



**TOWN OF SUNNYVALE
SUNNYVALE TOWN COUNCIL
WORKSHOP
COUNCIL CHAMBERS - 127 N. COLLINS RD
MONDAY, JULY 25, 2016
6:00 P.M.**

MAYOR	JIM PHAUP
MAYOR PRO-TEM, & PLACE 2	SAJI GEORGE
COUNCILMEMBER, PLACE 1	KARA RANTA
COUNCILMEMBER, PLACE 3	MARK EGAN
COUNCILMEMBER, PLACE 4	JIM WADE
COUNCILMEMBER, PLACE 5	KAREN HILL
COUNCILMEMBER, PLACE 6	CHRIS MCNEILL

CALL MEETING TO ORDER

Mayor Phaup called the meeting to order at 6:12 p.m.

1. WORKSHOP WITH FORESTAR DEVELOPMENT FOR REVIEW OF PEDESTRIAN BRIDGE SOLUTIONS IN THE STONEY CREEK DEVELOPMENT.

Director of Development Services Rashad Jackson stated in May 2016, Council approved tentative development plans for phases 2E & 2F of the Stoney Creek subdivision. Subsequent to the approval, Council requested that a solution be developed for a pedestrian bridge crossing as required by the Stoney Creek Planned Residential Overlay ordinance. The applicants (Forestar) have worked with staff and now have returned to present a possible pedestrian bridge solution.

Forestar representatives stated that based on the feedback from the survey the results show that residents are in favor of the underground option. Mayor Phaup stated that it sounded like Forestar is projecting a box culvert type structure and he is unimpressed. He suggested to continue and to bring it back to Council before any decisions are made.

ADJOURN

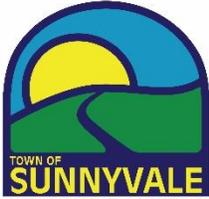
Mayor Phaup adjourned the meeting at 6:33 p.m.

The undersigned presiding officer certifies that this is a true and correct record of the proceedings.

Mayor Jim Phaup

ATTEST:

Leslie Black, Town Secretary



**TOWN OF SUNNYVALE
SUNNYVALE TOWN COUNCIL
REGULAR MEETING
MONDAY, JULY 25, 2016
TOWN HALL - 127 N. COLLINS RD.
7:00 P.M.**

MAYOR	JIM PHAUP
MAYOR PRO-TEM, & PLACE 2	SAJI GEORGE
COUNCILMEMBER, PLACE 1	KARA RANTA
COUNCILMEMBER, PLACE 3	MARK EGAN
COUNCILMEMBER, PLACE 4	JIM WADE
COUNCILMEMBER, PLACE 5	KAREN HILL
COUNCILMEMBER, PLACE 6	CHRIS MCNEILL

INVOCATION

Councilmember Hill led the invocation.

PLEDGE OF ALLEGIANCE

Mayor Phaup led the Pledge of Allegiance.

CALL MEETING TO ORDER

Mayor Phaup called the meeting to order at 7:01 p.m. All Councilmembers were present.

PUBLIC FORUM

Citizens may speak on any matter other than personnel matters or matters under litigation. No Town Council actions or discussion will be taken until such matter is placed on the agenda and posted in accordance with law.

None.

CONSENT AGENDA ITEMS 1 THROUGH 2:

TOWN SECRETARY

- 1. DISCUSS AND CONSIDER SECOND READING OF ORDINANCE 16-10: AN ORDINANCE OF THE TOWN OF SUNNYVALE, TEXAS, AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES OF THE TOWN OF SUNNYVALE BY DELETING SECTIONS 5.101 THROUGH 5.108 IN THEIR ENTIRETY AND ADDING NEW SECTIONS 5.101 THROUGH 5.108, THEREBY ADOPTING THE INTERNATIONAL FIRE CODE, 2009 EDITION, BY PROVIDING CERTAIN AMENDMENTS AND DELETIONS THERETO; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2000.00) DOLLARS FOR EACH OFFENSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

2. DISCUSS AND CONSIDER RESOLUTION 16-10: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE APPROVING THE ENTERING INTO OF AN AGREEMENT WITH DALLAS COUNTY ON BEHALF OF DALLAS COUNTY HEALTH AND HUMAN SERVICES CONCERNING THE PROVISION OF CERTAIN FOOD ESTABLISHMENT INSPECTION AND ENVIRONMENTAL HEALTH SERVICES TO THE TOWN OF SUNNYVALE.

3. DEPARTMENT MONTHLY REPORTS- JUNE 2016

Councilmember Wade requested to remove item 3, Department Monthly Reports – June 2016.

Councilmember McNeill made a motion, seconded by Councilmember Ranta to approve consent agenda items 1 and 2 as presented, and with all members voting affirmative the items passed 7/0.

Councilmember Wade asked for an explanation on the budge update. The General Fund, page 64, Transfers from Assigned/Misc., he knows Creekside and the Operating transfers this year. He wants to know what else will transfer this year. Finance Director Liz Hopkins stated the Creekside/Beltline traffic light and the Vehicle Replacement Plan. Councilmember Wade asked about the Vehicle Replacement Plan. Finance Director Liz Hopkins stated part of it is a purchase that was made and part of it is an insurance settlement from one of the vehicles that was in an accident.

In response to a question by Councilmember Wade, Finance Director Liz Hopkins stated that all of 2015 property taxes had been collected with the exception of \$36,000 in delinquent taxes. We only budgeted for 97% of collections and that is why it looks like it has been collected at 101%.

Councilmember Wade stated on the expense side everything is tracking well. He wanted to know if the line Non-Departmental is the tornado expenses. Finance Director Liz Hopkins stated we pay tornado, workman's comp, and big insurance policies through Non-Departmental.

Councilmember Wade asked where American Idol was budgeted. Finance Director Liz Hopkins stated American Idol was budgeted in Parks, and it was raised at mid-year to cover those expenses.

Councilmember Wade asked for a break down on the road maintenance of \$374,000. Finance Director Liz Hopkins stated it consists of payroll costs, engineering costs with Collins Rd. expansion, road inspections have the majority of that, and road maintenance. Councilmember Wade asked if we are budgeting payroll in road maintenance. Finance Director Liz Hopkins stated yes, we are charging payroll to that particular budget.

Mayor Phaup asked for a break-out of the road maintenance that totals \$373,000. Finance Director Liz Hopkins stated yes she will get that to Council in the next week. Councilmember Wade also asked for a projection of where we would be in the next 3 months knowing that we have an \$800,000 agreement with Dallas County for road repairs.

Councilmember Wade stated the Utility Fund looks like it is headed for a big loss again. According to the statistics there is a 10% increase in water usage and revenues are down. We have had half of the rain and that explains the usage. He asked how revenues are down from last year. Finance Director Liz Hopkins stated she would look into that in more detail and get back to Council.

Mayor Phaup asked about 71% of the Fire Department budget. There are a couple of capital items beyond the vehicles. Chief Berkobien stated a smoke extractor was not needed. There is a local company that provides the service. Mayor Phaup asked about the turnaround time and savings cost. Chief Berkobien stated the turn-around time is 48 hours versus 2 weeks. The savings cost was minimal because it is state mandated to be sent in annually for cleaning and inspection. Mayor Phaup asked for a month to month log of Fire Department calls on the monthly reports.

Mayor Phaup asked for Economic Development to hold off on the Town Center concept until it has been discussed in the Comprehensive Plan at a future workshop.

Councilmember Egan made a motion, seconded by Mayor Pro-Tem George to approve Consent Agenda Item #3 Department Monthly Reports – June, 2016, and with all members voting affirmative, item passed 7/0.

PUBLIC HEARING:

Citizens may speak on any matter other than personnel matter or matters under litigation. No Town Council actions or discussion will be taken until such matter is placed on the agenda and posted in accordance with law.

- 4. APPLICANT: TOMMY SATTERFIELD**
AT OR ABOUT: 612 U.S. HWY 80 FRONTAGE ROAD
REQUEST: FINAL PLAT – VALDEZ HWY 80 ADDITION, BLOCK A LOT 1

Director of Development Services Rashad Jackson stated the applicant is the representative for a residential property located at 612 U.S. Highway 80. The parcel of land is approximately 16.5 acres in size. The Sunnyvale Zoning Ordinance requires lots of this size to have a minimum lot width (at the right of way) of 250'. The subject property will be platted with a lot width of 124' at the right of way. The applicant received a lot width variance for the subject property on December 12, 2015 from the Board of Adjustment. Preliminary plat approval was received in January 2016.

The proposed final plat conforms to the approved variance and all other Town zoning and subdivision Ordinance requirements.

Notice was published within the Town's official newspaper on Wednesday, June 29th, 2016. Letters were also provided to surrounding properties meeting the distance requirements as provided within the Town Ordinance. Ten (10) letters were sent out. As of the writing of this staff memo, no letters had been returned either in favor or in opposition of the request.

Town staff recommends approval.

Note 3 says that lot-to-lot drainage is not allowed unless it is within a drainage easement. This is incorrect; lot-to-lot drainage is not allowed at all. The statement needs to be corrected.

There is an 8" and 18" sanitary sewer on the southern portion of the property; the utility easement for the sanitary sewer needs to be shown on the plat.

Councilmember Wade asked at what point would the staff recommendation notes 2 and 3 get on the actual plat. Director of Development Services Rashad Jackson stated when it was originally submitted to final plat it was recognized by the Town Engineer and was recommended to be removed. He felt it could be noted on the staff recommendations to be removed prior the recording of the plat and any signatures made.

Councilmember Wade asked who verifies that this is accomplished. Director of Development Services Rashad Jackson stated he and the Town Engineer would verify that it is done.

Councilmember McNeill asked if it is a 3rd landlocked lot in between the western and eastern parcels. Councilmember Egan stated it is landlocked.

Mayor Phaup opened public hearing. Mayor Phaup closed public hearing

Councilmember Egan made a motion, seconded by Councilmember Wade to approve application made by Tommy Satterfield, 612 U.S. Hwy 80 Frontage Road, final plat – Valdez Addition Hwy. 80 Addition, Block A Lot 1 subject to verification of ownership of neighboring parcels and confirmation of landlocked conditions, also subject to staff notes 1-3, with all members voting affirmative item passed 7/0.

**5. APPLICANT: SUNNYVALE GALLOWAY OLD HOME PLACE TRUST
(DEBORAH FRANKLIN)
AT OR ABOUT: 622 & 626 PECAN CREEK DRIVE
REQUEST: REPLAT–EAST FORK ESTATES, LOT 13R & LOT 14, BLOCK 2**

The applicant is the representative for residential property located at 622 & 626 Pecan Creek Drive. The subject area comprises approximately 14 acres. The applicant proposes to plat 2 lots each of which received a lot width variance from the 250' lot width requirement. The proposed subdivision will create one lot of 5 acres and one lot of 9 acres.

Both lots will have right of way access via an existing cul-de-sac at the end of Pecan Creek Drive. Upon review, it was discovered that the existing cul-de-sac was initially constructed by the property owner to provide access to the home located at the end of Pecan Creek Drive (the Franklin Estates Property). As it exists, a portion of cul-de-sac is currently part of private property. With approval of the subject plat, the private portions of the existing cul-de-sac will be dedicated as public right of way. The cul-de-sac will provide access to both proposed lots.

The subject property was originally platted as a master planned subdivision called East Fork Estates. The property located at 626 Pecan Creek Drive (Franklin Estates) was proposed as phase 3 of the East Fork Estates. The current property owner plans to subdivide the property for the development of a single family residence on Lot 14 of the proposed plat. Lot 13R is currently a heavily wooded lot and is not planned for development at this time. For the proposed lots, the lot width would be measured from the front yard setback line for each lot. The zoning ordinance stipulates....*"for lots on cul-de-sacs or similar circumstances, the minimum lot width shall apply at the front yard setback line."* The front yard setback is measured 80 feet back from the front property line.

Notice was published within the Town's official newspaper on Wednesday, June 29, 2016. Letters were also provided to surrounding properties meeting the distance requirements as provided within the Ordinance. Ten (10) letters were sent out. As of the writing of this staff memo, one (1) letter had been returned in favor of the request.

Town staff recommends approval.

Councilmember Egan asked if the wooded lot is buildable and will still allow adequate setbacks. Director of Development Services Rashad Jackson stated yes it is buildable.

Courtland McCloud, 6200 Windhaven, Plano, TX. 75093 is the representative for the applicant. He stated the lot that is there is 3.3 acres and we will be making that lot larger. It will be more like 4.8 acres it will be adequate for future development. The other tract will be 9.8 acres and will be more than adequate for future development. Both lots will be accessible on the southern side of the cul-de-sac by two driveways.

Mayor Phaup opened the public hearing. Mayor Phaup closed the public hearing.

Councilmember Egan made a motion, seconded by Mayor Pro-Tem George to approve the application by Sunnyvale Galloway Old Home Place Trust (Deborah Franklin), 622 & 625 Pecan Creek Drive, replat – East Fork Estates, Lot 13R & Lot 14, Block 2, subject to successful completion of staff notes 1 & 2, and with all members voting affirmative item passed 7/0.

DISCUSSION/ACTION ITEMS:

DEVELOPMENT SERVICES

6. UNIFIED DEVELOPMENT ORDINANCE PRESENTATION, UPDATE BY FREESE AND NICHOLS (FNI) – SUBDIVISION ORDINANCE, AND DISCUSSION.

Director of Development Services Rashad Jackson stated in July 2015, Town Council approved the development of a Unified Development Ordinance (UDO) with the purpose of modernizing the Town's land development regulations and addressing major issues within the ordinances.

At a workshop held on January 18, 2016, Town Council provided direction to proceed with the drafting of the subdivision procedures for the UDO. Freese and Nichols (FNI)

addressed Council comments and returned to provide an orientation and presentation of the proposed development process on April 25, 2016. Upon review, direction was provided to FNI to proceed with the drafting of the subdivision section of the UDO. Freese and Nichols returned to provide an update on the subdivision section of the proposed ordinance.

Mayor Phaup stated that it sounds like good progress was being made.

ENGINEERING

7. RECEIVE A STAFF PRESENTATION AND HOLD A DISCUSSION ON THE COLLINS ROAD PAVING AND DRAINAGE 60% DESIGN PLANS.

Town Engineer Justin Brown stated the Town's consulting engineer for the Collins Road reconstruction project, from SH 80 to Tripp Road, has recently submitted the 60% design plans for the Town's review and comment. Staff presented the 60% design plans to the Town Council and discussed the overall design of the roadway.

In response to a question by Mayor Pro-Tem George, Town Manager Sean Fox stated that staff did contact the property owners. The owner on the north side of the bank is very supportive and has attended previous meetings. He just did not feel the need to voice his opinion. He is well aware of what the Town is trying to accomplish.

Mayor Phaup requested the PDF Files to be sent to Council by Wednesday morning.

FINANCE

8. CONSIDER ALL MATTERS INCIDENT AND RELATED TO APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION, INCLUDING THE ADOPTION OF A RESOLUTION PERTAINING THERE TO.

Finance Director Liz Hopkins stated on July 11, 2016 Council directed staff to move forward with the financing option for the improvement of Collins Road from U.S. Highway 80 through the intersection of Tripp Road.

A representative from First Southwest will provide a presentation outlining the proposed issuance of Certificates of Obligations to finance the project.

Below is suggested timing in order to issue prior to setting the tax rate:

- 7/25: Council consider and approve notice of intent to issue certificates
- 7/29: first newspaper publication (will need to confirm exact date with newspaper)
- 8/5: second newspaper publication (same day one week later)
- Week of 8/15: rating agency conference call
- 9/12: pricing overseen by First Southwest
- 9/12: Council approval and sale of certificates
- 9/12: adopt tax rate (after approval of certificates)

- 10/13: closing; receipt of funds

Fiscal Impact:

Current Opinion of Probable Construction Costs	\$6,230,000
ROW Acquisition	<u>\$ 780,000</u>
Total Project	\$7,010,000
Dallas County Participation	\$2,900,000
Estimated Costs Expended since project inception	- 300,000
½ of Engineering Costs currently underway	<u>- 266,000</u>
Remaining Contribution	\$2,334,000
Remaining Construction Costs to be financed	\$4,676,000

The I&S rate would remain at current year levels and the Road Impact Fund would provide the first two years of debt service.

Staff recommends accepting the presentation.

Mayor Phaup asked about the drop in rates between 2020 and 2029. Finance Director Liz Hopkins stated when the refinancing was done in 2013 no maturities were extended, so the interest rate was lower.

Councilmember McNeill asked if there were no contributions made in 2017 or 2018, what would the I&S Tax Rate be for those years to cover the interest. Mr. Macha stated yes, column G would be the proposed tax rate in those cases, so 0.07 cents. If the new debt is layered on, and there is not a contribution it would be about 8.3 cents. If road impact fees were not contributed, it would drop down to the 0.0688 thereafter.

Mayor Phaup stated the schedule for this activity looks very clear, he asked if this had been overlaid with the road project schedule. Town Manager Sean Fox stated it was outlined to Council with the 60% design coming forward on the road. He stated the Right of Way Acquisition needed to be started within the next 2 to 3 months. Two sets of numbers were provided to Council. The first issuance of \$780,000 dollars would take care of the Right of Way. The second half would be issued in the main time period of the contract. The recommendation was for one issuance of the debt to save \$25,000 in closing costs.

Mayor Phaup stated with a capital item outlay you have a project schedule that goes from step one through the signing off on the road. He asked if Council can get that. Town Manager Sean Fox stated yes

Mayor Phaup stated there will be 2 different funds used in the short term. The first is the Collins Road Mitigation Fund and he is sure that one is safe to use. The other is the Impact Fees from Stoney Creek and he asked if the Town has obtained legal opinion, in

writing, that it is okay to use these funds. Town Manager Sean Fox stated legal notification from Town Attorney David Dodd has not been obtained but it can be done.

Councilmember Wade stated Impact Fees were done based on zones in the past. The Town does not do that anymore because there is only one zone. He asked does that apply regardless of where the fees are collected. He also asked if it can be used anywhere in the Town because there is only one zone. Mayor Phaup stated in the past there was a discussion about a project on Jobson and the Town wanted to use Impact Fees from Homestead. The Town had to make sure they were following the restrictions of the state law. Mayor Phaup stated there was not a lot of legal input going in and it took a long time to obtain that information.

Councilmember Wade asked how it is determined that \$358,000 dollars was used in Impact Fees. Mr. Macha stated it is a plug number in order to get the tax rate back to 0.0678. If the value changes in fiscal year 2018 the number can be modified as needed.

Mayor Phaup asked what the arbitrage limits are. Mr. Macha stated the proceeds would need to be spent within 3 years. The reasoning in going with the full amount now is that the interest rates are at an all-time low. By splitting the amount the Town would be taking on the smaller portion now to get the Right of Way going, and in a year the interest rates would change. The idea is to borrow the full amount now, do the Right of Way, and have 3 years to spend the proceeds to take advantage of lower interest rates.

Mayor Pro-Tem George asked for a project schedule. Town Manager Sean Fox stated construct is scheduled to start mid-summer and take 12 to 18 months to build. Mayor Pro-Tem George asked if the impact fees from any place in town could be and used anywhere in town. Town Manager Sean Fox stated that is correct and he will obtain legal documentation as it has been raised as a concern. He said Mayor Phaup indicated there is an additional \$1,100 per lot for Stoney Creek as outlined in the Ordinance. That is specific and the Ordinance states the Tripp and Collins intersection or any other project deemed appropriate by Council and the Developer can be funded. The Tripp and Collins intersection is a large portion of this project. It is better to use that fund which will free up the general fund.

Mayor Pro-Tem George made a motion, seconded by Councilmember Ranta to approve publication of notice of intention to issue Certificates of Obligation, including adopting Resolution 16-11.

Mayor Phaup stated he supports the Resolution but he is not going to vote for it without seeing a schedule.

Councilmember Wade stated he will not vote for it either and he laid out his objections at the last meeting.

Mayor Phaup asked what the deadline for the publication is. Mr. Macha stated September 12th.

Councilmember Egan stated he would vote against it because the schedule needs to be clear and there needs to be clarification from the attorney. Regardless of the use of funds it needs to be clarified.

Councilmember Wade asked about using the roadway impact fees because of a single zone, is it clear that the Stoney Creek Impact Fees can be used because this does not touch Stoney Creek at all. Mayor Phaup stated it is earmarked for Collins Road. Councilmember Wade stated it is earmarked for Collins Road itself, not as it continues to Stoney Creek. The Town will need those funds later as this project runs down the street. Town Manager Sean Fox stated it specifically states the Collins and Tripp intersection or any other improvements deemed appropriate by Council and Developer. If it has a \$418,000 balance the entire amount can be on this particular financing option.

Mayor Pro-Tem George stated this is 4.76 million dollars to make a decision. He asked if Council can get a schedule sooner than later. Town Manager Sean Fox asked if Council was looking for a proposed construction schedule, a timeline going forward, right of way acquisition purchase for a certain time period, utilities relocates, and a finance schedule with the construction overlay. Mayor Phaup stated a project schedule, kicking off the project, all of the relevant steps and time periods anticipated, including acquisition of right of way, construction start until the project sign off and acceptance, or the final step.

Town Manager Sean Fox stated he has that information available. He meets monthly with Nathan D. Meier and he has that information but did not realize Council would want to see how that overlays. There is not a problem providing Council with that data tonight, tomorrow, or at the next meeting. He is concerned if there is not a vote tonight, it could cause a conflict. Mr. Macha stated he was looking at the calendar and if the next meeting is August 8th, it would need to get into the newspaper by August 11th. Then the 31day requirement would be met. Councilmember McNeill stated that last month Town Manager Sean Fox laid the timeline out and he feels like it is too late to back out now.

Mayor Phaup called for a vote, and item passed 5/2. Mayor Phaup and Councilmember Wade voting against.

Mayor Phaup called for a 5 minute recess.

TOWN SECRETARY

9. DISCUSS AND CONSIDER RESOLUTION 16-12: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS DESIGNATING AN OFFICIAL TOWN FLAG; AND PROVIDING AN EFFECTIVE DATE.

Town Manager Sean Fox stated Sunnyvale resident, Ross Miracle, submitted a proposed design and draft resolution for a new official Town Flag in March 2015 but the resolution failed by a vote of 3/3.

In December 2015, Mr. Miracle submitted a petition requesting Council reconsider the proposal of adopting a new official Town Flag. Council directed Staff to devise a rough plan to accommodate Mr. Miracle's proposal for consideration.

In January of 2016, Staff presented a recommendation that included presenting the submissions to an ad-hoc committee to narrow down the selections to two designs plus the current Town flag for citizen feedback. The Council asked for citizens to provide submissions to be considered and solicit feedback from the community. Three designs were submitted by Sunnyvale residents. In the June utility bills, the three submitted designs along with the current Town flag were presented for feedback.

During the month of June, the Town received a total of 249 returned newsletters. 157 people recommended keeping the current flag design. 74 people recommended the flag designed by Ross Miracle, 1 person recommended the flag designed by Christine Tadlock, and 17 people recommended the design by Ilde Lopez.

At the July 11, 2016, Town Council Meeting the Council directed staff to prepare a resolution formally adopting the design currently used for the Town flag.

Mayor Phaup asked if we needed to adopt a flag. Mayor Pro-Tem George stated he thought the question came up at the last meeting if the Town has a flag on record, or if the Town has ever adopted a flag and the answer was no. Councilmember Egan stated the discussion during the last meeting was that the Town does not have an official flag. So, this is a good time to adopt one and not waste the time like has been done over the past year. Someone could come along later and say they do not like the Town Flag. If one was adopted it would prevent that from happening.

Councilmember Ranta stated she felt like Council should not approve any of the designs that were submitted because there is not enough support. It was not a waste of time. She does not think it should be adopted as the official flag.

Mayor Phaup stated that when a citizen brings something to him that they are passionate about he will not rain on it, no matter what his perspective might be. He may be brutally honest with them and tell them that he does not like but he will bring it to Council so they can weigh in on it. There was one citizen that started this and then some more passionate citizens that submitted their concepts and he appreciates that. He does not think this was a waste of time. Councilmember McNeill stated he agrees because he is always asking for citizen input. When there is citizen input he does appreciate it.

Councilmember Wade stated there were 249 submissions of people expressing their opinion on this. There were 51 on a major construction project at Collins Rd. Council did not take any different action, so this needs to move forward. Councilmember McNeill stated that he agrees and he wanted to go on record stating that he told Mr. Miracle this week that if he were looking at all 4 proposals, with no history to any of them with this Town, he thought Mr. Miracle's design was great. However, having lived here for 10 years with seeing the logo on the backs of cars and in front of Town Hall, when he sees that he thinks Sunnyvale, for sentimental reasons if nothing else. To him it is our flag. It is unique and so is Sunnyvale.

Mayor Phaup stated that Sunnyvale has a flag and the citizens have spoken, overwhelmingly, that it can be kept.

Councilmember McNeill stated that the only reason for taking action would be not to rub salt in an open wound. He agrees with Councilmember Wade that there has been a lot of citizen input.

Motion was made by Councilmember Egan, seconded by Councilmember Wade to approve resolution 16-12 as presented. a resolution of the Town Council of the Town of Sunnyvale, Texas designating an official Town flag and providing an effective date, item passed 5/2. Mayor Phaup and Councilmember Ranta were opposed.

TOWN MANAGER

10. DISCUSS AND REVIEW THE BACKGROUND AND DECISION PROCESS FOR PLANNING AND ZONING RECONSIDERATION OF SKORBURG APPLICATION FOR GLAZER PROPERTY.

Town Manager Sean Fox stated Skorborg submitted their original application and was initially heard by the Planning and Zoning Commission (P&Z) on March 21, 2016. The Planning and Zoning Commission recommended denial of the proposed zone change. The applicant appealed the Commission's decision to Town Council, was heard on April 11th and was denied.

Skorborg submitted an updated application on April 20th. The Zoning Ordinance states under Chapter 21, Section 21.7, paragraph 1, "whenever any development application is denied... an application for development permit for all or a part of the same property shall not be considered for a period of one (1) year from the date of denial unless the subsequent application involves a proposal that is materially different from the previously denied proposal." It was determined by the Town attorney that this updated application qualified as materially different due to its adherence with the base zoning districts 1 acre requirement. The updated application was heard by the Planning and Zoning Commission on May 16th, was tabled and then heard again on June 20th. P&Z once again recommended denial by a vote of 4 to 2.

Skorborg submitted appeal letter on June 29th, requesting their application be remanded by to Planning and Zoning for reconsideration. On July 7th, I officially notified Skorborg that according to our Zoning Ordinance, Chapter 21, Section 21.7, "The appeal shall contain a written statement of the reasons why the final decision is erroneous," and that no fact, statement or reason was provided in their appeal letter as to why the final decision made was erroneous. Additionally, I informed them there is no process or alternative method within our ordinances to allow a request to be remanded back to P&Z and doing such without good cause, sets the wrong precedence and displays a lack of respect for our Commission and their decision. For these reasons, and with concurrence of the Town Attorney, I informed them their appeal letter did not constitute a valid request and would not be considered by Council.

Upon receiving notification, Skorborg's attorney contacted David Dodd contending that the Town had failed to send Skorborg "a written statement setting forth the basis for this decision to deny the application," and therefore was not compliant with Section 21.2.B. That was not the case. Their attorney also questioned the legality of preventing any applicant from proceeding to Council, post

P&Z, when the applicant requests it. Skorburg's attorney further went on to say they had been in touch with member(s) of the P&Z and at least one was under the impression Skorburg would have another opportunity to modify their application and present to P&Z.

After consultation with David, it was determined that only possible option, per parliamentary procedures, was if one of the majority or in this case, dissenting votes were willing to make a motion to reconsider and it was approved, Skorburg's application could be brought back before Planning & Zoning and would not have to meet the materially different standard outlined in Section 21.7.

This information was shared with the Chairman of the Planning and Zoning Commission and Staff was directed to put it on the next agenda. Planning & Zoning met on July 18, 2016 and a motion was made and approved by a vote of 5 to 2.

Mayor Pro-Tem George stated he did not understand the last paragraph. He asked what they approved. Town Manager Sean Fox stated they made a motion to reconsider. If they had voted and said the decision is final, it would have been over. There was no appeal to Council. They would have to come back with something that is substantially different.

Mayor Pro-Tem George asked if this is standard practice for Planning & Zoning to make a motion to never hear Skorburg again. Town Manager Sean Fox stated no, everything that has been done in this particular case has not been standard practice. Councilmember Hill asked why not. Town Attorney David Dodd stated it is legal, it just does not come up that often.

Mayor Phaup stated that all agreed that there was no basis to have an appeal to come to Council, including the Town Attorney. They were told that and the Skorburgs attorneys do not like that answer, so they said there was no clarification as to why Planning & Zoning rejected it. Town Attorney David Dodd stated there were two things that were not on the first attempt to appeal. They are trying to say there is no basis and we disagree with that. Their next alternative was to get it back to Planning & Zoning was they had to say there was an error in Planning & Zoning's ruling and it was not that at all. Mayor Phaup asked why it ever went back to Planning & Zoning. Town Attorney David Dodd stated that what kept being presented to us was that Skorburg was really close to getting what Planning & Zoning likes. To call the bluff we said alright go back to Planning & Zoning, if they want to hear it again. They could have voted no. That is where the parliamentary procedure came in.

Mayor Phaup stated he disagrees because he listened to the audio from Planning & Zoning. On that audio the applicant admits there was no error and they knew they were going to get turned down by Council. He agrees with two of the Planning & Zoning commissioners that said the Town of Sunnyvale is creating a definite precedence here that is dangerous. Every time somebody does not like the decision and does not want to wait a year, they want to go around this. He thinks this is wrong. He is not critical of Planning & Zoning in any way for hearing this again, he understands that. He respects Chairman Ken Demko and the other people that voted for it. He does not think was handled correctly. It should have never gone back to Planning & Zoning. Skorburg was given clear indication that they did not meet the Town of Sunnyvale's requirements for appeal. They did not like it. They rattled our sabers and we caved. He does not think we caved for a good reason because they admitted they did not have a legal reason to come back and challenge this. Now Council will hear it again.

Town Manager Sean Fox stated he understands the frustration because Staff deals with this particular developer on an everyday basis. Before Staff went back to Skoburg to say this is a possible avenue forward, Staff discussed it with the Planning & Zoning Chairman to say this is an option. Planning & Zoning can direct this or not direct this. Staff will stand behind Planning & Zoning one way or another. He asked Planning & Zoning what they would like Staff to do, and he fully understood the ramifications of each one. He believed it deserves another chance, so go ahead and put it on the agenda.

Mayor Phaup asked why it went back to Planning & Zoning because Planning & Zoning clearly denied it. Town Manager Sean Fox stated because one of the Planning & Zoning members indicated to Sean personally had this made it to Council that they were going to come and speak on their behalf, that they thought if Skoburg were given one last chance that Skoburg would get it across the finish line. Again, it is a very frustrating situation.

Mayor Phaup stated he thinks the Town has been opened up to a lot of future scrutiny because they were not consistent. That is his biggest concern.

Councilmember Hill stated the application never met any of the Town's zoning requirements. They wanted a PRO in their initial acreage and that is not even close to what we allow for a PRO. It failed before it ever had a chance. She is with the Mayor in thinking that the Town is now opened up for scrutiny.

Councilmember Wade stated he is very frustrated. He stated that Skoburg addressed Planning & Zoning and was allowed to speak last Monday night at the meeting. That is not a motion for reconsideration and that is presenting your position again and is not handled correctly at that point. There should have been a motion to reconsider for the person that is bringing it back and then a vote by the Council, but it still was a several minute dissertation by Skoburg.

Mayor Phaup asked if they have to submit a different application. Town Attorney David Dodd stated no they do not have to submit a different application. They are submitting a new application to show how close it is.

Mayor Phaup stated he respects Planning & Zoning's independence but he is concerned. He feels like the communication is inconsistent and this is what causes trouble.

Mayor Pro-Tem George asked if this was just for information. Mayor Phaup stated this was just for information and to be transparent.

11. REVIEW LATEST SCHEDULE AND PLANS FOR ROAD REPAIRS.

Town Manager Sean Fox stated as a result of an agreement with Dallas County to rebuild/reconstruct five miles of road per year for the next three years, Council approved a Project Specific Agreement (PSA) with Dallas County to jointly identify and fund repairs, maintenance and improvements on duly qualified "Type B" public roadway within the Town on March 14, 2016. The PSA outlined the project would consist of the reconstruction of Town East, Tripp and East Fork Roads.

Reliant on Dallas County's availability, slated reconstruction was originally scheduled for late May or June. Due to weather delays and previous obligations, Dallas County has shifted the anticipated start date 3-4 times. As of the date of this memo, the anticipated starting date remains August 1st, if not the week prior. Due to the recent damage and deterioration of Jobson Road, the PSA is being revised to reduce the eastern limit on Tripp Road, removed East Fork Road and in place of, reconstruct Jobson Road between Tripp & Town East Roads. These changes are being made without any fiscal impact to the PSA and Dallas County has assured Staff the approval of the updated PSA will not impact the start time of the project.

Dallas County has projected reconstruction will take approximately five weeks to complete, but Staff feels eight weeks is more likely. Notification of the road repairs is being passed along to our residents via the Town's website, FB page and is included in the next water bill insert.

Mayor Phaup asked if this is Staff's opinion that Jobson needs to be prioritized higher. Town Manager Sean Fox stated yes, very much so.

Mayor Phaup asked if this will carry over to next fiscal year. Town Manager Sean Fox stated that Public Works Director Johnny believes it will take 8 weeks to complete. He does not believe it will have to carry over the funding portion of it because as soon as PSA starts, they expect the Town to write a check for the full amount. Councilmember Wade asked if that was for all 3 roadways. Town Manager Sean Fox stated it is for all 5 miles.

Mayor Phaup asked if they are going to come in here and blitz the project. Town Manager Sean Fox stated they will be here for however long it takes to complete the project.

Mayor Pro-Tem George asked which road will be first, Town East or Jobson. Town Manager Sean Fox stated that has not been identified.

MAYOR & COUNCIL

12. MAYOR AND COUNCIL REQUESTS FOR FUTURE STAFF UPDATES AND AGENDA ITEMS.

Councilmember Hill stated the tree limbs are reaching on Collins Rd. at both bridges and they need to be trimmed. Homecoming Parade will be October 8, 2016 in the morning and the PTA Carnival is October 8, 2016. October 14th will be the Homecoming football game.

Mayor Pro-Tem George asked to have a workshop with 4A and 4B to discuss strategies. Mayor Phaup stated yes.

EXECUTIVE SESSION AGENDA:

Motion was made by Councilmember McNeill, seconded by Councilmember Egan to recess into Executive Session at 8:48 p.m., with all members voting affirmative item passed 7/0.

A. SECTION 551.072 REAL PROPERTY

To deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

PROPERTY LOCATED AT OR ABOUT U.S. HWY 80 AND COLLINS RD.

END OF EXECUTIVE SESSION

Reconvene into open session and take any action necessary as a result of the Executive Session.

13. SECTION 551.072 - REAL PROPERTY LOCATED AT OR ABOUT U.S. HWY 80 AND COLLINS RD.

Mayor Phaup reconvened into open session at 9:26 and stated there was no action to be taken.

ADJOURN

Mayor Phaup adjourned the meeting at 9:26 p.m.

The undersigned presiding officer certifies that this is a true and correct record of the proceedings.

Mayor Jim Phaup

ATTEST:

Leslie Black, Town Secretary