

CITY OF DENTON CITY COUNCIL MINUTES

May 13, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, May 13, 2014 at 2:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Mayor Burroughs, Council Member Engelbrecht, Council Member Gregory, Council Member King, Council Member Roden, and Council Member Hawkins.

ABSENT: Mayor Pro Tem Kamp

1. Receive a report, hold a discussion, and give staff direction regarding a Reimbursement Agreement with Westray Group, LP for public infrastructure improvements in Tax Increment Reinvestment Zone Number Two.

Aimee Bissett, Economic Development Director, presented the details of the item. She indicated that this was the reimbursement agreement for the Westpark Reinvestment Zone. The Zone was located near the Denton Airport and was mainly industrial in nature. Staff had been in discussions with Rayzor Investments for the public infrastructure improvements.

Basic terms of the agreement - a project plan and finance plan for the TIRZ had to be completed. A feasibility study was done to look at the financial forecasts for viability. General terms of the agreement included the parties to the agreement would include the TIRZ Board, City Council and Westray Group. The project would involve three phases. Phase 1 would cost approximately \$5.1 million plus interest and had to be completed within 24 months of the agreement. There was an option to construct Phases 2-3.

Phase 1 improvements included (1) two additional lanes on Western Blvd., (2) associated drainage improvements, (3) an 8" sewer line along Western Blvd., (4) a 6" water line along Western from Airport to Highway 380, (5) landscaping for right-of-way on Western, (6) traffic signals at Western and Highway 380; Jim Christal and Western; Western and Airport Road. There also was an option for the extension of a low or high pressure gas pipeline as necessary.

The Reimbursement process included the following steps (1) Westray receives a Certificate of Completion of Public Improvements for Phase 1, (2) Westray submits project costs to the City for verification and approval, (3) interest accrues at 5% annually, (4) the County will not participate in interest reimbursement (5) the TIF fund would be 40% contribution from the City and County, (6) the funds would be deposited annually into a separate account and (7) disbursements would be made bi-annually.

The order of reimbursement included (1) debt on TIRZ bonds, (2) pre-TIRZ administrative costs, (3) ongoing administrative costs, (4) Westray pre-development costs, (5) verified project costs, (6) interest on verified project costs and (7) additional improvements. In the future, the City may, but is not obligated, to issue TIRZ bonds if all necessary criteria were met to protect the city and service the debt.

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

Resolution No. R2014-021

1. Consider approval of a resolution by the City of Denton, Texas denying an increase in rates requested by ATMOS Energy Corporation - Midtex Division, submitted on or about February 28, 2014 under the rate review mechanism; finding ATMOS' request unreasonable; directing ATMOS Energy to reimburse the City's rate-case expenses; authorizing the City's participation in appeals ATMOS may take denying its requested increase; requiring delivery of the resolution to the company and the City's special counsel; finding that the meeting complied with the Open Meetings Act; making other findings and provisions related to the subject; and declaring an effective date.

City Manager Campbell stated that the recommendation was to deny the increase as had been done in the past. ATMOS could then appeal to Railroad Commission.

Council Member Engelbrecht motioned, Council Member Roden seconded to approve the resolution as presented by staff. On roll call vote, Mayor Burroughs "aye", Council Member Engelbrecht "aye", Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried unanimously.

Council Member Roden suggested developing a response plan to citizen questions regarding the rate increase.

Ordinance No. 2014-142

2. Consider adoption of an ordinance of the City of Denton, Texas approving a Reimbursement Agreement between the City of Denton, the Board of Directors of the Tax Increment Reinvestment Zone Number Two, City of Denton, Texas, and Westray Group, LP.

Aimee Bissett, Director of Economic Development, stated that under the terms of this agreement, improvements would be split into three phases. Westray Group would be required to construct Phase I improvements within 24 months of execution of the agreement for a total of approximately \$5.1 million in improvements on and along Western Blvd. Per the original proposal and Project Plan, Westray Group would be eligible for reimbursement of interest at a 5% interest rate. The agreement also provided an option to construct Phases II and III. However, it also gave the City the option to enter into reimbursement agreements with other parties to accomplish Phases II and III should Westray Group opt not to construct future phases.

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

Ordinance No. 2014-143

3. Consider adoption of an ordinance of the City of Denton, Texas approving a second amendment to an Economic Development Program Grant Agreement dated June 15, 2010, between the City of Denton and Allegiance Hillview, L.P., which was duly assigned, in part, to RED Rayzor Ranch, LLC; and providing an effective date.

Aimee Bissett, Director of Economic Development, presented information on Items 3-5.

Item #3 was a request by RED Development for a second amendment to the Rayzor Ranch agreement. No terms had changed since last meeting, however, there were two options provided in terms of the Golden Triangle Mall. Option #2 removed the sunset provisions regulating the Golden Triangle Mall. A modification had been made to the agreement when a discrepancy was discovered between the 380 agreement and the PID resolution. The issue had been resolved with the developer and bond counsel. Exhibit A of the agreement stated that the amounts levied and collected through PID assessments by the City for eligible improvements defined by Table A-1 would be considered reimbursable costs so long as the amounts levied and collected through PID assessments were deducted from the categories in Table A-1 and so long as the subtotal of \$62,000,000 was not exceeded. Another element was TxDOT improvements that would be included in Table A-2.

Council discussed the provisions of the PID and agreement and making the PID resolution consistent with the grant agreement. They also discussed the sunset provisions relative to the Golden Triangle Mall and the collection of sales tax relative to former Mall tenants.

Bissett stated that Items #4 -#5 were related to the establishment of a PID district on the south side. #4 approved a Memorandum of Understanding between the City and developer that memorialized the term sheet and the conditions for the Rayzor Ranch PID. The term sheet had an exhibit that defined the boundaries of the PID which was a visual representation of the PID and not a legal description. Item #5 established the PID. The 380 agreement was updated to include the TxDOT improvements. However, there was a resolution for consideration both with and without the TxDOT improvements. Staff was asking Council to consider the resolution with the TxDOT improvements included.

Council Member Roden stated that this did not create a special taxing district and asked how it was different.

Bissett stated that a PID was not a special taxing district. It levied an assessment against the property owner and that was used as a financing tool for the PID.

Mayor Burroughs stated that one chief concern about the districts in the County was the lack of general infrastructure around them and the sustainability of that infrastructure. The special taxing district was basically a residential expansion tool with few standards to avoid the provisions required by cities.

Council Member Engelbrecht stated that he had expressed a prior concern for Table A2 dealing with I35 ramp reimbursement funds. He questioned if A2, Item 3 was only being done under the assumption that the PID would be approved with this change. If it was a potential, he suggested leaving it out and only putting it in when necessary.

Bissett stated that potentially it could be done but it was helpful for the developer that they had a reimbursement potential.

Council Member Engelbrecht stated that he would like to see the potential footprint before the potential payments and that the City was receiving requests for additional payments when the

footprint appeared to be shrinking. By tying them both together he would not be in favor of #3 and could not vote for #5 either. He was in favor of the other issues but not the TxDOT provisions. In the event that it was necessary, it could be discussed at a later date.

Council Member Roden asked if from the PID perspective, was I35 the only item Council Member Engelbrecht was concerned with. He felt it was in the City's interest and developer's interest to help shape the direction of the expansion for easy access to the project.

Council Member Engelbrecht stated that his concern was that this was another request for the City to give up something when it appeared that the footprint on the south side was shrinking rather than increasing. The multi-family portion of the development had decreased. In addition, the City had spent a lot of money for the fence for the substation to conform to the design of the development. He saw continued requests for the City to give up something at same time the footprint was shrinking. There was also the issue of two anchor stores which now had been reduced to one. He wanted to wait and see performance rather than consider the TxDOT amendment.

Council Member Gregory questioned if the \$3 million for the ramps might happen from the 380 agreement or the PID.

Bissett stated that it would be eligible from either the 380 agreement or the PID. The eligibility would be determined based on actual expenditures and who was benefiting from the improvements.

Council Member Gregory asked if it could come from the 380 agreement for the \$3 million and not get sales tax.

Bissett stated that under the 380 agreement it would be sales tax revenue and would get rebate from that sales tax.

Council Member Gregory stated that he would be bothered if sales tax for the City went to reimburse the developer for payments to TxDOT to move the ramps and then the developer sold the land to TxDOT and pocketed the money. He understood that there might be an agreement where the developer wanted the ramp in another location and a possible trading of land would be acceptable.

Bissett stated that there was a potential for a trade and felt that it might not be at the discretion of TxDOT.

Council Member Gregory stated that he would be comfortable if the \$3 million was through a PID as the property owners which was the developer would be paying. He was reluctant if it was coming from the 380 agreement.

The following individuals spoke on the item:

Gar Herring, 5710 LBJ Freeway, Dallas, 75240 - in support of Option #2 for Item 3 as it would create a level playing field with Rayzor Ranch.
Jim Greenfield, 2201 S. I35, Denton, 76205 - was in favor of Option 2

Matt Ludemann, 2201 S. I35, Denton, 76205 - in favor of Option 2

Council Member Hawkins stated that when an anchor went dark, there might be a co-lease.

Ludemann stated that each lease had co-tenancy which related to an anchor and shop space between anchors. A comparable type anchor had to be replaced or the lease could be terminated.

Scott Wagner, 1 E. Washington, Phoenix, 85004 – spoke in support. He explained the reasons for the requested revisions.

Mayor Burroughs stated some reasons for a move would suggest unless a store could relocate to a larger location, the store could go dark. There was no way to predict that. He looked at it in general terms in order for the company to make a profit. The protected device was to not make a choice between one project over another. The greenfield always had an advantage over the established development.

Mayor Burroughs asked Council Member Engelbrecht about his statement of the footprint shrinkage.

Council Member Engelbrecht stated it was the south side of Rayzor Ranch. The earlier footprint suggested larger anchor stores and when those went away, there was a risk to take the smaller stores away also. He felt it was time to see what the project was made of before giving more concessions.

Council discussed the pros and cons of the two options and how they affected the proposed development.

Council Member King stated that he liked the second option for #3 as it provided protection for both locations.

Council Member King motioned to adopt the ordinance with Option #2. Council Member Hawkins seconded and both King and Hawkins accepted Exhibit A as distributed in the meeting.

Council Member Engelbrecht stated that he was in favor of Option 2 in regards to the Mall but was not in favor of the other provisions until he saw further quality of the development.

On roll call vote, Mayor Burroughs "aye", Council Member Engelbrecht "nay", Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried with a 5-1 vote.

Ordinance No. 2014-144

4. Consider adoption of an ordinance of the City of Denton, Texas approving a Memorandum of Understanding regarding terms and conditions for the Rayzor Ranch Public Improvement District No. 1, and providing an effective date.

Council Member Roden motioned, Council Member King seconded to adopt the ordinance. On roll call vote, Mayor Burroughs "aye", Council Member Engelbrecht "nay", Council Member

Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried with a 5-1 vote.

Resolution No. R2014-022

5. Consider approval of a resolution of the City Council of Denton, Texas, making findings that the proposed Rayzor Ranch Public Improvement District No. 1 and the proposed public improvements will promote the interests of the City and confer a special benefit on a definable part of the City; providing that the district and proposed public improvements are feasible and advisable; providing findings with respect to the nature and estimated cost of the proposed public improvements, the boundaries of the district, the method of assessment, and apportionment of costs between the District and the City; authorizing the creation of the District and directing the City Secretary or other officer to publish notice of the creation; and providing an effective date. The Economic Development Partnership Board recommends approval (7-0).

Council Member Roden motioned, Council Member Gregory seconded to approve the resolution. On roll call vote, Mayor Burroughs "aye", Council Member Engelbrecht "nay", Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried with a 5-1 vote.

Ordinance No. 2014-145

6. Hold a public hearing and consider adoption of an ordinance granting approval, in accordance with Chapter 26 of the Texas Parks and Wildlife Code, of the non-park use of a part of Spc. Ernest W. Dallas Jr. Veterans Memorial Park for the purpose of installing and maintaining a sanitary sewer line for the Classic Used Cars of Denton Project; providing for a notice by the city of Denton, Texas of non-park use for installation and maintenance of sanitary sewer line and reservation of easement in the event of sale of park; and providing an effective date. The Parks, Recreation and Beautification Board recommends approval (6-0).

Jim Mays, Parks Superintendent, presented the details of the proposal. He indicated that Chapter 26 of the Texas Parks and Wildlife Code required a public hearing if a portion of park property was going to be used for a non-park use. The requested purpose would be for installing and maintaining a sanitary sewer line to be able to connect to the existing sewer main.

Council Member Gregory asked if the sewer line would be underground.

Mays replied correct.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

Council Member Gregory motioned, Council Member Engelbrecht seconded to adopt the ordinance. On roll call vote, Mayor Burroughs "aye", Council Member Engelbrecht "aye",

Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried unanimously.

7. 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.

There were no items noted by Council.

Following the completion of the Special Called Session, the City Council convened in a Special Called Closed Meeting to consider the items listed below under the Closed Meeting section of this agenda.

1. Closed Meeting

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

1. Receive further competitive public power, financial and commercial information from Denton Municipal Electric ("DME") staff regarding the procurement, acquisition, integration and implementation of ERCOT Shadow Settlement Software in its Energy Management Organization relating to its power purchase operations, which includes bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services for purposes of supporting the Energy Management Organization of the Power Supply Administration of DME; discuss, deliberate, provide staff with direction, consider and take final action on the Master Customer Agreement and any and all ancillary Agreements pertaining thereto. Consultation with the City's attorneys regarding legal issues associated with the above acquisition 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; Consider an ordinance of the City Council of the City of Denton, Texas providing for, authorizing, and approving the execution by the

City Manager of a "Master Customer Agreement" by and between the City of Denton, Texas and Ventyx, Inc., a Delaware Corporation, further authorizing and approving the execution of such other ancillary and related documents, including without limitation, licensing agreements and statements of work related to the Master Customer Agreement by the City Manager or his designee, which are incident or related thereto; confirming and ratifying that the City of Denton, Texas, its Mayor, its City Council members, its City Manager, its City Attorney, and their respective designees, shall be authorized and empowered to perform such acts and obligations as are reasonably required to complete and consummate this transaction; ratifying and confirming all prior actions taken by the City Council in furtherance of this procurement; and determining that said agreements pertain to a "Competitive Electric Matter" as set forth under the provisions of §§551.086 and 552.133 of the Texas Government Code, as amended; finding and determining that the approval of this transaction in a closed meeting of the City Council is further authorized under Texas law; finding and determining that Texas Government Code, Section 252.022(a)(7)(A) applies to the purchase of items that are available from only one source because of patents, copyrights and secret processes; and Section 252.022(c) of the Texas Government Code making it exempt from the Texas competitive bidding statutes; adopting significant recitations, findings and conclusions, as are set forth in the preamble of this ordinance; finding that the matter of approval of the Master Customer Agreement was posted as required by law and was duly considered in a closed meeting of the City Council on the 13th day of May, 2014, by a quorum of the Denton City Council and was duly approved by a vote taken in said closed meeting; providing that upon approval of the Ordinance, Master Customer Agreement and any and all ancillary agreements, by the City Council that the City Secretary is hereby authorized and directed to seal the said documents as Public Power documents, as provided by applicable Texas law; that this procurement is in the public welfare and is in the best interests of the ratepayers of Denton Municipal Electric; authorizing the expenditure of funds therefor; providing an effective date. The Public Utilities Board recommended approval by a vote of 6-0 on May 5, 2014.

This item was not considered.

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

1. Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including Constitutional limitations, statutory limitations upon municipal regulatory authority, statutory preemption and/or impacts of federal and state law and regulations as it concerns municipal regulatory authority and matters relating to enforcement of the ordinance.

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

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS