

CITY OF DENTON CITY COUNCIL MINUTES

December 13, 2011

After determining in Special Called Open Session that a quorum was present, the City Council of the City of Denton, Texas convened in a Special Called Closed Session on Tuesday, December 13, 2011 at 10:30 a.m. in the City Hall Conference Room at City Hall.

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

ABSENT: None

1. Closed Session

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

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

Joint Meeting of the City of Denton City Council and the Texas Woman's University Board of Directors on Tuesday, December 13, 2011 at 11:30 a.m. in the City Council Work Session Room at City Hall, 215 E. McKinney, Denton, Texas at which the first posted item was considered.

1. Hold a discussion regarding City of Denton and Texas Woman's University's plans, goals and visions concerning growth and expansion trends and how such may impact the community; further hold a discussion as to how each entity may assist the other and enhance a mutually beneficial relationship.

Mayor Burroughs welcomed the members of the TWU President's Cabinet. Dr. Ann Stuart, President-TWU, thanked the Mayor for the opportunity to meet together. She introduced the members of the Cabinet.

Mayor Burroughs stated that suggested topics of discussion might include growth in the City and growth in the TWU corridor. He asked what kind of meaningful interactions would help TWU and the City.

Dr. Stuart stated the opportunity to work together in areas of real discussions such as traffic patterns, roads in and out of the institution, and approvals needed from the City for development was an exciting concept. The University did not do a month by month strategic plan of facilities but had ideas of where they were going to develop and what their needs would be. She felt two or three City staff members meeting with her staff would be ideal. She also felt a serious conversation on job growth would be a wonderful topic. She suggested finding centers of interest and invite UNT, TWU, NCTC, and the City for a joint conversation. Her hope for the future would be to have working groups of interest to everyone.

Mayor Burroughs stated that with the growth of the University there was the potential for more student housing or University owned housing. The City had competing interests in that area that might be neighborhood related or city related and it would be best to have conversations on those

types of issues in order to come to a common ground as much as possible. He felt identifying a working group would be a good idea.

Dr. Stuart suggested finding the appropriate senior leadership and maybe met twice a year to touch base with such topics as housing, enrollment with associated traffic patterns and services needed.

Mayor Burroughs suggested the semi-annual meeting might also include growth issues.

Dr. Stuart suggested including job development and labor force issues. The three institutions knew the number of degrees they were producing and the types of degrees and the City knew what development was happening in the City that might help provide jobs for those individuals.

Mayor Burroughs stated that there might be potential development on projects that students in that type of degree plan might want to do an internship with the City to help with those specific topics. He stated that the City could look for opportunities for joint partnerships and have a mind set to look for those opportunities. The point person would be the City Manager.

City Manager Campbell felt that there would be opportunities to do joint partnerships. He agreed that it would be beneficial to make an effort on some level to meet on a regular basis to discuss projects the City was undertaking that might have an impact on the universities. An example of that might be the new A-train schedule and new bike plans that might be affect the universities.

Mayor Burroughs stated that depending on the topics there might be changing members for the meeting. The meeting did not need to be a specific set of individuals or the entire Council.

Mayor Pro Tem Kamp stated that another area of interest might be COG opportunities that came to the region that could be developed through COG such as the aviation program at UNT. Such a consideration at TWU might be medical programs.

Council Member Roden asked about the number of students who stayed in Denton after graduation and the major industries they were going into.

Dr. Stuart stated that the majority of the students came from the north Texas area and the majority stayed in the north Texas area.

Council Member Roden stated that the job growth issue might include the Chamber of Chamber to find additional opportunities.

Dr. Stuart stated that faculties often provided data; research or background that some industry might want to know about and produce an opportunity for study to be done or work that would help both the student and the business.

Dr. Robert Neely suggested including experts with both universities when making meetings. He also felt that UNT and TWU should think of Denton in terms of combined higher education institutions rather than as separate institutions.

Mayor Burroughs suggested looking at case studies to identify partners for active engagement with the Chamber. The Chamber might be helpful with placement of students in the community.

Council Member Gregory questioned what percentage of faculty lived in Denton and were there things that the City or Chamber could do to help when recruiting faculty. If TWU was losing faculty because of Denton, what were those issues so the City could work on them.

Dr. Stuart stated that universities usually did not lose faculty because of the place. They were lost because there might not be enough professional opportunities or money. She stated that a number of the faculty lived in the Denton community.

Council Member Gregory asked what was going to be done with property where the old school had been located.

Dr. Brenda Floyd stated that in the long term future, it might be considered for sale. It was difficult property to access to add housing or a classroom building but for moment, TWU was going to retain it.

Dr. Stuart stated that part of the property was a flood plain which also was an issue. To get across Highway 380 to make it useful was almost impossible.

Council Member Watts stated that over the past last several years he had observed the housing needs for TWU students went outside TWU. The University leased apartment buildings or used existing housing stock.

Dr. Nicholas stated that the University had gone off campus for overflow housing for upper classmen at this point. Part of the long term growth plan was housing. Currently TWU housing was full and probably would stay full. They regularly were approached by developers to measure the market share. If the University continued in growth, housing would become a larger issue.

Mayor Burroughs asked about the University's long term growth plan.

Dr. Stuart replied that it depended on who was responding. The Coordinating Board set its own goals. They might project growth in students and parcel that out among the institutions which often were not possible.

Dr. Neely stated that there was a revolution going on in higher education such as distance education and market share that might take from institutions or blended programs. There was not another university in Texas that had 40% graduate students as TWU did because TWU had so many professional programs. Those students would not be living on campus. The University had to be careful on how much student housing it developed.

Mayor Burroughs asked that if TWU had an issue to let the City know and they would work on it and the same for the City to the University. He felt bi-annual meetings would be good.

Dr. Stuart suggested having a purpose for meeting. She felt there was a need to find groups that made sense and then could report back to the Cabinet and Regents. She felt this kind of dialog was needed and that the two institutions not be isolated from each other.

City Manger Campbell stated that he would start coordinating who should attend the meetings and topics to consider.

Mayor Burroughs suggested vetting the topics through the all entities so they could prioritize them.

City Manager Campbell stated that the first meeting would involve determining who should attend and would provide large opportunities for sharing information with each other.

Following the completion of the meeting with TWU 12:45 p.m., the Council convened in a 2nd Tuesday Session.

2. Receive an update, hold a discussion, and give staff direction concerning the Phase II Sustainability Plan.

Amelia Pellegrin and Glennis Nelson with Camp, Dresser, and McKee provided an update about the process and an overview of the draft plan.

Ms. Pellegrin stated that her presentation would include a project summary and progress update; public outreach and involvement; draft plan overview; input and comments received; and next steps.

The purpose of Phase II was to develop a sustainability plan for the city government and community, facilitate implementation of the plan through partnership development and public involvement; create an implementation tracking tool and communication tool for measuring and reporting progress.

Public outreach to date included interdepartmental team meetings, community meetings with 80 attendees; a community survey with 199 responses; 4 workshops with sustainability partners; and 3 briefings with the Committee on the Environment.

From the community input, staff learned that there was substantial community interest and support for sustainability initiatives, Denton's successes to date were significant, but not well known, and there was a lot of interest in existing programs and initiatives.

Pellegrin reviewed the plan organization and hierarchy. Goals were developed from the focus areas which lead to strategies and actions. From that input they were able to prioritize the strategies from almost 400 to 58 with 30 in the plan and 10 additional for future consideration. Strategies and actions were being vetted with various City departments and partners. The actions needed to be feasible and achievable.

Factors in the Plan implementation included (1) it would be on going, (2) measuring and communicating progress would be very important to the success of the plan, (3) the Plan would

be evaluated and updated on a regular basis, (4) strategies and actions might shift given different priorities, funding changes, staff changes, etc, and (5) the priorities list of strategies provided a menu for future consideration.

Partners input in draft plan provided information on successes to date, suggested incorporating more emphasis on education and stressed the importance of budgeting and City commitment to the Plan. The Committee on the Environment suggested coordination with Comprehensive Plan update, the Plan should be reviewed and updated on an annual basis, emphasized importance of tracking successes and achievements and recommended full Council review and regroup in January.

Mayor Pro Tem Kamp asked about citizen participation.

Ms. Nelson stated that the participation was 90-100 % which was excellent.

Ms. Pellegrin reviewed the next steps and timeline.

Council Member Roden stated that there was a need to partner with UNT as they had the number one sustainability department in the area.

Catherine Barnett-White stated that some of the community partners included UNT, the League of Women Voters, the Chamber, DCTA, Atmos, DISD and other community members.

3. Receive a report, hold a discussion, and give staff direction regarding amending Section 35.7.14 of the Denton Development Code relative to standards governing the City's Infill Development Special Purpose District.

Mark Cunningham, Director of Planning and Development, presented the boundaries of the Infill Special Purpose District (ISPD). The ISPD was created on May 1, 2007 and included the DTIP area, Fry Street, Bell Avenue Conservation District, West Oak Historic District and the Oak-Hickory Historic District.

ISPD restrictions provided incentives for infill development via less stringent zoning and development standards on parcels of land that remained undeveloped. The provisions did not apply to parcels greater than 2 acres, an area that was replatted into less than 2-acre lots after the effective date of the ordinance or areas that were within any other Special Purpose or Overlay district. The provisions also could not be used to infill an entire street or whole block face; and could not be used to infill an entire neighborhood.

Council Member Gregory questioned if a property had a structure on it at one time and it had been removed for a time, would that lot be considered developed.

Cunningham stated that the lot had to never be developed. The reason was to safeguard existing development from being torn down and then not be subject to the landscaping requirements, etc.

The ISPD incentives included (1) the Planning Director could grant adjustments up to 25% from the requirements of Subchapter 5 of the Denton Development Code for height, setback, and lot

coverage within certain districts; (2) adjustments above 25% could be granted by the Planning and Zoning Commission and the City Council; (3) the development would be exempt from Subchapter 35.13.7.C Street Tree requirements, provided that at the time of permitting, street trees were not present on a majority of the developed lots; (4) the development would be exempt from Subchapter 35.13.10.C.3 Landscaping Standards; (5) would be exempt for sidewalk construction along the non-collector and non-arterial street; (6) would allow tandem parking; (7) would allow parking in front of the buildings; and (8) would allow zero-lot-line development. Because the current regulations only applied to parcels of land that had remained undeveloped, blighted, underdeveloped or economically underperforming developed lots within the ISPD did not qualify for the incentives.

Staff was recommending that the provisions of the ISPD be made applicable to all lots within the district providing they met the existing criteria of (1) the subject parcels may not be greater than 2 acres, (2) the proposed area had not been replatted into less than 2 acres after the effective date of the adoption of the ordinance, (3) the proposed area was fully within the boundaries of the ISPD, and (4) the proposed area did not fall within any other Special Purpose or Overlay District. Staff was also recommending that 35.7.14 be reviewed for possible amendments that would encourage development/redevelopment within the ISPD, while not departing from the initial spirit and intent of the Code.

Council Member Watts questioned if a lot had a structure that had been removed for quite a while, would the new incentives apply to that lot.

Cunningham stated that the area could be redeveloped.

Council Member Roden stated that the incentives might create a scenario that would encourage the removal of historical significant housing and questioned if there was a tool to use to prevent that scenario.

Cunningham stated that small area plans could be done with criteria in order to use the infill provisions.

Council Member Roden suggested that the Historic Landmark Commission look at any structures that were 50 years old or older to determine whether or not to preserve the structure.

Council Member Engelbrecht stated that some past infill was not compatible with the existing neighborhood and felt that compatibility was a major element in the plan. He felt there was a need to ensure some measure of architecture compatibility.

Cunningham stated that one tool was the requirement of a site plan which would allow for review to make ensure compatibility with neighborhoods.

Council Member Watts stated that the ISPD was primarily developed to encourage development on vacant lots and it hadn't really worked. He was not sure that just changing the regulations from never developed to developed would work. He suggested keeping different regulations for never developed from redeveloped. It was great to encourage redevelopment but the provisions were crafted for a specific intent.

Cunningham stated that if the goal was to allow for redevelopment there was a need to write the code to achieve the goal while still having preservation of the neighborhoods.

Following the completion of the 2nd Tuesday Session, the Council convened into Closed Session at 1:47 p.m. to consider the following:

- B. Deliberations regarding Real Property - Under Texas Government Code, Section 551.072; and Consultation with Attorney - Under Texas Government Code, Section 551.071.
 - 1. Discuss, deliberate and receive information from staff and provide staff with direction pertaining to the potential acquisition of real property interests located in Denton County, Texas, out of the John Davis Survey, Abstract Number 326, the Thomas Toby Survey, Abstract Number 1285, the James Perry Survey, Abstract Number 1040, the John Scott Survey, Abstract Number 1222, the John Bacon Survey, Abstract Number 1541, the E. Puchalski Survey, Abstract Number 996, and the F.P. Johnson, C.R. Green, J.F. Myers, and H.F. Brummett Surveys, Abstract Number 1699 and generally located north, east and west of the City of Denton Airport, related to the construction of a combined heat and power (CHP) plant. Consultation with the City's attorneys regarding legal issues associated with such potential real property interest acquisition and the operation of the CHP and infrastructure related thereto, 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 potential litigation.
- C. Deliberations regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; and Consultation with Attorneys - Under Texas Government Code, Section 551.071.
 - 1. Receive a further presentation from Denton Municipal Electric staff regarding a public power competitive and financial matter regarding the planning and construction of the proposed Denton natural gas pipeline related to the construction of the combined heat and power (CHP) plant. Discuss, deliberate and provide Staff with direction.
- D. Consultation with Attorney - Under Texas Government Code Section 551.071.
 - 1. Receive a briefing from and consult with the city's attorneys regarding Item 3 on the Special Called Session Agenda of December 13, 2011 regarding a Specific Use Permit (SUP) to allow for the drilling and extraction of natural gas from an underground storage formation on

property located within a Neighborhood Residential 4 (NR-4) zoning and use district on approximately 2.066 acres located generally south of McKinney Street, approximately 900 feet west of Trinity Road.

Following the completion of the Closed Session at 3:10 p.m., the Council convened in a Special Called Session to consider the following:

Ordinance No. 2011-247

1. Consider adoption of an ordinance awarding a Professional Services Agreement for the professional services and engineering design of the proposed Denton natural gas pipeline; providing for the expenditure of funds therefore; and providing an effective date (RFQ 4693 - Request for Qualifications for Professional Services and Engineering Design of the Proposed Denton Natural Gas Pipeline awarded to Teague Nall & Perkins in the amount of \$489,800 for engineering/design services and construction administration).

Mike Grim, Denton Municipal Electric, stated that the recommendation from the Public Utility Board was for the engineering design and miscellaneous fees for \$314,800 and delay the \$175,000 administrative portion until needed.

Council Member Gregory motioned, Council Member Engelbrecht seconded to adopt the ordinance with the Public Utility Board recommendation on funding. On roll call vote Council Member King "aye", Council Member Watts "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Council Member Roden "aye", Mayor Pro Tem Kamp "aye" and Mayor Burroughs "aye". Motion carried unanimously.

Council Member King left the meeting.

Ordinance No. 2011-248

2. Consider adoption of an ordinance authorizing the City Manager to approve a First Amendment to an Airport Safety Equipment Lease dated October 4, 2011 between the City of Denton, Texas and Jet Works Air Center; and providing an effective date.

Mark Nelson, Director of Transportation, stated that this was a continuation of an existing lease agreement for equipment at the Airport.

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

3. Continue a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit (SUP) to allow for the drilling and extraction of natural gas from an underground storage formation on property located within a Neighborhood Residential 4 (NR-4) zoning and use district on approximately 2.066 acres. The subject property is generally located south of McKinney Street,

approximately 900 feet west of Trinity Road; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability and an effective date. (S11-0002, Lake Dallas Storage) The Planning and Zoning Commission recommends approval (3-2).

Mark Cunningham, Director of Planning and Development, stated that this was a continuance of a case from the last regular scheduled meeting. The applicant was requesting a subsurface storage well on the site. The property was zoned Neighborhood Residential-4 with a Specific Use Permit required. At the last public hearing questions were raised about what the structure was being used for on the property. At the time of preparing the staff report, staff could not determine what it was being used for. At the November 2nd Planning and Zoning Commission meeting, the property owner indicated that the structure was a leased residential structure. Staff had asked the property owner for information on site but to date had received no response. The structure did not receive DME services. Staff was at a loss for a definitive use of the property. On November 11th, people were seen moving into the building. If this was a residential structure, the well site would have to be outside the 1000 foot setback requirement. Because all of the information was not known when the staff report was written and the fact that staff understood that it was not a residential structure, staff had recommended approval. To date, staff was not 100% certain of what the structure was being used for based on a lack of information.

Council Member Roden stated that the Planning and Zoning Commission minutes stated that two people spoke in opposition. He questioned the status of what had to be done get into a supermajority equation.

City Attorney Burgess stated that there was no supermajority vote as the provisions of a written protest from the property owners had not been met.

Council Member King returned to the meeting.

Council Member Roden questioned that if the property owner completed a Speaker Card in opposition and signed it, would that be put into the equation.

City Attorney Burgess stated that it would be counted if it was properly submitted.

The Mayor reopened the public hearing.

John Manganilla, representing Atmos, stated that he would address any questions from the last meeting.

Mayor Burroughs questioned if the structure on the property was residential.

Manganilla stated that according to the property owner, the structure was a leased house with a pasture, including vehicles on the property. The property owner had approached the contractor and asked to include the structure with a service tap off their water line to provide water service to the house as the well had gone dry 5-6 months ago and there was no water to the facility.

Council Member Watts asked if another location on site would work for Atmos as far as the surface location that would be outside the 1000 foot setback.

Manganilla stated that the engineering study had determined the best location for the well. They did have some flexibility with the property owner and had asked him to pick a location of the well. The property owner had indicated that the whole property would not work. Atmos could move to a different location but that would involve a timing issue if they had to go back through the Planning and Zoning Commission process.

Council Member Gregory stated that he was passionate about the setback requirements and would have trouble voting for the SUP if the structure were a residence. His only problem with the request at this time was the setback requirement. By pressing for a vote today, the project could potentially be slowed down for a year. He asked if the project could be delayed for another few weeks to determine if another location was possible.

Manganilla asked what would have to be done if the well were relocated aside from going back to the Planning and Zoning Commission with two more public hearings and a new gas well plat.

Cunningham stated that an argument could be made that relocating the well could be a modification of the existing application. However, it could also be argued that if the application was modified too much then what the Planning and Zoning Commission ruled on would not be reflected on a modified ordinance. The Planning and Zoning Commission had acted on a site plan if so that plan was modified would the actions of the Commission still be relevant.

Mayor Burroughs stated that if the request was denied outright, Atmos would have to wait a year to come back with a new proposal. Other alternatives included asking for a waiver from the owner of the property, going to the Zoning Board of Adjustment to ask for a variance, or moving the well.

Manganilla stated that those options could be considered.

Council Member Watts asked if Atmos was aware of the 1000 foot setback requirement and of the two options regarding the surface owner approval and the variance from the Zoning Board of Adjustment.

Manganilla stated that he was not aware of those. He felt that the setback requirement was not an issue when the project was first started and that the issue of the residential structure came into play after the initial Planning and Zoning Commission meeting.

The Mayor closed the public hearing.

Mayor Pro Tem Kamp motioned, Council Member King seconded to continue the item to the January 10, 2012 Council meeting. On roll call vote Council Member King "aye", Council Member Watts "aye", Council Member Gregory "aye", Council Member Engelbrecht "nay", Council Member Roden "aye", Mayor Pro Tem Kamp "aye" and Mayor Burroughs "aye". Motion carried with a 6-1 vote.

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

Council returned to the Closed Session at 3:40 p.m. to consider the following:

- A. Deliberation regarding personnel matters - Under Texas Government Code Section 551.074.
 1. Deliberate and discuss the evaluation, duties, discipline, and contracts of the City Attorney, Municipal Court Judge, and City Manager.

Following the Closed Session discussion, the Council returned to Open Session and with no further business, the meeting was adjourned.

MARK A. BURROUGHS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS