

MINUTES
REGULAR CITY COUNCIL MEETING
CITY OF MURPHY
206 North Murphy Road
Murphy, Texas
Tuesday, May 15, 2012
6:00 PM

1. CALL TO ORDER

Mayor Baldwin called the meeting to order at 6:01 p.m.

2. INVOCATION & PLEDGE OF ALLEGIANCE

Councilmember Richmond gave the invocation and led the Pledge of Allegiance.

3. ROLL CALL & CERTIFICATION OF A QUORUM

The following Councilmembers were present:

Mayor Bret Baldwin
Mayor Pro Tem John Daugherty
Deputy Mayor Pro Tem Colleen Halbert (arrived at 6:04)
Councilmember Dennis Richmond
Councilmember Scott Bradley
Councilmember Bernard Grant
Councilmember Dave Brandon

4. PROCLAMATIONS / PRESENTATIONS

4.1 Proclamation for Motorcycle Safety Awareness Week

Mayor Baldwin presented a proclamation recognizing May as Motorcycle Safety and Awareness Month to representatives from the Southern Cruisers Riding Club and Finance Director Linda Truitt.

4.2 Proclamation for EMS Week

Mayor Baldwin presented a proclamation designating Emergency Medical Services recognition week to Fire Chief Mark Lee.

4.3 Presentation to C.E.R.T. Program Participants

Mayor Baldwin and Chief Lee presented graduation certificates to C.E.R.T. program participants.

4.4 Presentation from Exchange Club of Murphy

Members of the Exchange Club of Murphy presented three scholarships to students.

5. PUBLIC COMMENTS

No public comments were submitted.

6. CONSENT ITEMS

All consent agenda items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and voted on separately.

6.1. Consider and/or act upon approval of a resolution denying Atmos Mid-Tex's proposed rate increase.

VOTING

Motion by: John Daugherty to approve the resolution denying Atmos Mid-Tex's proposed rate increase.

Second by: Dennis Richmond

Councilmember	YES	NO	ABSTAIN	RECUSE
Baldwin, Bret (Mayor)	x			
Daugherty, John (Mayor Pro-Tem)	x			
Halbert, Colleen (Deputy Mayor Pro-Tem)	x			
Bradley, Scott (Council)	x			
Brandon, Dave (Council)	x			
Grant, Bernard (Council)	x			
Richmond, Dennis (Council)	x			

7. PUBLIC HEARINGS

7.1. Hold a Public Hearing and Consider and/or act on the application of HELEN PICKARD/ CVS PHARMACY requesting a change in zoning of approximately 10.844 acres from SFR (Single Family Residential) to a PD (Planned Development) District for Retail Uses with conditions on property located at SWC FM 544 and McCreary Road. (ZF 2012-01)

Prior to this item, Council convened into Executive Session at 6:21 p.m. under Sections 551.071, 551.087, 551.072 as noted specifically in Items 11.1 – 11.5 of this agenda.

Council reconvened into Regular Session at 8:07 p.m. No action was taken as a result of the Executive Sessions.

Public Hearing

Mayor Baldwin opened the public hearing on Item 7.1 at 8:08 p.m. Three comments were submitted; one in favor, and two opposed as noted below.

Mr. Barry Knight, representing Orange Development and CVS spoke in favor of the development.

Mr. Kelly Smith spoke in opposition to the development noting property dispute issues, inconsistencies with the City’s comprehensive plan, and the height of the retaining wall.

Mr. Keith Patton spoke in opposition to the development stating it is piecemeal development.

With no further comments, Mayor Baldwin closed the public hearing at 8:23 p.m.

Council Discussion

Council discussed the following items regarding the proposed development.

- 15 ft. landscape buffer and middle median landscaping to be constructed in Phase 1
- Screening and landscape screening for loading dock
- Concerns about approving site plan without knowing remaining development for property
- Complete sidewalk for entire property in Phase 1
- Signage – provide three dimensional signage for entire development, not just Phase 1
- No electronic signage
- No split-face CMU for building materials

Mr. Knight, representing the applicant, committed to the middle median landscaping. Regarding the retaining wall to address citizen comments, Mr. Knight explained that they do not know the height of the retaining wall because a study has not been completed. Mr. Knight stated that the applicant was encouraged to submit a complete concept plan for the property and that the plan depicts the footprint of a major grocery store. Mr. Knight stated it is the intent that the developers of CVS will also develop the remaining property.

Motion

Councilmember Halbert moved to approve the application of HELEN PICKARD/ CVS PHARMACY requesting a change in zoning of approximately 10.844 acres from SFR (Single Family Residential) to a

PD (Planned Development) District for Retail Uses with conditions on property located at SWC FM 544 and McCreary Road (ZF 2012-01) with the following changes:

- 1) remove split-face CMU from Section F. 2. e.;
- 2) include verbiage in Section J that electronic signs are prohibited;
- 3) In Section VI. A. Permitted Uses to remove:
 - 6. *Bank or Credit Union (with Drive-thru) (one free standing only) (SUP)*
 - 7. *Barber/Beauty Shop*
 - 8. *Barber/Beauty Shop College (SUP)*
 - 16. *Financial Services (Advice/Invest) (SUP)*
 - 21. *Health Club (Indoors) (SUP)*
 - 23. *Insurance Agency Offices (SUP)*
 - 24. *Laundry/Dry Cleaning (Drop Off/Pick Up Only)*
 - 26. *Offices (Brokerage Services) (SUP)*
 - 27. *Offices (Health Services) (SUP)*
 - 28. *Offices (Legal Services) (SUP)*
 - 29. *Offices (Professional) (SUP)*
 - 34. *Real Estate Offices (SUP)*
 - 36. *Restaurant (Drive-In/Drive-Thru) (SUP)*
 - 40. *Travel Agency (SUP);*
- 4) modify 18. *Food or Grocery Store*, and 22. *Home Improvement Center* to be approved by SUP only;
- 5) add *Sporting Goods, Clothing, and Home Goods* as permitted uses;
- 6) move the open space/amenity area along the southern boundary into Phase 1 and landscape the drive-thru area traffic island;
- 7) clarify that the vegetative landscaping along the loading dock is to be as tall as the screening wall;
- 8) to develop a signature sign to resemble the sign at the northeast corner of FM 544 and Murphy Road, to be completed in Phase 1, not to include electronic signage, and to be approved by the City Manager;
- 9) and subject to plat approval by staff within 90 days.

Councilmember Brandon seconded the motion. Councilmember Brandon moved to amend the motion to remove 31. *Pharmacy (with Drive-thru)* from Section VI. A. Permitted Uses. Councilmember Bradley seconded the motion. A vote was taken on the amended motion and failed 1-6 with Councilmember Brandon casting the only vote in favor.

A vote was taken on the main motion and passed, 7-0.

Councilmember	YES	NO	ABSTAIN	RECUSE
Baldwin, Bret (Mayor)	x			
Daugherty, John (Mayor Pro-Tem)	x			
Halbert, Colleen (Deputy Mayor Pro-Tem)	x			
Bradley, Scott (Council)	x			
Brandon, Dave (Council)	x			
Grant, Bernard (Council)	x			
Richmond, Dennis (Council)	x			

8. OTHER CONSIDERATION ITEMS

8.1. Consider and/or act on the application of Landcore Development Company requesting approval of a site plan for a dialysis clinic with additional retail rental space on the property zoned Planned Development for Retail Uses, located at the northwest corner of FM 544 and Maxwell Creek. (Tract 1, Block C, Lot 3, Murphy Marketplace)

Staff Comments

City Manager Fisher stated that staff is still reviewing this application and recommends postponing to the August 21 City Council Meeting.

Public Comments

Mr. Drew Krisman, Krisman Kelly Attorneys, representing Landcore Development, addressed Council stating that postponing approval is compromising his client’s obligations and creating a breach of contract with financial damages. He stated the use is permitted and the site plan is fully compliant. Mr. Krisman explained that the client is only requesting a parking variance. He stated that his client has vested rights. Mr. Krisman explained that they were not anticipating a postponement until the end of summer and that a postponement would force them to figure out how to protect their client from damages.

City Attorney Andy Messer stated that there are outstanding engineering issues per the letter from the City Engineer.

Mr. Krisman stated they were not aware of any outstanding engineering issues and would be happy to discuss them.

Councilmember Halbert commented that she regrets not being more specific in her original motion for this item at the April 17th meeting regarding postponement so that Council could review the Planned Development.

VOTING

Motion by: Colleen Halbert to postpone this item to the August 21 City Council agenda so that it can go through the Planning and Zoning process and then back to Council.

Second by: John Daugherty

Councilmember	YES	NO	ABSTAIN	RECUSE
Baldwin, Bret (Mayor)	x			
Daugherty, John (Mayor Pro-Tem)	x			
Halbert, Colleen (Deputy Mayor Pro-Tem)	x			
Bradley, Scott (Council)	x			
Brandon, Dave (Council)	x			
Grant, Bernard (Council)	x			
Richmond, Dennis (Council)	x			

8.2. Consider and/or act upon ratification of the City Council Focus Areas from the 2012 Strategic Planning Session.

VOTING

Motion by: Colleen Halbert to approve with change to Focus Area of Public Relations by adding “to define our story”

Second by: John Daugherty

Councilmember	YES	NO	ABSTAIN	RECUSE
Baldwin, Bret (Mayor)	x			
Daugherty, John (Mayor Pro-Tem)	x			
Halbert, Colleen (Deputy Mayor Pro-Tem)	x			
Bradley, Scott (Council)	x			
Brandon, Dave (Council)	x			
Grant, Bernard (Council)	x			
Richmond, Dennis (Council)	x			

8.3 Discussion regarding the proposed Multi-Agency Recreation Center joint project with the City of Richardson.

Item 9.1 and City Manager reports were discussed prior to this item but will be noted in order for the purpose of the Minutes.

Councilmember Halbert excused herself from the discussion of Item 8.3 as she has Conflict of Interest form on file. (9:21p.m.)

Council Discussion

Council had a lengthy discussion regarding the pros and cons of moving forward with the MARC project.

Mayor Baldwin began the discussion by stating that this type of facility fits into the City's Comprehensive Park Master Plan with amenities such as a large indoor pool and a large recreation center. He stated that these are facilities that the City could not fund alone and he sees this as a great opportunity to partner with the City of Richardson.

Councilmember Bradley discussed the options of partnering to build the facility and using the facility as non-residents. He discussed proposed funding and tax increases and stated he did not see the benefit. Mr. Bradley also noted other priorities for the City parks program such as Bunny Run and Central Park.

Councilmember Grant stated that he did not think this project was a good idea. He explained that he would rather see a 'tax' imposed on those that want to use the facility rather than imposing a tax increase on everyone.

Councilmember Daugherty stated that he would like to move forward to obtain all of the information and present it to the voters to decide. He also commented that the City needs to let the City of Richardson know sooner rather than later. Mayor Baldwin agreed that the City needs to let Richardson know if Murphy wants to proceed.

Councilmember Richmond agreed that he would like to get more information and ultimately, let the citizens decide. He also stated that he would rather spend money on projects in Murphy.

Councilmember Brandon stated that there is no way the City will ever be able to provide this type of amenity and explained that he is not sure the City needs to provide every type of amenity for everyone. He stated he would rather spend the money in Murphy to make parks such as the Timbers Preserve and Central Park unique.

Public Comments

Two citizens addressed Council on this item.

Mr. Keith Patton stated that the City of Richardson is looking for the parameters that Murphy needs to move forward with the overall concept. He suggested providing a list of constraints and requirements necessary for Murphy to continue with the project.

Mr. Don Kiertscher spoke in regards to the maintenance and operation costs and stated that if the City is willing to go to the next step to find out additional information, then maintenance and operation costs have to be a consideration and communicated to the voters.

City Manager Fisher requested Council to clarify a direction to be communicated to the City of Richardson. Council directed Mr. Fisher to clarify where the project is within Phase 1 and more information on the percentage of funding and operational costs for the City of Murphy.

9. DISCUSSION ITEMS

9.1. Update on site plan, landscape plan and elevations for 121 E FM544 (Pad 7 – Einstein's / Chipotle)

Staff provided a brief update on the development explaining that there was an issue with a proposed tenant in one of the lots.

Council Discussion

Councilmember Halbert inquired how the tenant was able to get so far in the process without knowing the contractual stipulations. She stated that she loved the patio but questioned what happens if the future tenant is a retail store instead of a restaurant.

Mr. Tom Day, representing the development, addressed Council explaining that the original tenant changed their business model during the process, eliminating them from being a viable tenant. He stated that three grease traps are being installed with anticipation of a restaurant for that lot. He commented that they are ready to begin dirt work on Monday.

Councilmember Halbert told Mr. Day to speak with Kristen Roberts, EDC Director, if any assistance is needed with the proposed tenant.

There was no action on this item.

10. CITY MANAGERS REPORT

March Financial Reports

Stage 2 Water Restrictions –NTMWD approved –watering twice a week. Flyers will go out.

Primary Election - City Hall Voting

May 22 - Possible Work Session

May 28 - City offices closed

CLC Thursday

Movie Night this Friday

Political Signs –Code will be removing; checking Code of Ordinances regarding location for signs

City Manager Fisher reported on the above items.

11. EXECUTIVE SESSION

The City Council will hold a closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

As previously noted, Council convened into Executive Session at 6:21 p.m.

11.1. 551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving Michael Cantrell v. City of Murphy, et. al, Cause No. 6:09-cv-225.

11.2. 551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving Johnny Boles v. City of Murphy, et al., Civil Action No. 4:11-cv-682.

11.3. 551.087 Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

11.4. § 551.071. Consultation with attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

11.5. § 551.072. Deliberation regarding real property; closed meeting; to deliberate the purchase, exchange, lease, or value of real property.

12. RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provision of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

As previously noted, Council reconvened into Regular Session at 8:07 p.m. No action was taken as a result of the Executive Session.

- 12.1. **551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving Michael Cantrell v. City of Murphy, et. al, Cause No. 6:09-cv-225.**
- 12.2. **551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving Johnny Boles v. City of Murphy, et al., Civil Action No. 4:11-cv-682.**
- 12.3. **551.087 Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).**
- 12.4. **§ 551.071. Consultation with attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.**
- 12.5. **§ 551.072. Deliberation regarding real property; closed meeting; to deliberate the purchase, exchange, lease, or value of real property.**

13. ADJOURNMENT

With no further business, the meeting was adjourned at 10:23 p.m.

APPROVED BY:

Bret M. Baldwin, Mayor

ATTEST:

Aimee Nemer, City Secretary