TOWN COUNCIL
MEETING MINUTES
April 3, 2012

The Town Council met in regular session on Tuesday, April 3, 2012 at 6:30 P.M. at 372 Town Place, Fairview, Texas. Those present were Council Members Carolyn Sommers Erickson, Ron Kasian, Jim Cunningham, Henry Lessner, and Darion Culbertson. Town Engineer, James Chancellor; Community Development Manager, Ray Dunlap; Budget and Management Analyst, Adam Wilbourn; Management Intern, John Skuta; Special Projects Intern, Ken Schmidt; Town Secretary, Michelle Lewis Sirianni and Town Attorney, Clark McCoy.

Mayor Israeloff called the meeting to order at 6:31 p.m. and declared a quorum was present. The council then adjourned into executive session.

At 7:38 p.m. Mayor Israeloff reconvened back into regular session and invited 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 February 7, 2012 regular council meeting. B) Approve minutes of the March 6, 2012 regular council meeting. C) Approve minutes of the March 20, 2012 special work session meeting. D) Approve an ordinance cancelling the May 12, 2012 general election. E) Approve an amended plat for Tranquility Farms.

Councilman Kasian and Lessner asked to pull item A.

Councilman Culbertson made a motion to approve items B, C, and D. Seconded by Councilman Lessner, with all in favor.

Council took no action on Item A since changes needed to be addressed with the Town Secretary.

CONDTIONAL USE PERMIT (CUP) 550 COTTONWOOD PLACE: Consider and take action regarding a Conditional Use Permit (CUP) for the development of two accessory buildings; one being a detached primary garage/storage/small hobby shop and the other a greenhouse, to be located at 550 Cottonwood Place.

Mr. Wilbourn introduced this item by stating that the subject property is 1.546 acres in size and currently has a primary structure under construction. Mr. Wilbourn stated that the applicant is requesting to construct two accessory buildings; one being a detached primary garage to serve as a two car garage/storage/small hobby shop and the other a greenhouse. Mr. Wilbourn stated that the applicant is also requesting two variances. The first is for the location of the primary detached garage/storage building/small hobby shop and the second for the location of the greenhouse. Mr. Wilbourn stated that the Fairview Code of Ordinances requires that all accessory buildings be located behind the rear of the primary structure, but since the western portion of the property falls within the 100 year flood plain, the applicant is requesting that the structures be located on the east and south side of the property. Mr. Wilbourn stated that the applicant has agreed to plant evergreen materials and plant bushes tall enough to obscure the view of the accessory buildings from Country Club Road as well as 14' tall shrubs on the northeast side of the house to screen and hide both accessory buildings.

Mr. Wilbourn stated that the Planning and Zoning commission unanimously approved the request conditioned upon staff review and approval of the landscaping including softening the view from the greenhouse, as well as other conditions stated in the letter submitted by the applicant. Mr. Wilbourn stated that there were two inquiries with neither positive or negative feedback, but just asked what the applicant was planning to do.

Mr. Wilbourn stated that staff recommends approval of the Conditional Use Permit (CUP) and the two variance requests for the two proposed accessory buildings as submitted in the Site Plan conditioned upon staff approval of landscaping to be located on top of the berm located on the eastern side of the property that will totally obscure the view of both accessory buildings from Country Club Road, as well as other conditions stated in the submitted Site Plan and letter submitted by the applicant.

Mayor Israeloff opened the public hearing. No comments were made.

Mayor Israeloff opened discussion to council.

Councilman Cunningham asked if the HOA has reviewed and approved his plans. Mr. Hooker, applicant responded 'yes'.

Councilman Lessner asked the applicant if he had talked with his neighbors regarding the project. Mr. Hooker replied that he had talked to the surrounding neighbors and all were okay with the project.

Councilman Kasian made a motion to approve the Conditional Use Permit (CUP) and the two variance requests for the two proposed accessory buildings as submitted in the Site Plan conditioned upon staff approval of landscaping to be located on top of the berm located on the eastern side of the property that will totally obscure the view of both accessory buildings from Country Club Road, as well as other conditions stated in the submitted Site Plan and letter submitted by the applicant. Seconded by Councilman Culbertson, with all in favor.

EMERGENCY ACCESS EASEMENT: Consider and take action regarding the emergency access easement between Meandering Way and Creekwood Drive North.

Mayor Israeloff provided an update by stating that the council appointed a subcommittee to look into a possible way to structure an agreement with the landowner regarding the pedestrian access across that particular lot. Mayor Israeloff stated that the subcommittee has had meetings with an ad hoc committee from the neighborhood, which led to direction from legal counsel to continue to move forward to see if an agreement can be reached.

Mayor Israeloff read a statement provided by the town attorney that read: "is there a motion that the town's previously formed subcommittee on this matter be authorized to pursue a final non binding proposal to resolve the easement and related issues through direct negotiations and/or mediation provided that such proposal be presented to the council for consideration within seventy days after this meeting or as soon as possible".

Councilman Lessner made a motion to authorize this particular subcommittee to hopefully receive a final draft proposal to bring back to council. Seconded by Councilwoman Sommers Erickson, with all in favor.

TXDOT'S PLANS HWY 5 TO FM 1378: Consider and take action regarding TXDOT's plans for Stacy Road expansion from Highway 5 to FM 1378 (Country Club Road).

Mr. Chancellor introduced this item stating that he and Councilman Lessner met one more time with TXDOT and the county. District and area office representatives were present, but they explained that they would be putting in letter format on what their response would be upon the town's request and what the impact of building the inside lanes versus the outside lanes and/or acquiring the right-of-way for four versus six lanes. Mr. Chancellor stated that TXDOT believes that to reevaluate a capital exclusion of the project would need to be done, which allows an environmental study to be done and can shorten the length of time allowing for quicker construction. Mr. Chancellor stated that TXDOT also mentioned a substantial cost increase would likely happen, but no amount was listed in the letter. Councilman Lessner stated that he believes they stated it would be $790,000 extra.

Mayor Israeloff stated that the town needs to decide whether to aceed to current plan with TXDOT acquiring six lanes worth of right-of-way and building four lanes worth of payment or do they oppose TXDOT's plan as is currently stands.

Councilman Lessner commented that since he's attended three meetings now that he believes TXDOT took the town's concerns seriously and if the town doesn't approve, there could be some right-of-way acquisition that the town would have to do. Councilman Lessner stated that he thinks they should move forward and that the location is not as onerous as he thought and that they were able to get additional landscaping and a path out of it, so they should let go as planned.

Councilman Culbertson stated that he believes that it is not optimal for the town to delay the project or potentially delay the project for some time and possibly risk the project not to be funded. Councilman Culbertson stated that he doesn't see a viable alternative. Councilman Culbertson stated that he thinks they need to proceed with the plan proposed by TXDOT.

Mayor Pro Tem Kasian asked if the town knows when TXDOT would begin if they gave their support of the project at this meeting. Councilman Lessner stated the right-of-way acquisition comes first and all the town can do is slow them down. TXDOT is moving ahead waiting on the town's response. If the town says 'no', then they stop implementation of the project. Mayor Pro Tem Kasian asked if there was a timeline. Councilman Lessner responded that there is a timeline, but doesn't have it with him, but the date of completion is set for late 2015/2016. Mr. Chancellor added that there is a right-of-way map that has been developed and will be released once the agreement is signed by the town, but TXDOT is anticipating a 6 month to year delay. Councilman Lessner added that at the last TXDOT meeting he attended, it was also mentioned that the engineering contract was approved to move the water pipe line, so there is obviously coordination between NTMWD and TXDOT.

Councilman Cunningham stated that he feels like he's being pushed into a corner by TXDOT. Councilman Cunningham stated that they have gone to numerous meetings; the town has publicly spoken stating their plans did not meet the town's Master Thoroughfare plans and submitted a copy for the record. Councilman Cunningham stated that he feels like he's letting down citizens along Stacy Road, but still in a bad position being elected to do what's best for the town and a delay of three and a half years is not very palatable. Therefore, he reluctantly is opposed to the way it was handled and their detrimental comments that everyone is in agreement and the town is not and that the town has fought against them for years, but TXDOT is going to do what they are going to do. Councilman Cunningham stated that unfortunately he would have to go along with not delaying the project, not because he wants to, but because it is in the best interest of the town.

Councilwoman Sommers Erickson stated that she agrees with Councilman Cunningham. Councilwoman Sommers Erickson stated that the town has been put into a corner and now they are in a position that they cannot say no. Over the past six months the council has been asking pointed questions, but has been told by TXDOT that it is a done deal. Councilwoman Sommers Erickson questioned why does the council need to say yes or go on record approving the project if it is a done deal. Councilman Lessner responded that they don't have to approve it. Councilwoman Sommers Erickson stated that have had several opportunities to say no and have expressed it through resolutions. Councilwoman Sommers Erickson stated that it is frustrating and makes her angry that the town is being asked to vote one way or another and that TXDOT wants an official vote from the town when they've known all along that the town was against it and now are asking for money if the town does says no. Councilwoman Sommers Erickson questioned why TXDOT didn't do anything before the environmental study was done. Councilwoman Sommers Erickson stated in her opinion the whole process has been flawed and that to her is frustrating. Councilwoman Sommers Erickson stated that they do need four lanes, but need to know the impact of the six lanes and what kind of capacity can a six lane road handle. Mr. Chancellor responded that the roads are rated A-F based on level of service. Level B is considered standard and level of service D you're approaching F and you don't want to get to an F. Mr. Chancellor stated at level service D on a six lane road can handle 30,000 vehicles per day and a four lane can handle 21,050 vehicles per day, which is not the best, but the maximum. Mr. Chancellor compared traffic counts done by the City of Allen since the town does not have a counter. Mr. Chancellor stated that their results are available on their website. Their numbers are showing that they are already approaching the service level D for a four lane road and TXDOT projections indicate that by 2032 traffic counts will be 28,000 from Highway 5 to Meandering. Councilwoman Sommers Erickson asked what NTCOG data reflected. Mr. Chancellor stated that NTCOG did not have any recent data available, but that there are probably some numbers within their mobility study, but did not have time to research those. Councilwoman Sommers Erickson asked as a town do we know what vehicle counts will be based on projected growth are. Mr. Chancellor stated that typically based on the region that 6-7% per year is added for vehicle growth.

Mayor Israeloff stated that the town is being asked to clarify their position since they have publicly expressed their opposition to TXDOT's plan, which is their plan to acquire additional right-of-way with four lanes of paving. Councilwoman Sommers Erickson stated that TXDOT will need additional easement(s) used for the median, which will give the appearance of six lanes, plus the median is large enough to eventually have two lanes.

Mayor Israeloff asked for a motion to withdraw the town's opposition to the current TXDOT plans as currently configured for the Stacy Road expansion, which includes all of the right-of-way plans, but only includes four lanes of actual paving with a wide median. Councilman Lessner moved and seconded by Councilman Culbertson.

Motion passes with a 5-1 vote.

ROAD RATINGS & REPAIRS: Consider and take action regarding the road rating and preliminary list for three year reconstruction plan.

Mr. Godwin introduced this item stating that selling bonds now could save quite a lot especially with the rates at an all time low. Mr. Godwin stated that the town would need one cent to sell the bonds all at once.

Mayor Israeloff commented that in order to acquire the one cent, it is his understanding that the town can either increase the total tax rate or take it from the M&O rate and is taking it from the M&O rate within the town's budget. Mr. Godwin replied that it can be done, but would be a challenge. Councilman Lessner asked about using reserves or what can they do without having to raise taxes.

Mayor Israeloff asked that based on the three year implementation that was discussed at the last meeting, can they sell the bonds as they need to spend them. Mayor Israeloff stated that he would hate to see the tax rate increased and understands the bond ratings having low interest rates, but spending money now to save money later seems like a better trade off. Councilman Culbertson agreed with selling the bonds as needed versus having to raise taxes or extract it from the M&O rate.

Councilman Cunningham stated that they has asked for a case study to be done as opposed to borrowing the funds as they needed them, but they don't know what the cost versus savings will be and the variable being not knowing what the interest rates are going to do. Councilman Lessner commented that he would issue as many bonds as they can without issuing a tax increase.

Councilman Cunningham asked if the town has received bids on the project. Mr. Chancellor responded that bids will go out in April so that he can bring them back to council in May.

Councilwoman Sommers Erickson asked if the council wanted to proceed with a case study to see what the other projects are. Councilman Cunningham stated that the study was to prepare the cost at today's rate as opposed to breaking it down into a third (1/3) for three years. Mayor Israeloff stated that he agrees with Councilman Lessner that they should put as many bonds into the first year without increasing the tax rate to take advantage of the low interest rates.

TOWN'S TRADEMARKED LOGO: Discussion regarding the town's trademarked logo.

Mayor Israeloff stated that he has asked for this item since he has seen two logos, one with a sun and one without, which caused him to ask which one was the town's official logo and trademarked.

Mr. Skuta stated that in 2008, in the description of the logo within the application submitted indicated having the sun, however, the artwork that was included with the application had pictures with and without the sun. Mr. Skuta stated after contacting the Secretary of State's office, they confirmed that only the logo with the sun was considered trademarked since it was within the description. Mr. Skuta stated that at this time, the only trademarked logo that has been recognized by the state is the sun and has been only made for paper goods and printed matter, which are only two out of the 45 different classifications. Mr. Skuta added that there is a $50 application fee for each classification. Mr. Skuta added the trademark will protect the town from allowing others to use it and is looking for council's guidance as to whether to keep it as is or can trademark both, but would have an additional cost per classification.

Mayor Israeloff stated that he favors the sun and asked the town attorney if there is a legal protection or need to trademark either one in other categories or is what they have sufficient enough. Mr. McCoy responded that it is a policy decision as far as what they prefer to use, but that trademarking the logo that covers activities that the town uses will provide for the greatest clearance and protection. Councilman Lessner asked if the town trademarked the logo federally rather than having to go through all the categories. Mr. Skuta said he marked off six to eight categories.

Mayor Israeloff asked council if they would be okay advising staff to expand the trademark protection by trademarking both logos into the additional categories that staff and/or council wish to suggest.

Consensus of the council was to trademark both under categories that would provide the best protection of items they currently use with the logo with the sun being the predominant logo used on town printed and/or paper goods.

TOWN WEBSITE: Discussion regarding the town's website and design.

Mr. Wilbourn introduced this item stating that at the last meeting council requested that town staff add this item for discussion. Mr. Wilbourn stated that the website has been simplified, but staff has three possible options for discussion of ways to enhance the website. Mr. Wilbourn stated that the first option is to utilize a higher tier of website design provided by GOV Office, who currently hosts the town's website; Option two is to look at other website designers. Mr. Wilbourn stated that he received information from a company called Vision Internet, who does website design for municipalities throughout the country including Grand Prairie, Highland Park, and Richardson; and option three comes from a suggestion from Baxter IT, which currently uses a company called Web Harambee that designed their website and many others. Mr. Wilbourn stated that the prices on these options vary and start at $600 all the way up to $19,975 depending on options and packages they could choose.

Mayor Israeloff stated that the website needs to be upgraded, it has too many clicks with not enough photos, and is dubious about price.

Councilman Culbertson stated that the website is progressing in the right direction, but is not where it could be. Councilman Culbertson stated that he likes the option of using Mr. Baxter's suggestion. Councilman Cunningham asked if he had any examples and how would they proceed with an initial layout. Mr. Baxter responded that the layout design would be kept simple and would incorporate task based scenarios into the design elements. Mayor Israeloff asked if Facebook was similar. Mr. Baxter stated that they are different, but would be best to design the website and Facebook page with the Technology Committee. Mayor Israeloff requested that they allow council to see progress before completing design layout(s).

ANNUAL PLANNING DEPARTMENT REPORT: Receive Planning Department's annual report.

Mr. Efrussy provided council with an update of the events within the Planning Department within the last year. Mr. Efrussy stated that the department collected $39,677.90 in fees and that in the last year, there has been more pre-application meetings than in previous years, which are to no charge to the developer and/or applicant.

Mr. Efrussy highlighted some of the main projects, which included:

- Amending the Sexually Oriented Businesses ordinance, this included adopting a Special Entertainment Overlay Zoning District.
- Annexed and zoned Lovejoy ISD.
- Zoned the Tanner property, which were 84.0± acres to Agricultural.
- Zoned Mr. Zampino's property to the Planned Center District Zone.
- Fairview Downs – Site Plan and Final Plat.
- Extended Blend Techs Special Use Permit another five years.
- Additional requests for accessory buildings, trending the improvement for neighborhoods.
- Conditional Use Permit for Sports Court.
- Assisted in the Veteran's Day Celebration.
- Discussion regarding Telecommunication Towers and locational criteria.
- Various work sessions.

Mr. Efrussy stated that the planning department continues to keep high standards to maintain high quality, maintaining the goals and objectives of the commercial development within the town, and reviewing the Comprehensive Plan every 3-5 years to look for ways to make any improvements.

Mayor Israeloff stated that Mr. Efrussy is very widely known and he and council are very thankful for having Mr. Efrussy on staff.

SECOND QUARTER BUDGET: presentation of second quarter budget.

Mr. Skuta introduced this item, starting the presentation by discussing the sales and use tax. Mr. Skuta stated that when the town earns revenue it takes two months before it is actually received. Mr. Skuta stated that on a positive note the town earned a 20-25% increase in sales and use tax. Mr. Skuta stated that with estimating the future fiscal year and by taking a conservative approach that there will be a 10% increase equaling 2.8 million in sales and use tax revenue, which is about $577,000 more than originally estimated. Mr. Skuta reminded council of the 380 agreement with MG Herring where the town refunds taxes to them, which is about 56% of total sales and use tax the town collects, which will be an estimated 1.6 million of the 2.8 million. The town would then have 1.1-1.2 million for their funds.

Councilman Culbertson asked if a comparison of the sales tax within a year's time of the businesses that have been there a full year. Mr. Dunlap responded by stating that internally the town does have this information, but cannot share due to the state law held by the Comptroller's office.

Mr. Skuta also briefed the council on the following:

- Increase in revenues from franchise fees compared to last year.
- Building Permits increased by $40,000 and of that $1,600 are commercial projects with the remaining being residential.
- Sewer sales have spiked due to the apartment complexes and the sales being directly related to water rates.
- Departments are all currently under or right at budget(s).

Councilman Lessner asked what the total debt currently is. Mr. Skuta responded thirteen million.

CHARTER REVISION: Discussion of a possible charter revision process and committee.

Mr. Godwin introduced this item stating that it is not unusual in many communities to appoint charter revision committees every five to ten years to review their existing charters. Mr. Godwin stated that unless the council would want a special election, they have time to review and make any changes.

Mayor Israeloff asked if council typically gives a list of topics that they want considered to the charter committee and is it best to have a liaison with an attorney. Mr. Godwin responded that he thinks that would be best to have an attorney, but doesn't know if that's typical.

Mayor Israeloff asked council to ponder if anything needs reviewed within the charter and let Mr. Godwin know.

NOISE ORDINANCE: Discussion of a possible noise ordinance changes.

Mr. Dunlap introduced this item stating that staff is in the process of updating the noise and nuisance ordinance and an issue was brought to the council's attention at the last meeting regarding barking dogs. Mr. Dunlap stated that staff researched this item under council's request and while habitual barking dogs are not addressed in the noise and nuisance section of the code of ordinances, but rather in the animal control section, staff would like to get direction from council on how to proceed. Mr. Dunlap stated that staff looked at larger lots and the suggestion is that residents with five or more acres of land and livestock would be exempt. However, the down side to this is that sound does travel, especially at night and may receive complaints. Mr. Dunlap stated that staff requests direction from council on what revisions they would like to see within the amended ordinance.

Mayor Israeloff asked what other towns have done in this regard since it seems like a tough issue to enforce. Mr. McCoy responded that it is one of the toughest issues to enforce. Mr. McCoy stated the challenge is to structure the ordinance with enough specific criteria with what constitutes a violation so that people know what the expectations are and how to enforce, which is not an easy thing to do.

Mayor Israeloff asked if we know how many incidents the town is encountering. Chief Tolliver responded that it does not happen often and usually occurs within a denser neighborhood. Chief Tolliver stated that the police department has had less than two dozen per year. Mayor Israeloff asked if the ordinance needs revisions. Chief Tolliver stated the ordinance is fine as is. The police department will make reasonable judgment and look at the circumstances at that time when responding to a disturbance call regarding habitual barking dog(s). Chief Tolliver stated that every now and again there is friction between neighbors.

Councilwoman Sommers Erickson stated that she agrees with Chief Tolliver. The ordinance doesn't warrant change and should leave as is. Mayor Israeloff and Mayor Pro Tem Kasian agreed. Councilman Cunningham asked the Chief of Police if citations are ever issued. Chief Tolliver responded not very often.

Consensus of the council was to leave the ordinance as is.

MCKINNEY AIRPORT: Discussion regarding the McKinney airport.

Mr. Wilbourn introduced this item stating that he has been attending the meetings regarding the airport, which take place the second Thursday of every month. Mr. Wilbourn stated the next meeting is scheduled on April 12th. Mr. Wilbourn stated that their agenda for this meeting includes a plan to take action on recommending to the McKinney council approving their draft plan. Mr. Wilbourn stated that he believes that it is the intent of the airport to take it to the McKinney council the second week of April.

Councilman Culbertson stated that he thinks one of the items discussed was the idea of the council appointing a citizen council with the potential of an expansion taking place. Councilman Culbertson asked if this is something that council would like to consider.

Councilman Cunningham stated that Councilman Lessner, Adam and he were at the last meeting and the airport had indicated their future plans and should activate and/or deactivate a task force to monitor their actions to see if it mitigates any damage to the town. Councilman Cunningham stated that their plans include a 1,000 ft extension of the runway, which will have a huge influence over Heritage Ranch; therefore, need to monitor this closely in the upcoming months, press for an environmental study if necessary, and keep it known that the town is not going to support their plan without a fight.

Councilwoman Sommers Erickson stated that she believes that they need a task force committee to go to the meetings and read their materials including the draft plan. Mr. Wilbourn stated that he provided a copy of their plan to council three months ago. He was able to receive a copy of it through a public information request. Councilwoman Sommers Erickson stated that she thinks they need to get the process started now, that there are certain benchmarks that the town has to meet in order to go on the record and these are FAA guidelines, and if you miss one the town may not get a chance to go on to the next step. Councilwoman Sommers Erickson stated that they need an environmental impact study done.

Councilman Lessner stated that he agrees that they need to find out what is going on, but have they made any changes that have made life better for the town. Councilwoman Sommers Erickson stated that she believes they delayed the plan. Councilman Cunningham commented that the second runway they wanted was not granted since the airport cannot operate both simultaneously and will not allow them to be operational together. Councilwoman Sommers Erickson stated that the environmental impact study will offer to help look at reducing noise and without the study; they don't have to do anything. The study is the key for the town.

Mayor Israeloff directed staff to place the item back on the next month's agenda or whenever they ready to bring the item back.

CITIZENS INPUT:

Ron Kasian, 1241 Red Oak Trail, stated that he'd like to propose for consideration adding a citizen's forum at the beginning of the agenda as a courtesy to residents.

Bill Baxter, 460 Long Cove, extended his thanks for the trees along Stacy Road.

REPORTS FROM STAFF/TOWN COUNCIL: Receive reports from Staff or the Town Council about items of community interest.

The Real Bookstore will have Fairview author day on May 12th, which includes a book signing by Mr. Godwin, from 2:00-6:00 pm.

Paul Westbrook is looking for signatures on a petition to encourage residents that have GCEC to encourage them to offer rebates to the residents that are being offered to OnCor users. Mayor Israeloff stated that he placed the petition online through the Fairview yahoo group.

Councilman Lessner stated on April 28th, the Allen Symphony Chorus will be performing at the Allen Performing Arts Center.

Mayor Israeloff adjourned the meeting at 10:06 p.m.

SIM ISRAELOFF, MAYOR

ATTEST:

Michelle Lewis Sirianni, Town Secretary

TOWN OF FAIRVIEW