis stated that they looked at return on investment when they looked at vehicles for the entire fleet because of the resale market.

Council Member Watts asked about Consent Agenda Item 4C. He questioned if the additional funds that would be added to the bid costs would represent the overall cost.

Emerson Vorel, Director of Parks and Recreation, stated that the bid price was for construction and installation. It would be purchased off the Buy Board as an installed price.

Council Member Watts asked if the funding was from the Park Dedication Fees.

Vorel stated that 100% of the funding was from the Park Dedication Fees.

Council Member Watts asked for a report on past purchases made with extended warranties on vehicles. He also indicated that he would like to reserve the right to possibly pulling Consent Agenda Item 4L for separate consideration.

3. Receive a presentation by President Lane Rawlins from UNT regarding UNT's Community Engagement Plan in the North Texas Region.

Lane Rawlins, UNT President, reviewed his presentation "The Circle of Influence for Major Research Universities - a proposal for the future of North Texas". He felt there was a need to do more outreach in the region and showed how the existence of major research universities was influential in the region. Steps involved in attaining the circle of influence included: (1) access and image, (2) academic program and continuing education delivery, (3) promoting economic development, (4) direct involvement and partnerships, and (5) a new place with unique capabilities. Critical short-term needs included a continuous process for communication and planning, open discussion of priorities and partnerships, and political and financial support.

4. Receive a report, hold a discussion, and give staff direction regarding the initial assessment for redistricting in the City of Denton, redistricting criteria, and guidelines for redistricting processes and schedules.

City Attorney Burgess noted that the census numbers were in and redistricting was a process that needed to be started. She introduced Bob Heath who was with the consulting firm working on the City's redistricting.

Bob Heath, Bickerstaff Heath Delgado Acosta, stated that voting was based on a constitutional principle that required one person - one vote. Voting districts must have approximately equal populations. If a new federal census indicated population changes, governmental entities have to determine whether existing districts still satisfied this requirement. If not, the population had to be rebalanced by re-drawing district boundaries. Denton had a lot of growth that was not uniform throughout the city and was currently not in compliance.

Deviation of population – for a legislative plan drawn by a governmental entity, a deviation of less than 10% most of the time would be acceptable. If it was above 10% it would not be acceptable. The deviation was measured between the single member district with the greatest

population and the district with the least population. After redistricting, each of the districts would have roughly equal population and the district with the greatest population would not be more than 10% larger than the district with the least population.

Census data used for redistricting included using the block level, the total population, voting age population, race, and Hispanic origin. Main issues associated with redistricting included the Department of Justice's role in preclearance and legal standards for liability. The Department of Justice looked at whether minorities would be worse off under a proposed new system. To obtain preclearance an entity must show that the proposal neither had the purpose nor would it have the effect of denying or abridging the right to vote. He reviewed Section 5 of the Voting Rights Act and the benchmark used as the standard against which retrogression was measured. Section 2 of the Voting Right Act prohibited election practices that discriminated on the basis of race or language minority status. He reviewed the terms cracking or packing voters in a district and redistricting standards adopted after the Shaw verses Reno case.

Adopt redistricting criteria – criteria to be considered when redistricting included (1) adopting districts of relatively equal size, (2) identifiable boundaries, (3) maintaining communities of interest and neighborhoods, (4) using whole voting precincts, (5) basing the plan on existing districts, (6) drawing districts that were compact and contiguous, (7) keeping incumbents in their districts, and (8) narrowly tailoring the plan to comply with the Voting Rights Act.

Steps to balancing conflicting legal obligations in redistricting included (1) planning ahead and building a record, (2) being aware of legal obligations and responsibilities, (3) adopting criteria that reflected traditional redistricting principles, including consideration of race to the extent required to meet obligations under the Voting Rights Act, (4) paying attention to the criteria when drawing the plan by considering and evaluating each plan presented whether by a consultant or by the general public in light of the adopted criteria, (5) analyzing the final plan in terms of how well it conformed to the criteria, (6) making sure the analysis was furnished to the governmental body before it voted on the plan, and (7) avoiding truly bizarre districts.

Heath reviewed the proposed 2011 timeline for redistricting and the initial assessment benchmark indicating that District Four was the district with the most deviation.

Council Member Watts questioned what would happen to a current representative if a district was redrawn and he/she would no longer be in that district.

Heath stated in that case the representative would typically serve out the term but if he/she wanted to run again, would have to live in the new district.

City Attorney Burgess stated that there was a constitutional provision to continue to serve until a successor was qualified to serve.

5. Receive a report, hold a discussion and give staff direction regarding the allocation of streets bond fund savings associated with the 2005 Capital Improvement Program.

Jim Coulter, Director of Water Utilities, stated that the Street Reconstruction portion of the 2005 Bond Program was nearing completion. There were a total of 41 street segments identified for

reconstruction with 38 completed. Savings realized with the completion of these projects would be moved to the streets that needed the most work. The CIP Oversight Committee recommended moving the savings money over to the Bonnie Brae project with the specific instructions to authorize the engineering and once that was completed to come back for authorization on the rest of the savings money.

Council Member Watts noted that the three streets left were Gay, Northridge and Bonnie Brae. Staff was not anticipating a need for additional funding.

Coulter indicated that money was being set aside to make sure the dollars were there when they were ready to complete those projects.

Council Member Watts stated that staff was confident that there would be enough money to complete the projects.

Coulter stated that they were holding back enough to take care of any contingency on Northridge on the street side but he was not sure about the drainage side.

Council Member Watts asked if Northridge was included in the one cent tax for drainage.

Coulter replied correct that it included the detention pond which was completed. The second phase was the underground storm drain.

Council Member Gregory stated that the gas well drilled on Rayzor Ranch at Bonnie Brae Street had to provide money to the City for wear and tear on streets.

Council Member Engelbrecht stated that he would like review the engineering plans once the curb on Bonnie Brae was engineered before going forward.

Coulter stated that they would be bringing back the engineering contract and construction project to Council.

Council Member Engelbrecht stated that he would like to see what the plans would look like before going all way through engineering in case Council wanted to make some comments on the plans.

Council considered Item 9.

9. Receive a report, hold a discussion, and provide staff direction on the construction of a Landscape Equipment Storage Area building at the Denton Municipal Airport.

Quentin Hix, Airport Manager, stated that this project was the construction of a landscape equipment storage area building at the Airport. He reviewed the budget details needed to build the storage facility and presented options on size of building, including work bays, office area and secure tool storage area. The building bid tabulation was reviewed with Hix indicating that in the future he would be bringing to Council the proposal for actual expenditures.

Mayor Burroughs asked what the estimate was from the architect on what the project would cost.

Dean Hartley, Facilities Manager, stated that the opinion of the architect was about \$355,000.

Council Member Watts felt that the cost was high for a 2,000 square foot metal building.

Hartley stated that the project included a wash bay with separator. The cost increased as the location of the proposed building was 175 feet from a sewer connection which added to the cost plus there would be brick on the outer side of the building on the runway side.

Council Member Watts questioned what was needed from Council at this time.

Hartley stated that they wanted to present the project to Council at this meeting and would bring it back on May 3rd for consideration.

Consensus of the Council was to proceed with the project.

Council considered Item 6.

6. Receive a report, hold a discussion and give staff direction regarding the reallocation of Capital Improvement Program (CIP) funds approved for the design, property acquisition, and construction of entry corridors for Downtown Denton.

Emerson Vorel, Director of Parks and Recreation, stated that the 2004 CIP Bond program approved \$700,000 for entry corridors either on Dallas Drive or Fort Worth Drive. As both of these streets were scheduled for major reconstruction within the next five years moving forward with enhancements was not recommended at this time. The Downtown Implementation Plan had called for the installation of wayfinding signs throughout the downtown area as it was long past time to replace some of the signs at the front of city buildings. The Downtown Implementation Plan Committee had been looking at options for signs and was asking for Council to consider moving the money approved in the bond election for multiple entrances for the City to pay for the wayfinding signs.

City Manager Campbell asked what could be purchased for the \$700,000.

Ron Menguita, Planning Supervisor, stated that the plan was to come back to Council with a proposal for wayfinding signs, secondary signage, major signs on the highway and kiosk signs throughout the city. Staff was currently putting a theme together for the public to provide comments.

Council Member Engelbrecht stated that this would be an image issue and to be cautious on how that would be determined.

Menguita stated that staff was working on those issues and would be presenting it to Council in the next month in order to provide citizen input.

Consensus of the Council was to proceed as proposed.

7. Receive a report, hold a discussion, and provide staff direction regarding delinquent tax collection services.

Mayor Burroughs left the meeting with a conflict of interest.

Bryan Langley, Chief Financial Officer, presented the details on the current contract. The current contract was originally awarded to Sawko and Burroughs on July 1, 2005. All fees for delinquent tax collection services were paid directly by the delinquent taxpayers. The original contract expired on June 2008. Staff solicited requests for proposal in lieu of automatically extending the contract with renewal options. That process determined that Sawko and Burroughs was the best overall proposal and was awarded a new contract in November 2008. The 2008 contract expired on June 30, 2011. That contract had a provision for two one-year renewal options. If both one-year renewal options were exercised, the contract could be extended until June 2013.

Performance requirements - current contract collections were required to be at least 60% of the current year delinquencies and 30% of all prior year delinquent amounts. Sawko and Burroughs provided a summary of their performance which indicated they had complied with these requirements. Collection performance was verified independently by City staff.

Contract options - Option 1 would renew the agreement for a period of one year through the existing renewal option in the contract. Option 2 would solicit new requests for proposals for the tax collection contract. The current contract could be renewed on a month-to-month basis while staff conducted the request for proposal process. Option 3 would enter into negotiations and award a contract to another law firm. Since these were considered a professional service, state law did not require the solicitation of bids or proposals.

Council Member Watts stated that a prior issue had been not to have the Mayor involved in the daily activity for collection of taxes and that a fire wall had been installed so that would not happen. He asked how consolidation suits were handled when the Mayor was involved.

Greg Sawko, Sawko and Burroughs, stated that for the most part with a consolidation of tax suits, Mr. Burroughs was excluded. However, once he provided a conflict disclosure and walled himself off from the decision process, there was no reason why he could not actively participate in the suit. It was more of an issue when the city was the main complainant. In those cases the notices were sent to him and if not, they went to Mr. Burroughs.

Mayor Pro Tem Kamp asked if they were still doing contracts with DISD.

Sawko replied correct and that most of their current contracts were month to month contracts which worked well for both the firm and the contracting entities. He indicated that the firm had been in business in Denton for 17 years and had a stake in the community.

Council Member Gregory felt that a month by month contract would need to be monitored for performance on a more regular basis rather than waiting until the contract was due to expire. He asked if it would be a fair measure of performance to ask for quarterly reports or were the collections in bits and spurts and not good for that type of report.

Sawko replied that they were already providing quarterly reports. He stated that he liked a month to month contract as it kept them on top of the situation and provided for constant communication.

Council Member Engelbrecht asked why staff did not propose a month to month option rather than the request for proposal process.

Langley stated that the current contract had terms to extend the contract for an additional year with a 30 day out notice. Staff would prefer a specific term of contract as a month to month contract would be an unusual situation.

Council Member Watts stated that month to month contracts were not done with any other type of contract. He did not feel there was a need to go out for a request for proposal process. To change to a 30 day month to month contract with possible political agendas would not be good.

Consensus of the Council was to proceed with Option 1 which was the renewal of the contract for one year.

Mayor Burroughs returned to the meeting.

8. Receive a report and hold a discussion on Traffic Operations Study conducted for the Downtown Implementation Plan.

PS Arora, DRC Engineering Administrator, stated that a traffic study had been done by the Downtown Implementation Plan in August of last year but staff wanted to bring the study down on a more street level. The Traffic Operation Study went block by block for each street and took cross sections of the streets, looking at future traffic flows based on development proposed for the downtown area. The study was done in two phases. Phase I was to qualify and quantify the pass through traffic going through the downtown area. Phase 2 evaluated the block by block impact of the proposed Downtown street modifications on anticipated operational conditions of the area. The modifications had to fit into the existing right-of-way or building line as opposed to the Jacobs study which did not consider that. Presentations on viewings of how the streets would look once completed were reviewed along with DTIP Section Feasibility Assessment.

Recommended traffic enhancements included (1) acquisition of right of way for the proposed DTIP section for Bell Avenue, (2) signalization at Bell Avenue and Oak Street and signalization at Carroll and Sycamore and (3) construction of Bell Avenue with median for center left turn lanes with noted critical left turn lanes. DCTA was currently developing bus route plans from the Downtown station. Bike access and circulation requirements were presented along with pedestrian movement on sidewalks. The estimate cost for roadway improvements was \$12.4 million at current dollars. The short range recommendations in 1-3 years included key corridors for early implementation. Medium range recommendations in 3-10 years included the reconstruction of the Mews streets and the long range recommendations over 10 years included development of full build-out densification of the downtown development patterns.

Council returned to the Closed Meeting at 6:40 p.m.

1. Closed Meeting:

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

1. Discuss, deliberate, and receive information from Staff and provide Staff with direction pertaining to the acquisition of tracts of real property as follows: I. An approximate 5.922 acre tract of land situated in the John Davis Survey, Abstract Number 326, the Thomas Tobey Survey, Abstract Number 1285, and the James Perry Survey, Abstract No. 1040, City of Denton, Denton County, Texas; II. Easements and Temporary Construction, Grading and Access Easements in, on, over, under and across lands situated in the John Scott Survey, Abstract Number 1222, the Thomas Toby Survey, Abstract Number 1285, the James Perry Survey, Abstract Number 1040, and the John Bacon Survey, Abstract Number 1541, City of Denton, Denton County, Texas; and III. Amendments to Electric Utility Easements in, on, over, under and across lands situated in the E. Puchalski Survey, Abstract Number 996, the James Perry Survey, Abstract Number 1040, and the Thomas Toby Survey, Abstract Number 1285, City of Denton, Denton County, Texas, all for public purposes; 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 Public Utilities Board 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.
2. Discuss, deliberate and receive information from Staff and provide Staff with direction pertaining to the possible acquisition of certain real property located in the downtown area of Denton, Texas, Denton County, Texas, including real property located in the H. Cisco Survey, Abstract No. 1184 and in B.B.B. & C.R.R Company Survey, Abstract No. 185. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition of the real property referenced hereinabove, where a public discussion of these legal matters would conflict with the duty 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 potential litigation.

Regular Meeting of the City of Denton City Council at 7:30 p.m. in the Council Chambers at City Hall.

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. Denton Redbud Festival Day

Mayor Burroughs presented the proclamation for Denton Redbud Festival Day

2. Tree City USA presentation

Courtney Blevins, representing Tree City USA, presented the award and stated that this was the 20th year the city had received the recognition. This was a national award that recognized cities that managed trees in its corporate limits.

3. CITIZEN REPORTS

A. Review of procedures for addressing the City Council.

B. Receive citizen reports from the following:

1. Kimberly Truax regarding zoning for residential care home.

Ms. Truax presented information on zoning for a residential care home in a residential neighborhood. She was asking for a special use permit. The current zoning allowed six residents and she was requesting eight to ten residents. Currently that type of zoning was only allowed in a multi-family zoning designation. The property in question was the best she could find for the benefit of the residents.

4. CONSENT AGENDA

Council Member Watts asked that Item L be pulled for individual 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 L. On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Ordinance No. 2011-057

A. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a purchase order through the Buy Board Cooperative Purchasing Network for the purchase of a Peterbilt Cab/Chassis for the Solid Waste Recycling program and a Peterbilt Cab/Chassis for Denton Municipal Electric by way of an Interlocal Agreement with the City of Denton; and providing an effective date (File 4663-Purchase of Peterbilt Cab/Chassis for Solid Waste and Denton Municipal Electric awarded to Rush Crane and Refuse Systems International in the amount of \$147,600). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2011-058

- B. Consider adoption of an ordinance of the City of Denton authorizing the City Manager or his designee to execute a purchase order through the Buy Board Cooperative Purchasing Network for the acquisition of twelve vehicles and/or equipment items for various City of Denton Utility Departments by way of an Interlocal Agreement with the City of Denton; and providing an effective date (File 4700-Purchase of Vehicles and Equipment for Utility Fund Departments awarded to multiple vendors in the amount of \$2,119,254.40). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2011-059

- C. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the construction of a Neighborhood Park and Playground Project for the Preserve at Pecan Creek and Owsley Park; providing for the expenditure of funds therefor; and providing an effective date (Bid 4653-awarded to the lowest responsible bidder meeting specification, Redden Concrete, Inc., in the amount of \$320,950).

Ordinance No. 2011-060

- D. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the construction of Drainage Improvements for West Prairie Street; providing for the expenditure of funds therefor; and providing an effective date (Bid 3516-awarded to the lowest responsible bidder meeting specification, Floyd Smith Concrete, Inc. in the amount of \$150,648.30). The Public Utilities Board recommends approval (4-0).

Ordinance No. 2011-061

- E. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of Retaining Wall Materials for construction of the Third Phase of a Screening Wall at Phase 3, Cell A at the City of Denton Landfill which is available from only one source in accordance with the pertinent provisions of Chapter 252 of the Texas Local Government Code exempting such purchases from the requirements of competitive bidding; and providing an effective date (File 4702-Purchase of Retaining Wall Materials for Second Phase of Screening Wall Installation at City of Denton Landfill awarded to Stone Strong, LLC in the amount of \$128,292.50). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2011-062

- F. Consider adoption of an ordinance approving the expenditure of funds for the purchase of Software Upgrades to FASTER Fleet Management software and Annual Maintenance for continued vendor support from only one source in accordance with the provision for State Law exempting such purchases from requirements of competitive bids; providing for the expenditure of funds therefor; and providing an effective date (File 4568-Purchase of Software Upgrades and Annual Maintenance for FASTER Web Software Package awarded to CCG Systems, Inc. in the amount of \$98,000).

Resolution No. R2011-010

- G. Consider approval of a resolution authorizing the City Manager, or his designee, as Denton's authorized representative, to accept on behalf of the City of Denton an offer from

the Texas Department of Transportation (TxDOT) relating to a grant for engineering and construction of a ramp area adjacent to the Airport Terminal at the Denton Municipal Airport; confirming agreement to pay a portion of the total project cost; and, providing an effective date. The Airport Advisory Board recommends approval (3-0).

Ordinance No. 2011-063

H. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute a Contract (herein so called) between the City of Denton, Texas and Westpark Group, L.P., a Texas limited partnership and Rayzor Investments, LTD., a Texas limited partnership, contemplating the purchase by the City of Denton, Texas of (I) an approximate 5.922 acre tract of land situated in the John Davis Survey, Abstract Number 326, the Thomas Toby Survey, Abstract Number 1285, and the James Perry Survey, Abstract Number 1040, City of Denton, Denton County, Texas; (II) Easements and Temporary Construction, Grading and Access Easements in, on, over, under and across lands situated in the John Scott Survey, Abstract 1222, the Thomas Toby Survey, Abstract Number 1285, the James Perry Survey, Abstract Number 1040, and the John Bacon Survey, Abstract Number 1541, City of Denton, Denton County, Texas; and (III) Amendments to Electric Utility Easements in, on, over, under and across lands situated in the E. Puchalski Survey, Abstract Number 996, the James Perry Survey, Abstract 1040, and the Thomas Toby Survey, Abstract Number 1285, City of Denton, Denton County, Texas, all for public purposes; authorizing the City Manager, or his designee, to execute, deliver and accept any and all Deeds, Easements, Temporary Construction, Grading and Access Easements, Amendments to Electric Utility Easements, and any other documents necessary to accomplish closing of the transactions contemplated by the Contract; authorizing the expenditure of funds therefore; and providing an effective date.

Ordinance No. 2011-064

I. Consider adoption of an ordinance of the City of Denton, Texas amending Ordinance No. 2010-226 ("original ordinance"), pertaining to the acquisition through agreement or eminent domain of variable width sanitary sewer easements and temporary construction easements, by replacing certain legal descriptions contained therein, all being located within Lots 4 and 5, Block 7, College View Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Volume 1, Page 13, Plat Records, Denton County, Texas; providing that, except for such legal description amendments made to Attachment "1" of the Original Ordinance, all provisions and findings of the Original Ordinance shall remain valid and subsisting and in full force and continuous effect; and providing an effective date.

Resolution No. R2011-011

J. Consider approval of a resolution of the City Council of the City of Denton, Texas establishing guidelines for persons submitting comments and specific redistricting proposals; and providing an effective date.

Resolution No. R2011-012

K. Consider approval of a resolution of the City Council of the City of Denton, Texas adopting criteria for use in the redistricting 2011 process; and providing an effective date.

Item L was considered.

Resolution No. R2011-013

- L. Consider approval of a resolution authorizing the City Manager to submit an offer to Denton County for the purchase of a 2-acre tract, more or less, of real property situated in the Hiram Cisco Survey, Abstract No. 1184, Denton County, Texas; and providing an effective date.

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to approve the resolution as directed in Closed Session. On roll call vote, Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Council Member King "nay", and Council Member Watts "nay". Motion carried with a 5-2 vote.

5. ITEMS FOR INDIVIDUAL CONSIDERATION

Ordinance No. 2011-065

- A. Consider adoption of an ordinance approving an Advance Funding Agreement for a Project Using Funds Held in the State Highway 121 Subaccount in the amount of \$1,964,500.00 between the City of Denton and the State of Texas for the design and installation of Intelligent Transportation System Trunk Lines at various locations in the City of Denton, authorizing the City Manager or his designee to execute said Agreement on behalf of the City of Denton; and declaring an effective date.

Jim Coulter, General Manager-Water/Wastewater, presented the details on the item. The project was a grant from COG and TxDOT to allow for funding of traffic signals in Denton using fiber optic links in various locations to synchronize the signals.

Council Member Engelbrecht asked why radio controllers were not used for all the signals.

Coulter stated that fiber was a better link for video as radio only controlled the signals.

Mayor Pro Tem Kamp noted that these were Regional Toll Revenue funds and not city funds.

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

- B. Continue consideration of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 3 (NR-3) zoning district classification and use designation to a Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district classification and use designation, with an overlay district, on approximately 6.836 acres of land located at the northeast corner of Glenwood Lane and East University Drive (U.S. 380) situated within the J.Q Lilly Survey, Abstract No. 762, within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000 for violations thereof,

severability and an effective date. (Z10-0007, 1411 E. University Dr.) The Planning and Zoning Commission recommends approval with an overlay district (3-2). DUE TO MORE THAN 20% OPPOSITION FROM THE LAND AREA WITHIN 200 FEET OF THE REQUEST, A SUPERMAJORITY VOTE (3/4) IS REQUIRED BY THE CITY COUNCIL TO APPROVE THIS ITEM.

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to remove the item from the table. On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Mark Cunningham, Director of Planning and Development, presented the details of the proposal. An initial public hearing was held on December 7, 2010 which was continued to the February 2, 2011 meeting. However, that meeting did not take place due to inclement weather and was rescheduled for February 15, 2011. Before that meeting, the applicant requested that the public hearing be rescheduled to March 1, 2011 which was done. At that meeting Council deferred taking action to a date certain of March 19, 2011 to allow the applicant to work out issues with the neighbors and access on US 380.

The basics of the proposed overlay restrictions included (1) all uses permitted within the NRMU-12 zoning district except for laundry facilities; (2) only professional service and office uses would be allowed within the 150 foot northern property line; (3) parking was permitted within 20 feet of the northern property line; (4) an eight foot high solid screen fence would be in the required buffer yard adjacent to the property line in lieu of the required buffer shrubs; (5) if single-family detached, single-family attached or duplex structure were not developed adjacent to Glenwood Lane, a 6-foot high wrought-iron style fence would be installed; (6) architectural standards as noted in the proposed ordinance; (7) exterior of all new structures would be constructed of 100% masonry; (8) building height would be limited to one story and not exceed 32 feet; (9) exterior lighting would be shielded so as not to shine onto adjacent properties; (10) all trees planted in the buffer yards would be a minimum of 4-6" dbh and a minimum of 20' high; and (11) access standards as noted in the proposed ordinance.

Cunningham stated that access was a point of contention. The residents did not want any access from Glenwood. The applicant was suggesting an ingress/egress that would align with a current street across University. He was also proposing a second point on University which would also serve multiple purposes. This was a rezoning request. A question had been asked what would happen if access was granted but was not constructed as proposed due to the necessity to get permission from TxDOT and the applicant received final plat approval for an application that proposed exclusive access from University. Any proposed final plat which did not restrict vehicle access from University would have to get a specific use permit with two public hearings. The applicant was in agreement with the conditions. The recommendation from the Development Review Committee and the Planning and Zoning Commission was to recommend approval with restrictive overlay conditions.

Council Member Gregory asked about the buffer long the northern boundary.

Cunningham stated that it would be a 15 foot wide buffer and 150 foot buffer for limited build zone with parking permitted within 20 feet of the northern property line.

Mayor Pro Tem Kamp asked about the lack of a site plan.

Cunningham stated that a site plan was typically done at the time of a building permit application. It was not done with a rezoning as it would be too costly if the rezoning was not approved. The zoning was needed to allow the use and if the zoning were approved, the site was plan was then done.

Council Member Watts expressed a concern regarding additional uses that might be available in the southern part of the proposal. The northern portion was limited to professional office uses.

Cunningham stated that Council could strike uses it did not want in the southern portion.

Council Member Watts stated that in terms of the ingress/egress issue, TxDOT had the final authority for granting the ingress/egress off University. If a request were made to have access off Greenwood, it would have to come to Council.

PS Arora, DRC Engineering Administrator, stated that even though TxDOT had the final authority, it would go with the city recommendation. Initially TxDOT did not appear to have a problem with the access as requested.

Mayor Burroughs felt that he would like to see additional items be withdrawn as uses. He did not see single family along US 380 which was a major thoroughfare and would not be decreasing in the future. It was Council's job to preserve and protect those who abutted the area and transition to the new use. The proposed develop was someone local who cared about the property.

Council Member Gregory stated that multiuse areas were not always bad. He appreciated all that Mr. Porter had agreed to do in terms of restrictions. Mr. Porter's other development on Hinkle was very nice but he felt he had to represent the residents in the neighborhood and their views.

Council Member Engelbrecht stated that he lived in a neighborhood similar to what was being proposed. He felt the neighbors would be surprised on what could be done especially in the 150 foot buffer area.

Council Member Watts asked about professional services restriction in terms of hours of operation.

Cunningham stated that professional office hours were normally between 8:00 and 5:00 but Council could further restrict the hours of operation if desired.

Council Member Watts questioned that the architectural standards only applied to the northern portion in 150 foot barrier.

Cunningham stated that all structures would be 100% masonry.

Council Member Watts expressed a concern about how close the parking and the lighting would be to the neighbors.

Reichhart stated that they would agree to no pole lighting in 150 foot area.

Council Member Watts asked Reichhart about the hours of operation.

Reichhart stated that it would be hard to limit the hours of operation for professional offices.

Council Member Watts stated that he had read all the comments and backup regarding the proposal. He felt that Council was being asked to keep the property as it currently was to approve something that was very restrictive, especially on northern boundary. To vote against the proposal would be saying that the property would always remain the same or that something better would be coming later. He did not want to deny developments that had a track record for quality development and something that might not be better than the restrictions already included.

Council Member Watts motioned, Council Member Heggins seconded to adopt the ordinance with the following conditions: all restrictions presented by staff including the access issues and overlay items; additional restrictions of uses to exclude attach single-family dwellings, dwelling above businesses, group houses, multi-family dwellings, semi-public halls, clubs and lounges, day cares (adult and children), gas wells; no pole lighting in 150 foot buffer of the northern property line.

On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Heggins "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Council Member Gregory "nay". Motion carried with a 6-1 vote.

C. Consider appointments to the City Council Airport Committee.

City Manager Campbell stated the enabling resolution indicated that three members were needed for the Committee. The appointments were to be made by the Mayor and approved by the City Council.

Council Member Gregory felt that it would be appropriate for one member to be the District representative for the area and one person who served on the Mobility Committee.

Council Member Engelbrecht volunteered to serve.

Council Member Gregory motioned, Council Member King seconded to appoint Mayor Pro Tem Kamp, Council Member Watts and Council Member Engelbrecht to the committee. On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

6. PUBLIC HEARINGS

- A. Hold the second of two public hearings to consider the voluntary annexation and Service Plan of approximately 1.148 acres of land located within the City's Extraterritorial Jurisdiction (ETJ) in accordance with Chapter 43 of the Texas Local Government Code. The site is located on the west side of Country Club Road; just north of the Education Center at Denton; between Ryan Road to the north and Brush Creek Road to the south. The Planning and Zoning Commission recommends approval (5-0). (A11-0001, Burch Property Annexation)

Mark Cunningham, Director of Planning and Development, stated this property was part of DH-5 which was considered for annexation last year. The property had been appraised for an agricultural exemption and qualified for a non-annexation agreement. The vast majority of the property received that agreement except for 1.148 acres which was a parking lot for the Education Center at Denton. According to the owners of the property, they had entered into a sixty month surface use lease to allow the property to be used by the school as additional parking for passenger vehicles, buses and permitted external buildings. However, the lease was not presented to the city prior to the annexation. Staff took the lease into account and was recommending that the original non-annexation agreement be revised to exclude the 1.148 acres and that only this portion of the 220.275 acre parent property be annexed. The Planning and Zoning Commission and the Development Review Committee recommended approval.

The Mayor opened the public hearing.

Janelle Burch, property owner, explained the parking lot size and location on the property.

The Mayor closed the public hearing.

No action was required by Council at this time.

7. 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 Gregory requested a report regarding the request for a group home on Brown Street with possible alternatives for the variance issue.

Council Member Watts indicated that there was no cross walk signal at the corner of Eagle Drive and Welch Street and asked that it be researched.

Council Member Watts asked for a report on a requirement for lighting on bicycles to make them safer in the dusk time period.

Council Member Watts asked for a report on what the city was paying in additional costs for hybrid vehicles.

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

Mayor Burroughs announced that the Council would be returning to the Closed Session to complete the items listed.

The Council considered the following in Closed Session.

A. Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

1. Receive a presentation and a status report from staff regarding public power competitive and financial issues and matters regarding the proposed Purchase Power Contract regarding the purchase of a portion of the City's electrical energy requirements and related matters; discuss deliberate, consider and provide staff with direction regarding same. Receive a consultation with the City's attorneys regarding legal issues concerning said proposed Purchase Power Agreement; and discuss, deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matter. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Council Member Engelbrecht motioned, Mayor Pro Tem Kamp seconded that this item was appropriate to discuss in Closed Session under the Public Power Exception. On roll call vote, Council Member King "aye", Council Member Watts "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

2. Receive a status report and further presentation from staff regarding public power competitive and financial matters regarding the possible construction and installation of a state-of-the-art combined heat and power (CHP) tri-generation station for the City to be located in the industrial district in the City of Denton, Texas; discuss deliberate, consider and provide staff with

direction regarding same. Receive a briefing from and a further consultation with the City's attorneys regarding legal issues concerning the possible construction and installation of a combined heat and power (CHP) tri-generation station for the City in the industrial district in the City of Denton, Texas; and discuss, deliberate and provide the City's attorneys with direction and any recommendations regarding such legal matter. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

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

1. Receive a report and hold a discussion with the City's attorneys regarding legal issues related to the delinquent tax collection services contract and provide the City's attorneys with direction. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the client under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

3. Consult with City's attorneys regarding the status and potential settlement of pending litigation styled Montano, et al. v. City of Denton, Cause No. 2009-60325, currently pending in the 431st District Court, Denton County.

C. Official Action on Closed Meeting Item(s) under Sections 551.071-551.086 of the Texas Open Meetings Act.

No official action was taken on Closed Meeting items..

With no further business, the Mayor reconvened the meeting in Open Session and the meeting was adjourned.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS