TOWN COUNCIL
MEETING MINUTES
July 6, 2010

The Town Council met in regular session on Tuesday, July 6, 2010 at 7:15 P.M. at 500 S. State Hwy 5, Fairview, Texas. Those present were Mayor Sim Israeloff, Council Members Jim Cunningham, Carolyn Sommers Erickson, Ron Kasian, Henry Lessner, Anton Mattli and Mary Price; Town Manager John Godwin; Assistant to the Town Manager; Matt Donnell; Planning Director, Alan Efrussy; Community Development Manage, Ray Dunlap; Budget and Management Analyst, Adam Wilbourn; Town Secretary, Michelle Lewis Sirianni and Town Attorney, Clark McCoy.

Mayor Israeloff called the meeting to order at 7:15 p.m. and declared a quorum was present. The council then adjourned into executive session.

At 7:30 p.m. Mayor Israeloff reconvened back into regular session and requested everyone to stand for the Pledge of Allegiance.

CONSENT AGENDA: All items listed under the Consent Agenda are considered routine and will be acted on by one motion, with no separate discussion of these items. If discussion is desired, an item may be removed from the consent agenda and considered separately. A) Approve minutes of the June 1, 2010 regular council meeting. B) Appoint a new municipal court judge and associate judge. C) Approve a 30 mph construction zone speed limit for East Stacy Road. D) Approve ordinance amending the 2009-10 budget. E) Approve speed zone ordinance for US 75. F) Approve speed zone ordinance for Stacy Road, FM 2786.

Councilman Kasian requested to pull items E and F.

Councilman Cunningham made a motion to approve items A, B, C, and D. Seconded by Councilman Kasian, with all in favor.

Councilman Kasian asked in regards to item E if there is an exhibit and also that the ordinance stated North Texas Tolling Authority versus Tollway Authority. Councilman Kasian stated that in regards to item F he has the same comments regarding NTTA and the exhibit does not indicate where County Club Road is located. Councilman Kasian asked if there was a non-construction ordinance since this speed zone did not pertain to a construction area. Mr. Godwin responded that TXDOT provided these and the council does not have to approve them if they do not feel comfortable, but they are using TXDOT's version since they've had a history of not approving ordinances that staff has amended. Councilman Lessner commented that the City of Allen has passed their ordinance.

Commissioner Lessner made a motion to approve items E and F as submitted with notating that the ordinance should state North Texas Tollway Authority and would like Exhibit A to item F label Country Club Road on graphic. Seconded by Councilman Cunningham, with all in favor.

FINAL PLAT, VILLAS IN THE PARK PHASE II: Conduct a public hearing and take action regarding a Final Plat for a portion of Phase II, of the Villas in the Park Subdivision, consisting of five townhome lots.

Mr. Donnell introduced this item stating that this portion of Phase II shows five lots to be platted, which is one building. Mr. Donnell stated that Grenadier adjusted the elevations from two stories to one story units, which has attracted more buyers and they are ready to begin a portion of Phase II. Mr. Donnell stated that the Planning and Zoning Commission recommended approval and there were no other comments made at the commission meeting.

Mayor Israeloff opened the public hearing. No comments were made and the public hearing was closed.

Mayor Israeloff opened discussion to council. No comments were made.

Councilman Kasian made a motion to approve the Final Plat for a portion of Phase II, of the Villas in the Park Subdivision, consisting of five townhome lots. Seconded by Councilman Mattli, with all in favor.

SPECIAL USE PERMIT (SUP) BEACH VOLLEYBALL/COMMUNITY GARDEN: Conduct a public hearing and take action regarding a Special Use Permit (SUP) for a temporary use for a proposed beach volleyball facility and a community garden within the Village At Fairview, located within the Commercial Planned Development District (CPDD), Zone K.

Mr. Donnell introduced this item stating that the MG Herring Group is requesting a Special Use Permit for a beach volleyball and community garden. Mr. Donnell stated that a Special Use Permit is typically based on the relationship and impact of the request to existing and proposed uses within the environs of the SUP and in relation to future plans for the subject area. Hence, the granting of a SUP is historically contingent upon a site specific analysis. Mr. Donnell stated that town staff recommends denial without prejudice and believes that the proposed items could be done at a different location. Mr. Donnell stated that the Planning and Zoning Commission approved this proposal with a

6-1 vote at the last commission meeting with conditions as outlined in memo, but staff stands by its recommendation.

Gar Herring, President MG Herring Group, stated that with this area being the center or 'hub' of activity and it would be several years before the office buildings would be occurring, they wanted to find something unique for this empty space. Mr. Herring stated that the main goal is to maximize sales and generate some activity from a marketing perspective and find a temporary use until something better comes along.

Mr. Herring stated that in regards to the community garden, it will be comprised of 77 4x20 and 20x20 plots and will also include fruit trees, unloading area, and garden shed with lock. Mr. Herring stated that from their research, they are self governing and usually maintain themselves. Mr. Herring stated in regards to the beach volleyball, it will have an area for washers, horseshoes, play area, sand box, a retail merchandising unit, dog park and four volleyball courts. Mr. Herring stated that they have received support from adjacent restaurants.

Mrs. Norine Bowen touched on the Code of Conduct that will be enforced by the management and security staff. Ms. Bowen stated that the code addressed no alcohol, appropriate clothing, noise, and hours of operation. Ms. Bowen stated that the code applies across the entire center.

Mayor Israeloff opened the public hearing. No comments were made and the public hearing was closed.

Mayor Israeloff opened discussion to council.

Mayor Israeloff asked the MG Herring Group to address the lighting concerns as well as how do they adjust with other events i.e. movie nights. Matt Gallo, Project Manager, stated that in regards to the lighting that there are two types of lighting: standard and recreational. Mr. Gallo stated that the standard lighting meets the dark skies requirements and the recreational lighting will only be turned on during activity and will be turned off thirty minutes after events. Mr. Gallo stated that they wanted to use five regular light poles, but the town ordinance has a 4' candle boundary and the highest theirs will be are 4.5'. Mr. Gallo stated that it is a very small overage and is hard to see by the visual eye and they have added trees to help mitigate the lighting. Mr. Gallo stated in regards to the other events, the management staff will co-ordinate so that they will not conflict.

Mayor Israeloff asked the applicant to address the compost pile. Mr. Gallo stated there are two 3x9 bins and if done correctly with the right mix, it will not smell and they set it back as far north as possible to keep away from remaining activities.

Mayor Israeloff stated that there is no adjacent parking and asked if there is enough in that area to support the proposed activities. Mr. Gallo responded that they have looked at the parking and have calculated a scenario of the busiest day with everyone having their own car, etc. that there would still be ample parking.

Mayor Israeloff asked if the uses are cancelled, are they prepared for the possibilities of changing something that's there and if successful will they seek re-approval in five years. Mr. Godwin commented that it is a temporary use and it expires on its own. Mr. Herring commented that they are willing to find an alternate location if it is successful, but they are communicating with everyone upfront whether it's through signage or verbally that it's temporary. Mr. Herring stated that they understand the risks, but it's meant to be temporary.

Councilman Kasian stated the many issues were discussed and dissected with the Planning and Zoning Commission and seems that most of everything was resolved. Councilman Kasian stated that this is not a typical land use and seems that the dog park is a selling point for the apartments, but questioned if there's a clause in the lease stating it's not permanent. Councilman Kasian stated that the Planning and Zoning Commission brought up concerns that included the garden shed, noise, scheduling and hours of operation etc. Councilman Kasian stated he believes there are valued arguments and appreciates the input by town staff, but it is a Special Use Permit, and the MG Herring Group seems cooperative and if it doesn't work, they can pull it whether it's a few weeks or months, but it will be eliminated. Councilman Kasian asked if there was any recourse if it only lasted a few weeks or months. Mr. Efrussy responded that within the requirements of a Special Use Permit, the Director of Planning has the authority to cease the use if requirements are not met and the town can step in if it endangers the public health, welfare or safety.

Councilman Mattli asked if it was a controlled access area or can people just stroll into the area and how do they plan to maintain the volleyball courts that sit in what appears to be a large sandbox. Councilman Mattli stated that it seems that it would be a complete maintenance nightmare and not a very hygienic place. Mr. Herring responded that the areas are open to the public and will have the same hours of operation, which are Monday thru Saturday 10 am to 9 pm and Sunday 11 am to 6 pm. Mr. Herring stated that they are using different sand and it will not be covered, but don't foresee it being a problem.

Councilman Cunningham stated that he was hesitant a few months ago and has studied problematic areas and seems like the surrounding businesses will dictate the outcome, especially within these economic times. Councilman Cunningham stated that the MG Herring Group has invested over $200,000 for a five year temporary use where additional revenue could be lost and if they are willing to invest in something temporary then he's in favor.

Councilwoman Price asked if people will have to bring their own washers/horseshoes or will they be sitting out. Mr. Herring responded that they will not leave them out all the time and will either take them in and out every night like the chess pieces or people will be able to check them in and out through guest services. Councilwoman Price also asked about the play area and fountain area in regards to smaller children. Councilwoman Price stated that children like to throw things and run around and is concerned that they may run out in front of cars. Mr. Herring responded that the play area will be separated by a boardwalk and they believe the area is isolated enough and that the streets near the fountain area were designed to be more narrow and bumpy and are used as a calming device to slow people down and it will ultimately be the parents also who will need to watch their children. Councilwoman Price asked if the volleyball courts are open or will they be reserved for leagues and how do they define appropriate clothing. Mr. Herring responded that it will be a first come first serve basis and usually the winner stays. Mr. Herring stated that they have discussed doing leagues and would reserve times and use a sign up of some sort if leagues occurred. Mr. Herring stated the Code of Conduct addresses the clothing.

Mayor Pro Tem Sommers Erickson stated that if they leave the area as is then nothing is going to happen, but would rather communicate to people that the uses are temporary and see the volleyball go away in five years versus the cinema, shops, etc. Mayor Pro Tem Sommers Erickson stated that they need to keep the Village alive in these economic times.

Mr. Efrussy recommended that the motion address the time frame (five years) with the option to extend conditioned upon a recommendation and action by the planning and zoning commission and town council.

Councilman Cunningham made a motion to approve the Special Use Permit (SUP) for a temporary use for a proposed beach volleyball facility and a community garden within the Village At Fairview, located within the Commercial Planned Development District (CPDD), Zone K for five years conditioned upon the option to extend with a recommendation and action by the planning and zoning commission and town council. Seconded by Councilman Kasian, will all in favor.

REVISED FINAL SITE PLAN VILLAGE AT FAIRVIEW PHASE I: Conduct a public hearing and take action regarding a Revised Final Site Plan for Phase I of the Village At Fairview, regarding a proposed temporary use for a beach volleyball facility and a community garden. Said subject property is located within the Commercial Planned Development District (CPDD), Zone K.

Mr. Efrussy introduced this item stating that the Revised Final Site Plan provides an overall site plan for the development that allows you to observe the relationship, impacts, and review of the individual project site. Mr. Efrussy stated that since the Special Use Permit was approved then the Revised Final Site Plan must be approved. Mr. Efrussy stated that all concerns that were noted in the council's memo have been eliminated.

Mayor Israeloff opened the public hearing. No comments were made and the public hearing was closed.

Mayor Israeloff opened discussion to council. No comments were made.

Mayor Pro Tem Sommers Erickson made a motion to approve the Revised Final Site Plan for Phase I of the Village At Fairview, regarding a proposed temporary use for a beach volleyball facility and a community garden. Said subject property is located within the Commercial Planned Development District (CPDD), Zone K. Seconded by Councilwoman Price, with all in favor.

BOARDS/COMMISSIONS: Consider the appointment of individuals to serve on various boards and commissions.

Councilwoman Price asked if they could place in the newsletter the need for alternates on the Board of Adjustments to obtain some possible candidates.

Mayor Pro Tem Sommers Erickson stated that she'd like to resign from the EDC Board and nominate Councilwoman Price.

Mayor Pro Tem Sommers Erickson made a motion to appoint Councilwoman Price to the EDC Board. Seconded by Councilman Lessner, with all in favor and Councilwoman Price abstained.

Planning and Zoning: Councilman Kasian made a motion to re-appoint Darion Culbertson, Tom Supan and Paul Hendricks. Seconded by Councilwoman Price, with all in favor.

Economic Development Committee: Councilman Kasian made a motion to re-appoint Gene Byrne, Chuck Williams and Sim Israeloff. Seconded by Councilwoman Price, with all in favor and Mayor Israeloff abstained.

Technology Advisory Board: Councilman Lessner made a motion to re-appoint John Adler and Neal Pappion. Seconded by Councilman Mattli, with all in favor.

Board of Adjustments: Councilwoman Price made a motion to re-appoint L. Michael Mints and Jim Helbig. Seconded by Councilman Cunningham, with all in favor.

Environmental Committee: Councilman Lessner made a motion to re-appoint Paul Westbrook and Neal Pappion. Seconded by Councilwoman Price, with all in favor.

ENVIRONMENTAL COMMITTEE: Consider and take possible action on amending the resolution creating the Environmental Management Advisory Committee.

Councilman Mattli made a motion to amend the resolution creating the Environmental Management Advisory Committee. Seconded by Councilwoman Price, with all in favor.

2010-2011 BUDGET CALENDAR: Discuss the 2010-2011 budget calendar.

Mr. Godwin introduced this item stating that there are four extra meetings and requested council to check their calendars so that any changes can be made. Mr. Godwin noted that the August 17th meeting is in the am and the July 29th is a work session and can move this meeting if council desires to a later date. Many council members suggested moving this to a date in late August, but no date tentatively set.

CERTIFICATES OF OBLIGATION: Consider and take action on a resolution directing publication of notice of intention to issue certificates of obligation; and resolving other matters relating to the subject.

Mr. Godwin introduced this item stating that they are starting the bond process. Mr. Godwin commented that the bonds are being used for the fire engine and new town hall, which have already been authorized by council.

Councilman Kasian made a motion to approve a resolution directing publication of notice of intention to issue certificates of obligation; and resolving other matters relating to the subject. Seconded by Councilman Mattli, with all in favor.

ANIMAL WASTE ORDINANCE: Consider an animal waste ordinance.

Mr. Godwin introduced this item stating that he has recently been getting complaints about people letting dogs and cats go to the bathroom in neighbor's yards. Mr. Godwin stated the town currently has a leash law and logically the pet owners should take care of this type of incidents but some are not.

Mayor Pro Tem Sommers Erickson asked how do you control this issue. Councilman Lessner asked how do you prove. Councilman Kasian stated if passed who monitors and would staff write citations. Mr. Godwin stated that council can choose to approve or not, and the ordinance is only a recommendation due to recent complaints.

No action taken.

THE ARTS OF COLLIN COUNTY: Discuss and take possible action regarding The Arts of Collin County.

Mayor Israeloff stated that he asked to place this on the agenda and wanted to inform council that he recently went to a joint meeting regarding the Arts of Collin County. Mayor Israeloff stated that the City of Frisco is divided and has no money in their budget, and the City of Allen and Plano would like to move forward now. Mayor Israeloff stated that the City of Melissa and the town are considered member cities and it seems that there will be no ground breaking in the next two budget years since there is no money in Frisco to issue bonds.

SLOAN CREEK PARKWAY EXTENSION: Discuss and take possible action regarding Sloan Creek Parkway Extension.

Councilman Lessner stated that he asked this item to be placed on the agenda and is concerned that this will be turned into a major thoroughfare. Councilman Lessner stated that he has support of the neighbors and they would like to see the road go away and would like to see the traffic routed around exterior areas of town than going through the neighborhood. Councilman Lessner stated that he requests that they remove the extension from Hart Road to Sloan Creek Parkway.

Councilwoman Price asked if the trail is still planned to go across this area and would be concerned of diverting traffic off of FM 1378 and that it would be turned into a short cut and how that would impact several neighborhoods. Mr. Godwin responded that they are keeping the trail.

Mayor Pro Tem Sommers Erickson stated that she would like to see it go away and goes against the 'Keeping It Country' clause. Mayor Pro Tem Sommers Erickson stated that she believes the extension was added on the Comprehensive Plan after Sloan Creek was approved.

Mayor Israeloff stated the plan was adopted by town council and is mixed on the question concerning the roads, neighborhood, etc. and then changing the plan now. Mayor Israeloff asked what was on the plat.

Mayor Pro Tem Sommers Erickson made a motion to start the process of updating the Master Thoroughfare Plan to remove the extension. Seconded by Councilman Kasian, with all in favor.

FAIRVIEW FARMS HOA: Discuss and take possible action regarding street lights in Fairview Farms HOA.

Councilman Cunningham introduced this item stating that the Fairview Farms HOA is being disbanded and will have approximately $12,000 remaining funds. Councilman Cunningham stated that there were thoughts of giving it to charity, but the idea was brought up concerning the street lights and the possibility of offering funds to the town to take over the light as well as contingent on additional street lighting to the four entrances.

Mayor Israeloff stated that usually a subdivision or HOA pays the light bills. Mayor Israeloff asked if they do this for one area, will they have to do it in another, how important are lights and would the town pay for the monthly light bills.

Councilwoman Price stated that lights are expensive and doesn't think the money would go very far, but questioned if they would be setting a precedent. Councilman Mattli commented that they may face the same situation with other HOA's.

Mr. McCoy stated that sometimes when HOA's disband that towns can use a public improvement district. Mr. McCoy stated that this would create a district where lot owners would pay for the service and operating costs, but would go through the public hearing process to adopt an ordinance. Mr. McCoy stated another option would be to adopt a hybrid, which pays a certain percentage, and the district pays the remaining, but the town council remains the governing authority.

Mayor Israeloff asked staff to investigate options with the public improvement district, cost of lights etc., as well as research what other communities are doing, who pays etc.

PUBLIC ART TOWN HALL AND FIRE STATION #2: Discuss and take action regarding public art at town hall and fire station #2.

Council passed over this item.

ATTENDANCE/PARTICIPATION IN MEETINGS: Discuss and consider council attendance at and participation in meetings of citizen boards and commissions.

Mayor Israeloff stated that he wanted to discuss this with council and thought that there was a policy amongst them that they would not attend other meetings and let the boards be independent. Mayor Israeloff stated that they have every right to attend public hearings, but should exercise discretion and not attend. Mayor Israeloff asked council to consider getting a consensus on not attending meetings.

Councilwoman Price stated that she didn't think that they were attending other meetings on a regular basis, but if there was an item that they wanted more information on, that maybe they ask for a work session.

Mayor Pro Tem Sommers Erickson stated that she doesn't remember promising not to attend other meetings and doesn't want to sway other boards, but questions how going keeps the board from being independent. Mayor Israeloff commented that their presence at a meeting is seen as being a council member not a citizen.

Councilman Kasian stated that he's attended two to three meetings to observe performance and wants to be able to see other discussions as they can be revealing. Councilman Kasian stated that he doesn't recall agreeing to not attending meetings and doesn't agree with proposal. Councilman Kasian stated that they are there to gather information. Councilman Kasian stated that the boards and are professional and felt they would not be intimidated by his presence.

Mr. McCoy stated the legal concern with the open meetings act is that no more than two can attend a meeting where an item that eventually goes to council. Mr. McCoy stated the risk to the Attorney General is that it can become a walking quorum (3 people) and when comments are made and then are discussed with another person equaling four people, that then it could constitute a walking quorum. Mr. McCoy stated the concern is not members attending, but the number of people who attend.

Councilman Cunningham stated that he attended the Planning and Zoning Commission meeting, but never asked for their opinion(s), but only made one comment regarding alcohol and the hours of operation.

Councilman Mattli stated they have a right to go and as long as the law is not being breached and are careful not to influence decision of board members, then doesn't see an issue.

FAIRVIEW ACRES: Discuss and take possible action regarding a compromise settlement agreement with James F. Lunsford regarding Fairview Acres.

No action taken.

CITIZENS INPUT:

No comments were made.

Mayor Israeloff adjourned the meeting at 10:34 p.m.

Sim Israeloff

SIM ISRAELOFF, MAYOR

ATTEST:

Michelle Lewis Sirianni

Michelle Lewis Sirianni, Town Secretary

TOWN OF FAIRVIEW