

## CITY OF DENTON CITY COUNCIL MINUTES

May 14, 2013

After determining that a quorum was present, the City Council convened in 2nd Tuesday Session on Tuesday, May 14, 2013 at 4:00 p.m. in the City Council Work Session Room at City Hall.

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. Receive a report, hold a discussion, and give staff direction concerning ground water sampling for gas well drilling activities.

Ken Banks, Director of Environmental Services and Sustainability, presented information regarding ground water sampling for gas wells. He stated that the discussion needed to start with some basic questions concerning sampling such as where, what, and when. He presented examples of what other cities in the area were doing regarding water well setbacks, types of sampling and specified parameters. Types of sampling included pre and post drilling sampling that included some with time frames and some testing done beyond the setbacks. The specified parameters included the types of chemicals that were tested for in the water sampling.

One of the policy issues to consider was where the sampling would occur. Issues connected with where the sampling would occur included (1) should the sampling involve those wells in proximity to existing gas wells or only those wells in proximity to new gas well; (2) if existing wells, how would overlapping setbacks and notification to well owners be handled; (3) what setback distance would be used for sampling; (4) should monitoring be conducted only for freshwater wells that were closer than the current 1200 foot setback; (6) should monitoring be conducted for both irrigation and drinking water wells or only for drinking water wells.

Mayor Burroughs asked who would pay for the sampling.

Banks stated that in other cities, the operators of the gas well paid for the testing of the water well on someone else's property.

Mayor Burroughs stated that in the other cities, if the water well owner said no to the testing that would end the procedure.

Banks replied correct.

Mayor Burroughs asked if these would be operating wells or non- operating wells.

Banks stated that would be included in the definition of the procedures. Typically there would be an element of use associated with the well.

Council Member Roden asked for an explanation of the underground water science.

Banks stated that before drilling was done, information would have to be submitted to the Railroad Commission describing the underlying aquifer with a prescribed distance below the

aquifer. When a well drilled into the aquifer, it would go through the aquifer and the requirements for casing would be put in place in the area of the aquifer.

Council Member Roden asked if leakage affected the water, what distance would do in terms of getting rid of pollution.

Banks stated that the directionality of water in the aquifer would have to be taken into consideration. There could also be pressures associated with them. Leakage events would be the result of a failure of some type such as casing.

Council discussed the drilling process and the effect on the underlying aquifer. In the absence of pre-drilling samples would it be beneficial to have post drilling samples.

Council Member Gregory asked if there was some type of notification of water wells required so there was a listing of where they were located.

Banks stated that a permit was required for drilling in the City and drillers had to register with the Water Development Board. However, the records might not be complete especially with older wells.

Council Member Gregory asked how it would be verified that an operator made contact with a landowner and the result of that contact when dealing with a new well.

Banks stated that process would have to be developed.

Mayor Burroughs asked if the results of the test would be public or private.

Banks stated that was a policy issue that needed to be addressed.

Richard Casner, Deputy City Attorney, stated that the documents would be subject to an open records request.

Banks continued with another issue to consider – what would be tested. He reviewed the common chemicals that were tested in other cities. There were also concerns with naturally occurring compounds. Aquifers may have naturally occurring compounds in excess of drinking standards. Evaluations of the two aquifers in this area indicated health based standard exceedences for some parameters were likely. He reviewed naturally occurring groundwater contamination in Texas.

When would sampling be done was another issue to consider. For Denton, pre-drilling sampling was not possible for water wells in proximity to existing gas wells. Local examples from other municipalities tend to have pre and post drilling with one municipality also specifying post fracturing.

Council Member Roden asked about procedures in other cities once a problem was discovered with post drilling.

Banks stated he did not know that answer and that he was not aware of a program where it came back and was actually documented. Additional issues to consider included (1) wells will be on private property so a process for obtaining access agreements would need to be developed, (2) a process was needed to document situations where the well owner did not wish to have testing, (3) how would data be reported to owners of freshwater wells in terms of just data, data with comparisons to appropriate standards, etc., (4) sampling should be done under a full quality assurance/quality control plan and field sampling plan, and (5) collecting representative samples from water wells required specialized techniques and training,

A summary of the issues/concerns included:

#1 – Where to sample whether in setback, previously drilled or new.

#2 – when would wells be sampled such a pre-drill only or pre and post drilling.

#3 – What would be tested with a consideration for volatiles and semi-volatiles.

#4 – Reporting results with a suggestion for comparisons with the Safe Drinking Water Act and the Texas Risk Reduction Program.

Mayor Burroughs questioned if an inspection was done on a well and the results were reported publically and if the results exceeded the State criteria for drinking water, what would happen.

Banks replied nothing would happen.

Mayor Burroughs stated that the State provided guidelines but didn't say that the water could not be used. He questioned if the testing did not exceed the State levels in pre-testing but did in post-testing, would nothing happen again from the State.

Banks stated that would depend on what and the amount of concentrations.

Council Member Watts stated that the purpose of the information would be to provide some type of evidence for someone to take a course of action. On the State level this would not be a criminal act, but more of a private party act.

Richard Casner, Deputy City Attorney, stated that it could be a criminal act if it were an environmental issue or it could be a civil matter by the landowner.

Mayor Burroughs stated that the process was a voluntary one from the water well owner. The results of the test could be harmful to a property owner such as in the sale of the property. He favored the third policy with a list of items to be tested but be done by an approved consultant but have an obligation of the driller and to the water well owner the results of the test and to maintain those results. The same procedure would be done with post drilling results. That would allow the voluntary well owner to make the call. He questioned whether the results would be confidential to the water well owner only as the City was only a bridge between the property owner and the well operator.

Mayor Pro Tem Kamp felt that if the information did not have to be public knowledge there might be more volunteers for testing.

Council Member Roden assumed the Mayor's scenarios would be for new wells. One of the reasons for considering this was not from the well owners but from others who had the perception of contamination. It was a benefit from the public perception to have the data open. It would prescribe a track record that was not polluting or was polluting. That data was helpful moving forward. The concern from citizens would not go away.

Council discussed parameters of reworking a well, notifications of a reworking of the well and whether water testing could be done in the time frame for notification of reworking procedures for reworking a well.

Consensus of the Council was to discuss some of the issues in a future Closed Session and following that work on developing a policy.

Council Member King left the meeting.

Following the completion of the 2nd Tuesday Session, the Council convened in a Closed Meeting at 5:23 p.m. to consider the item listed below.

1. Closed Meeting:
  - A. Consultation with Attorneys - Under Texas Government Code Section 551.071.
    1. Consult with City's attorneys with regard to Item #1 on the May 14, 2013 Special Called 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.

Following the completion of the Closed Session at 5:50 p.m., the Council convened in a Special Called Meeting to consider the following:

1. 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 14, 2013 Council meeting (7-0).

Brian Lockley, Director of Planning and Development, provided the details of the proposal. The request was for a zoning change from Rural Residential to Employment Center Industrial. Council postponed this item at their May 7<sup>th</sup> meeting to allow staff and the applicant to meet to

discuss public safety issues and infrastructure improvements. The Employment Center Industrial zoning district would bring existing uses into conformance (including existing light manufacturing) and allow for new permitted uses. A review of the development chronology pre 2001 development and post 2001 development activity was presented. In terms of building permit review and inspections, the Fire Department performed annual review/inspections with operational permits, hazardous permits, and flammable/combustible material permits. The Building Division performed inspections only during Certificate of Occupancy applications. Code Enforcement performed pro-active enforcement and inspections during Certificate of Occupancy applications and as part of their routine inspections program.

If the property were developed today, the following comments would apply: (1) Masch Branch Road was classified as a Commercial Mixed-Use Collection street. Appropriate dedication of right-of-way was made during the approval of the final plat; (2) Masch Branch Road was classified as an unimproved perimeter street with requirements for construction of 25-foot wide concrete pavement, 8-foot wide sidewalk, curb and gutter, and required drainage improvements; (3) based on the size of the proposed development, a Traffic Impact Analysis would be required; (4) the Traffic Impact Analysis would determine if Signal Cost Participation was required for the intersection of Masch Branch Road and University Drive; and (5) the Traffic Impact Analysis would analyze the condition of the existing Masch Branch Road pavement up to University Drive to determine if offsite improvements to Masch Branch Road were required.

Council Member Roden questioned if the mentioned infrastructure improvements would be what would be required if the proposal came to Council today.

Lockley replied correct.

Council Member Roden asked if at the time of the annexation in 2006 if Masch Branch Road was a county road.

Lockley stated at the time of the annexation it became part of the city.

Mayor Burroughs asked about the uses of the property at the time of the annexation.

Lockley stated that the uses were office/warehouse. The most appropriate zoning district would have been Employment Center which was the lowest of the industrial classifications.

The following individuals submitted speaker cards:

Patricia Adams, representing the property owner, spoke in favor.

Don Fraizer, 1740 Westminster, Denton, 76205 – spoke in favor.

Council Member Watts asked if the property was rezoned from RD-5 did that eliminate the legal non-conforming status that existed at the time of rezoning.

Richard Casner, Deputy City Attorney, stated it would make the uses at the time of zoning legal and others would be legal non-conforming.

Council Member Roden questioned what other avenues would trigger improvements on the road.

Lockley stated that future developments would have to be several pieces in the area. Some would have to be annexed first.

Mayor Pro Tem Kamp stated that due to the Development Review Committee and Planning and Zoning Commission recommendations for approval, she motioned to approve the request.

Motion died due to the lack of a second.

Council Member Gregory motioned to deny due to the insufficient structural integrity of the road and the width of the road for the zoning designation.

Motion died due to the lack of a second.

Council Member Roden felt the issue of concern was the road and questioned if at any point was the road mentioned to the property owner.

Casner stated that it was unlikely that public improvements were discussed.

Council Member Watts stated that two motions had been made with no second. If no further motions were made or if a motion was made again with no second, what would happen to the proposal.

Casner stated that the zoning request would fail due to the fact that it was not passed.

Council Member Watts stated that a zoning request that failed at the Council level had to wait a year to be resubmitted. He questioned if this would be the case in his example of motions.

Casner stated he was not sure at this point.

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to postpone the item to the June 4<sup>th</sup> City Council meeting.

Council Member Gregory felt that if the motion to approve had no second and the motion to deny had no second then there was no denial. If there was no denial of the proposal there would not be a time set for reapplication.

Council Member Roden asked if Council could go into Closed Session to get these points clarified.

Casner stated that he would need time to research the questions asked by Council.

On roll call vote to postpone the item to a date certain of June 4th: Council Member Gregory, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden – “aye”. Council Member Watts and Council Member Engelbrecht – “nay”. Motion carried with a 4-2 vote.

Ordinance No. 2013-131

2. 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)

Paul Williamson, Real Estate Manager, presented the details on the property which involved the trading of easements. The route would follow a new line around the property and abandon the easements and line going through the center of the tract.

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

3. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored

by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Council Member Watts mentioned an upcoming event at TWU for the opening of a dorm.

With no further business, the meeting was adjourned at 6:25 p.m.

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MARK A. BURROUGHS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS