

**PLANO CITY COUNCIL
SPECIAL CALLED MEETING
May 21, 2001**

COUNCIL MEMBERS

Jeran Akers, Mayor
Rick Neudorff, Mayor Pro tem
Phil Dyer, Deputy Mayor Pro tem
Shep Stahel
Pat Evans
Steve Stovall
John R. Roach, Jr.
Ken Lambert

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Executive Director
Bruce Glasscock, Executive Director/Police Chief
Rod Hogan, Executive Director
Diane C. Wetherbee, City Attorney
Elaine Bealke, City Secretary

Mayor Akers called the meeting to order at 5:00 p.m., Monday, May 21, 2001, in the Council Chambers of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Mayor Pro tem Neudorff.

Report on Affidavit Contesting Recount

City Secretary Bealke presented a report to the Council responding to the affidavit requesting a recount of the recount of the Place Five Council Member position. Ms. Bealke referenced the provisions allowed in state law for this request with regard to votes cast, and stated that questions or alleged irregularities in the election process are not capable of being resolved under the limited parameters of a recount.

Ms. Bealke stated that no specific information was provided in the affidavit as to why and which votes were invalid or specific votes which should have been counted and were not and further that statements made criticized the process at the election and initial recount stages. She stated that references made to voter signature omission are not possible to resolve in an additional recount process, and spoke to questions of the electronic voting system with regard to no votes cast or a minimal number.

Ms. Bealke spoke to the recount process and stated that the Recount Committee Chair identified the rules for the process. She stated that all precincts were counted at least twice or a third time if two counts did not agree, review against the voter signature sheet is not required and that a failure to have a signature on the polling list is not a ground to dispute a ballot in a recount. Ms. Bealke further advised that reconciling under and over votes is up to the discretion of the chair during the proceedings.

Ms. Bealke spoke to the complaint regarding the accessibility of signature books and lack of efficient resources, which is also within the discretion of the chair as to what is to be involved in the recount. She spoke to references made regarding receipts from electronic machines and minimal or non-existent votes and stated that tests were done on the machines and that they were found to be operating properly. Ms. Bealke stated that statements made in the affidavit are not legal grounds for requesting a second recount and further spoke to the failure to identify specifically that improper votes were received and legal votes were not counted. Ms. Bealke stated that she will not authorize a second recount.

Ms. Bealke spoke to concerns raised that are outside the recount process and stated that historically certain voter locations have either low or zero voter turnout, receipts showing zero ballots with regard to the non-use of ADA machines, and stated that overvote and undervote information is provided in the reports for the punch card system and is not provided for touch screen and that this is a difference in the two systems. She stated that the touch screen system does not allow overvotes but that the punch card system does.

Council Member Lambert spoke to the requirement of a signature prior to voting. Ms. Bealke stated that this reference is outside of the parameters of the recount, and clarified that it is not uncommon for a signature to be missed due to circumstances such as several voters appearing at the same time to vote or to the inexperience of the voting judge and that the guarantee of a ballot cast is the ballot itself even though a signature might not have been obtained. Mr. Lambert referenced voting information provided him for Haggard Library (early voting) indicating a number of votes cast without signatures provided and spoke to the machines not working properly. Ms. Bealke responded that it is not the machines that did not work properly but that it is instead the human element that failed.

Mayor Akers reiterated that it is not part of the recount process to justify or explain any irregularities if any and that the charge to Mr. Ownby and Ms. Bealke is to count the votes that are in their possession. He stated that the questions that are being asked may be addressed through a contest process.

City Attorney Wetherbee stated that it may even be a little broader than that, and that while it is the requirement of the election judge to have the voter sign the poll list, there could be many reasons as to why someone failed to sign the signature list such as the human element. She further stated that even if this was done for the most illegal of reasons, this cannot be resolved through the recount process.

Mayor Akers requested that Mr. Ownby review the recount process with the Council and in particular speak to the number of times that the ballots were counted. H. Ownby introduced himself as the person appointed to serve as the Chair of the Recount Committee for Place Five of the election. He spoke to the two different ballot formats, punch card and touch screen, and stated that they were hand counted by teams of three and that every single ballot card was counted a minimum of two times as stated by the City Secretary. He spoke to the ballot and seal forms, receipts printed from the touch screen system representing the ballots for that format, and that they did match perfectly. Mr. Ownby stated that, as to the signature issue, he did not need to know how many individuals signed in, but did need to know how many ballots he should expect to see. He further stated that after the conclusion of the recount on Wednesday at 3:40 p.m., two individuals who were members of the recount committee were allowed to remain and authorization was given for them to count signatures from precincts/polling places identified by Ms. Flick. Mr. Ownby stated that a representative sat opposite the committee member and performed the counting task. He stated that he cannot testify "yes" or "no" if the numbers the counters obtained were accurate and that this task concluded at about 5:30 p.m. He stated that a number of questions have been resolved by Ms. Rowe regarding signatures appearing and ballots cast and includes scenarios regarding Denton County voting numbers. He stated that it is his belief that there is a signature for every ballot cast.

Mr. Ownby advised Council Member Lambert with regard to the process of the election judge verification of number of ballots used, and stated that there is not a separate place to record where "X" numbers of signatures were obtained, most recount statutes were rewritten in the 1980s' with incorporation of the punch card system, spoke to identification of a ballot, and further stated that the statutes direct that in a recount process what is charged is to count what is represented as a ballot and make note of those that are clearly illegal, legal or were missed. He stated that qualification of persons going into the polling place and casting a ballot go now to the contest phase.

Mr. Ownby stated that he did allow the counting of signatures to go forward because the individuals were there and it was at a minimum cost, but further stated that this would have no impact due to the fact that the recount had already been certified.

Mr. Ownby reiterated that every ballot, both punch card and touch screen was counted, spoke to the ADA machines as not having been used, and to the Miller (election day) precinct having no votes due to this being a low count City voting location.

Mr. Ownby stated there were four instances with the punch card system that overvoted, one in the electronic ballots where the ballot was cast without any votes at all being voted and that information received from Global identifies that this is possible, and further spoke to there being one hanging chad. Council Member Lambert spoke in support of keeping the punch card machine. Mr. Ownby advised Mr. Lambert that one polling place contained no receipt and that after looking further, found that the judge had left it locked in the machine. He spoke to one other machine where a receipt was not printed whereby the disc was obtained and the receipt printed out. Mr. Ownby further stated that early voting receipts were not printed at Haggard and Harrington Libraries due to the fact that they were early voting and ballots can not be printed out prior to the conclusion of voting on election day.

Collin County Elections Administrator Rowe spoke to non-matching signatures obtained during the review process after the conclusion of the recount and to the non-inclusion of Denton County voter signatures in that process. She stated that there were two sets of signature books, one for Collin County and one for Denton County, spoke to different formats used by the election judges for obtaining signatures, and to the variance in signature numbers as being resolved by this process. Mr. Lambert referenced information given him regarding the difference in early voting numbers which he stated were unverified and signatures at Haggard Library (early voting) that did not equal out. Ms. Rowe stated that her staff members have also counted these numbers and found there to be only one or two votes different with the exception of the Bethany (election day) location where the signatures were actually scanned into the books. She stated that perhaps all the poll books were not used. Ms. Rowe advised Mayor Akers that public access will be given to all records and that they are open to inspection.

City Attorney Wetherbee advised Mayor Akers that she knows of no reason, legal or otherwise, that the canvass should not proceed.

Resolution No. 2001-5-15 (R): Canvassing the recount of election returns for City Council Place No. Five of the Joint General Election of May 5, 2001; declaring the results; and providing an effective date.

Mayor Akers requested that Council Members Lambert and Evans canvass the recount votes. The meeting recessed at 5:40 p.m. in order that Council Members Lambert and Evans might retire into the Council Conference Room and conduct the canvass.

The Council reconvened back into open session at 5:48 p.m.

Council Member Lambert stated that he and Council Member Evans have canvassed the numbers (for Council Member Place Five) and find that according to the recount report Joy Flick received 4,666 votes and Steve Stovall received 4,804 votes.

A motion was made by Council Member Roach and seconded by Council Member Evans to adopt Resolution No. 2001-5-15 (R) canvassing the recount of election returns for City Council Place No. Five of the Joint General Election of May 5, 2001 and declaring that Steve Stovall was elected to Place Five. The Council voted seven (7) for and none (0) opposed. The motion carried.

Discussion and direction on initiating annexation proceedings on 0.59+ acre located on the south side of Parker Road at Rainier Road, in the J. Beverly Survey, Abstract No. 78.

Director of Planning Jarrell advised the Council that this item is a request for direction on whether or not to initiate annexation proceedings on the referenced property which has been the subject of a 1975 annexation agreement and recent discussions with the property owner concerning the use of the property. She advised that if the Council does initiate these proceedings in order to meet the required Public Hearing dates and guidelines for annexation that the first Public Hearing would be at the June 25 Council meeting and further that a special meeting would need to be scheduled later that week to hold a second Public Hearing.

A motion was made by Council Member Roach and seconded by Deputy Mayor Pro tem Dyer to initiate annexation proceedings on this property and to schedule a special called meeting on June 26 in order to conduct the second Public Hearing as required. The Council voted seven (7) to none (0). The motion carried.

Consideration and Action Resulting From Executive Session Discussion

No Executive Session was conducted.

Nothing further was discussed. The meeting adjourned at 5:50 p.m.

Jeran Akers, MAYOR

Elaine Bealke, City Secretary