

**PLANO CITY COUNCIL**  
**March 16, 2005**

**COUNCIL MEMBERS**

Pat Evans, Mayor  
Shep Stahel, Mayor Pro Tem  
Ken Lambert, Deputy Mayor Pro Tem  
Steve Stovall  
Phil Dyer  
Scott Johnson  
Sally Magnuson  
Jean Callison

**STAFF**

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

Mayor Evans convened the Preliminary Open Meeting directly into the Regular Session on Wednesday, March 16, 2005, at 7:05 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Dr. Leon Aduddell with First Baptist Church of Plano.

The Pledge of Allegiance was led by Cub Scout Pack 297, Chartered by the Free Will Baptist Church of Plano.

Mayor Evans recognized Scott Neumeyer as the 2004 Code Enforcement Officer of the Year.

Mayor Evans administered an oath of office to new Public Arts Committee member Mary Jo Forbes.

Richard Howe made a presentation to the City of Plano from the City Center Association.

**GENERAL DISCUSSION**

Jack Lagos, citizen of the City, spoke to the Council's action taken on February 25, 2005 altering the verbiage of a proposition contained in a presented petition as being a violation of Section 7.02 of the City's Charter. He further spoke to the posting for that meeting and the Chair not calling to speak those who presented the petition being in violation of the Open Meetings Act.

Chris Stites, citizen of the City, requested the Council schedule an item on their next agenda to discuss arranging a public forum to discuss spending Plano tax monies for an arts hall in the City of Allen and to citizens being opposed to this decision as reflected in their actions during bond elections and opinions expressed in a 2004 City Profile Survey. She stated that there would be little benefit in terms of increased business.

The Council resumed discussion of the Preliminary Open Meeting.

#### Council Reports – Banner Sign Committee Report

Council Member and Banner Sign Committee Chair Callison spoke to a proposed ordinance amendment, meetings held in February and March, and the Committee's impasse. She stated it would not be beneficial for the committee to proceed further at this time and the Mayor spoke regarding banners in other cities and to having the ordinance available should future discussion arise.

#### **CONSENT AGENDA**

Mayor Pro tem Stahel and Council Member Stovall advised they would be stepping down on Consent Agenda Item "FF" due to possible conflicts of interest.

Upon a motion made by Council Member Stovall and seconded by Council Member Johnson, the Council voted 8-0 to approve and adopt the remaining items on the Consent Agenda as recommended and as follows:

#### **Approval of Minutes** [Consent Agenda Item (A)]

February 22, 2005

February 25, 2005

March 2, 2005

#### **Award, Rejection of Bids/Proposals, Conditional Acceptance of Lowest Responsible Bid/Proposal and Designation of Alternate Lowest Responsible Bid/Proposal when applicable on the following:**

**Bid No. B061-05** for construction of Parker Road Estates Sanitary Sewer in the amount of \$500,523. The project consists of reconstruction of 2,600 feet of sanitary sewer by pipe bursting, 1,200 feet of sanitary sewer by open cut, and the reconstruction of the alley in the rear of Ports O'Call Drive from Las Palmas Lane to Brisbane Lane in the Ports O'Call Subdivision. [Consent Agenda Item (B)] (See Exhibit "A")

**Bid No. B079-05** for Environmental Discovery Garden Kiosk (Project No. 5439) in the amount of \$27,600. [Consent Agenda Item (C)] (See Exhibit "B")

**Bid No. B055-05** for the Oak Point Park and Nature Preserve Phase 2 Amphitheater Entertainment Roof System in the amount of \$312,403. [Consent Agenda Item (D)] (See Exhibit “C”)

**Bid No. B080-05** for the 2004-2005 Arterial Concrete Replacement Project, Coit Road from 15<sup>th</sup> Street to McDermott Drive, Project No. 5581, within the City of Plano in the amount of \$925,500. [Consent Agenda Item (E)] (See Exhibit “D”)

**Bid No. GI076-05** for purchase of Chemical/Biological Protective Clothing for Pre-2004 SHSP Grant and 2004 SHSP Grant in a total amount not to exceed \$102,025. [Consent Agenda Item (F)] (See Exhibit “E”)

**Bid No. C073-05** to establish an annual fixed price contract for Traffic Signal Pre-Emption Equipment in the estimated annual amount of \$101,200 for an annual contract with two optional one-year renewals. [Consent Agenda Item (G)] (See Exhibit “F”)

**Bid No. B049-05** for Municipal Center – Bldg #71 – from The Whitlock Group to furnish audio visual equipment in Training Room A and Building Inspections Training Room in the amount of \$44,000. [Consent Agenda Item (H)] (See Exhibit “G”)

### **Adoption of Resolutions**

**Resolution No. 2005-3-1(R):** To approve receipt of two gifts in equal amounts of \$26,000 each from Friends of the Plano Public Library and Plano Public Library Foundation (for a total gift amount of \$52,000) for the creation of a children’s mural for the general benefit and enhancement of L.E.R. Schimelpfenig Library; and authorizing the City Manager to execute all necessary documents to receive these gifts; and providing an effective date. [Consent Agenda Item (I)]

**Resolution No. 2005-3-2(R):** To approve a contract in the amount of \$52,000 between the City of Plano – Plano Public Library System and Gary Riggs Interiors for the creation of a children’s mural for the general benefit and enhancement of L.E.R. Schimelpfenig Library; and authorizing the City Manager to execute all necessary documents to effectuate the purchase approved herein; and providing an effective date. [Consent Agenda Item (J)]

**Resolution No. 2005-3-3(R):** To approve a Special Warranty Deed from the City of Plano to the City of Plano, comprised of one (1) parcel of land totaling 1.424 acres for dedication as public right-of-way for Plano Parkway, said parcel situated in the M.R. Foster Survey, Abstract No. 332 of the Land Records of Collin County, Texas, authorizing its execution by the City Manager, and providing an effective date. [Consent Agenda Item (K)]

**Resolution No. 2005-3-4(R):** To approve a Special Warranty Deed from the City of Plano to the City of Plano, comprised of one (1) parcel of land totaling 0.041 acre for dedication as public right-of-way for Mortonvale Road, said parcel situated in the A.M. Hatfield Survey, Abstract No. 432, and the Eli Smyler Survey, Abstract No. 857 of the land records of Collin County, Texas, authorizing its execution by the City Manager, and providing an effective date. [Consent Agenda Item (L)]

**Resolution No. 2005-3-5(R):** To approve a Special Warranty Deed from the City of Plano to the City of Plano, comprising eleven (11) parcels of land totaling 23.937 acres for dedication as public right-of-way for Los Rios Boulevard, said parcels situated in the Jeremiah Muncy Survey, Abstract No. 621, the WM. McCreary Survey, Abstract No. 601, the W.J. Jackson Survey, Abstract No. 485, the A.M. Hatfield Survey, Abstract No. 432, and the Eli Smyler Survey, Abstract No. 857 of the land records of Collin County, Texas, authorizing its execution by the City Manager, and providing an effective date. [Consent Agenda Item (M)]

**Resolution No. 2005-3-6(R):** To approve and authorize refunds of property tax overpayments; and providing an effective date. [Consent Agenda Item (N)]

**Resolution No. 2005-3-7(R):** To approve the purchase of SmartNet 800 MHz mobile and portable radios from Motorola Communications and Electronics, Incorporated, a sole-source provider; authorizing the City Manager to take such action as necessary to effectuate the purchase; and providing an effective date. [Consent Agenda Item (O)]

**Resolution No. 2005-3-8(R):** To approve the purchase of the “Simulator for VisiCAD,” from Brimac Systems, Inc.; a sole-source provider, authorizing the City Manager to take such action as is necessary to effectuate the purchase; and providing an effective date. [Consent Agenda Item (P)]

**Resolution No. 2005-3-9(R):** To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for intersection improvements on Spring Creek Parkway at Coit Road; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (Q)]

**Resolution No. 2005-3-10(R):** To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for the development and construction of Los Rios Boulevard from Jupiter Road to Parker Road; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (R)]

**Resolution No. 2005-3-11(R):** To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for intersection improvements on SH 289/Preston Road at Legacy Drive; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (S)]

### **Adoption of Ordinances**

**Ordinance No. 2005-3-12:** To provide for partial exemption of certain Heritage Resources located in the City of Plano, Texas from the current year ad valorem taxation in the amount of \$31,333; providing a severability clause and an effective date. [Consent Agenda Item (T)]

**Ordinance No. 2005-3-13:** To abandon all right, title and interest of the City, in and to a portion of that certain 80' temporary drainage easement recorded in Volume 2843, Page 740 of the Collin County Deed Records and being situated in the Daniel Rowlett Survey, Abstract Number 738 and located approximately 1600 feet north of Ruisseau Drive and between Premier Drive and US Highway No. 75 in the City Limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Moore Plaza Partners Limited Partnership, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (U)]

**Ordinance No. 2005-3-14:** To amend the Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-102(e) to include the prohibition of stopping, standing or parking of motor vehicles along the east side of Floyd Drive from Gull Lake Drive south to Elsinore Drive between the hours of 7:15 a.m. to 8:15 a.m. and 2:45 p.m. to 3:45 p.m. on school days; declaring the parking of motor vehicles in said section of Floyd Drive within the defined time limits as unlawful and a misdemeanor; and providing a repealer clause, a severability clause, a penalty clause, a savings clause, and an effective date. [Consent Agenda Item (V)]

### **Approval of Purchase off Existing Contract**

To authorize the purchase of one (1) GMC Truck, Model TT7F042, regular tilt cab with dump body in the amount of \$61,056 through the Texas Association of School Board Cooperative Purchasing Buyboard Program Contract #208-04 awarded to Rush Truck Centers of Texas, LP and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (W)]

To authorize the purchase of one (1) 2005 Mack CV713 "Granite" Cab & Chassis Tractor, in the amount of \$89,960 from Dallas Mack Sales, LP, and one (1) Red River Tandem Axle Live Bottom (48-foot) Trailer, in the amount of \$64,282 from B & C Body Company both through the Texas Association of School Board Cooperative Purchasing Program (Buyboard), Contract No. 208-04 and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (X)]

To authorize the purchase of nine (9) Mid-Size Police Package Vehicles (Chevrolet Impala 9C3) in the total amount of \$155,619 from Caldwell Country Chevrolet, pursuant to the City's participation in the Tarrant County Joint Venture/Purchasing Cooperative Bid No. 2005-001, authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (Y)]

To authorize the purchase of one (1) Rosenbauer-General Safety Extruded Aluminum Rescue CAFS Unit on a Ford F-550 Chassis in the amount of \$149,717 per H-GAC Contract No. AAAACA, awarded to Emergency Vehicles of Texas, Inc. and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (Z)]

To authorize the purchase of four (4) full-size Chevrolet Tahoes with Police Package for Dept-532/Police in the amount of \$102,393 from Classic Chevrolet in Grapevine, Texas, through Tarrant County Contract No. 2005-030 and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (AA)]

### **Approval of an Expenditure**

To approve an expenditure in the amount of \$38,613 to GME Consulting Services, Inc. for construction materials testing services in conjunction with the construction of Janwood Drive – Alma Drive to Westwood Drive from an existing contract (DO21-05), and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (BB)]

### **Award of Contract**

To approve and authorize for the selection of TranSystems Corporation Consultants to provide Professional Engineering Services for an amount not to exceed \$112,945 in connection with the design of Intersection Improvements – Jupiter Road and Plano Parkway (TxDOT) and authorizing the City Manager to execute all necessary documents to effectuate this contract. [Consent Agenda Item (CC)]

To approve and authorize for the selection of USA Professional Services Group, Inc. to provide Professional Engineering Services for an amount not to exceed \$26,450 in connection with the design of Alley Reconstruction – Los Rios Boulevard and authorizing the City Manager to execute all necessary documents to effectuate this contract. [Consent Agenda Item (DD)]

To approve a contract made and entered into by and between the City of Plano and Sharon Rowe, the Elections Administrator of Collin County, Texas, pursuant to the authority in Subchapter D, Section 31.092, of Chapter 31, of the Texas Election Code, regarding the coordination, supervision, and running of the City's May 7, 2005 General and Special Elections in the estimated amount of \$65,479. (D094-05) [Consent Agenda Item (EE)]

### **Cancellation of Existing Purchase Orders**

The Fire Department recommends canceling Purchase Order Number 102633 (Wheeled Coach Industries) in the amount of \$353,890 and Purchase Order Number 102634 (Texas Association of School Board Purchasing Cooperative) in the amount of \$800 and authorizing the City Manager to execute any and all documents necessary to effectuate the cancellation. [Consent Agenda Item (GG)]

**Reimbursement of Oversize Participation**

To approve and authorize reimbursement to Tollway and Parker NWC, Ltd. for oversize participation for paving improvements in Communications Parkway associated with construction of Windhaven Plaza, Lot 1, Block A in the amount of \$26,584. [Consent Agenda Item (HH)]

**Approval of Change Order**

To Rebcon, Inc., increasing the contract by \$55,675 for McDermott Road – Phase I (Ohio Drive to Robinson Road). Change Order No. 5 (Bid No. B070-04) [Consent Agenda Item (II)]

**END OF CONSENT**

Due to possible conflicts of interest, Mayor Pro Tem Stahel and Council Member Stovall stepped down from the bench on the following item.

**Award of State Contract** - To approve an expenditure in an amount of \$60,379 for the purchase of annual license renewal, new licenses, and upgrade protection and support for Altiris Client Management Software from SHI Government Solutions through the Department of Information Resources (DIR); and authorizing the City Manager to execute all necessary documents to effectuate the purchase. (DIR#313-001A). [Consent Agenda Item (FF)]

Upon a motion made by Council Member Magnuson and seconded by Council Member Dyer, the Council voted 6-0 to approve an expenditure in an amount of \$60,379 for the purchase of annual license renewal, new licenses, and upgrade protection and support for Altiris Client Management Software from SHI Government Solutions through the Department of Information Resources (DIR); and authorizing the City Manager to execute all necessary documents to effectuate the purchase.

Mayor Pro Tem Stahel and Council Member Stovall resumed their places on the bench.

**Transmittal** of Fiscal Year 2003-2004 Affirmative Action Report [Regular Agenda Item (1)]

Human Resources Director Ross advised the Council that the report has been reviewed and approved by the Community Relations Commission. She provided an overview of the report and spoke to the City providing a level playing field with regard to recruitment and promotion and spoke to the importance of a partnership between other departments and Human Resources.

**Public Hearing and a resolution** to approve and adopt the Plan to End Chronic Homelessness in Collin County; and providing an effective date. Tabled 12/21/04 [Regular Agenda Item (2)]

Upon a motion made by Council Member Magnuson and seconded by Council Member Johnson, the Council voted 8-0 to remove the item from the table.

Neighborhood Services Manager Buffington spoke to adoption of the plan by the City of McKinney and to plans to use funds obtained through a Continuum of Care Grant provided by Housing and Urban Development. He advised that if Staff is unable to retain this grant the pilot program would not be started or other sources of funding would be sought. Mr. Buffington spoke to the Samaritan Inn addressing only the chronically homeless and not the entire homeless population.

Mayor Evans opened the Public Hearing. No one spoke either for or against the request. The Public Hearing was closed.

A motion was made by Council Member Stovall and seconded by Council Member Magnuson to approve Staff's request to move forward with application for the Continuum of Care Grant. After discussion, Mr. Stovall withdrew the motion.

Deputy Mayor Pro Tem Lambert spoke to the plan stating that Community Development Block Grant (CDBG) funds would be utilized and to making modification clarifying that the pilot program would be for four cities and based on funding from the Continuum of Care Grant. Director of Planning Jarrell advised that Staff can bring back an amended plan for Council's consideration.

Council Member Stovall made a motion to table the request and have Staff bring back an amended plan at the next meeting. No second was made and no vote was taken at this time.

Mr. Buffington responded to Mayor Pro Tem Stahel regarding the amount spent on the chronically homeless. Mr. Stahel stated concern that money would be spent so that other entities can save and to not receiving a return on the investment. He requested definitive language be included calling for stoppage if the program fails and to capping the City of Plano contribution at a dollar figure or percentage. Deputy Mayor Pro Tem Lambert spoke to the plan as presented including reference to CDBG funds and requested language be included addressing the possibility that grants might not be secured.

Mr. Buffington responded to Mayor Evans, stating that once the City is entered into the grant program it is a continuing process. Mayor Evans requested writing this into the plan. Mayor Pro Tem Stahel requested a future agenda item to receive information regarding the amount of funding anticipated for future years and Deputy Mayor Pro Tem Lambert requested information regarding the possible used of CDBG funds. Mr. Buffington advised that the county would be a partner, but that they do not have a source of grant funding as cities do. He further stated that approximately 38% of the county's chronically homeless are in Plano.

Community Development Coordinator Brown cited a family recently found residing in the Haggard Park restrooms as an example of the chronically homeless and to work done with the City of Dallas to make the program a regional one. Mayor Pro Tem Stahel spoke to putting a cap on the City's exposure or contribution and Council Member Stovall spoke to the amount of the Continuum of Care Grant being the cap. Mr. Stahel spoke to working this into the plan and laying out a forecast, projections and financials.

Mayor Evans restated the motion made by Council Member Stovall and seconded by Mayor Pro Tem Stahel and the Council voted 8-0 to table the request to approve and adopt the Plan to End Chronic Homelessness in Collin County; and providing an effective date; until the March 28, 2005 Council Meeting.

After discussion the motion was amended by Council Member Stovall and seconded by Council Member Stahel to table the item until the April 11, 2005 Council Meeting. The Council voted 8-0 and the motion passed.

**Resolution No. 2005-3-15(R):** To authorize the City of Plano to partner with the Metro Dallas Homeless Alliance to jointly apply for the Continuum of Care Grant Program; and declaring an effective date. [Regular Agenda Item (3)]

Deputy Mayor Pro Tem Lambert spoke to correcting the request reflecting that the Homeward Bound Plan has not yet been adopted.

Upon a motion made by Deputy Mayor Pro Tem Lambert and seconded by Council Member Stovall, the Council voted 8-0 to authorize the City of Plano to partner with the Metro Dallas Homeless Alliance to jointly apply for the Continuum of Care Grant Program; and declaring an effective date; with revision stating that: “any funding received under this program will allow the City to carry out the City’s Homeward Bound (the Plan to End Chronic Homelessness) program *if and when adopted*;” and adopting Resolution No. 2005-3-15(3) as revised.

**Public Hearing and an ordinance as requested in Zoning Case 2005-01** – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, granting Specific Use Permit No. 560 so as to allow the additional use of Contract Construction on 1.0± acre of land located on the northeast corner of K Avenue and Pecan Lane in the City of Plano, Collin County, Texas, presently zoned Light Commercial; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Neighborhood #22. Applicant: Fix Air Services [Regular Agenda Item (4)]

Director of Planning Jarrell advised the Council that the applicant has been granted a Certificate of Occupancy for office uses only and spoke regarding the screening wall that would be required between the residential and non-residential uses. She advised that the applicant does not plan to have open storage of goods or materials and would need to provide an amended site plan if this changed. Ms. Jarrell stated that the Planning and Zoning Commission recommended approval of the request as submitted and spoke to the concerns of several of the commissioners who voted in opposition due to the proposed use of the property and its adjacency to residential development. She stated that the applicant is aware of the City’s plans for the roadway in the area and that future right-of-way needs would leave a sizeable tract of land.

### **Zoning Case 2005-01 (cont'd)**

Mayor Evans opened the Public Hearing. Applicant Hadi Shafaian-Fard spoke to the purchase of the property for offices and to disclosure the day before closing that permits may be required and right-of-way needed to widen Pecan Lane. He spoke regarding the cost and concerns related to constructing a screening wall and proposed alternatives. Mr. Shafaian-Fard spoke to concerns related to an auxiliary water valve and the need to obtain a specific use permit being driven by categorization as contract construction. He responded to the Council that he would not store equipment at the location and Ms. Jarrell clarified that the current definition of contract construction is anything related to maintenance, repair, construction on a fee or contract basis and includes heating and air conditioning and spoke to the Planning and Zoning Commission consideration of definitions and regulations. She advised that the Certificate of Occupancy was granted for office uses until the SUP was considered and approved. Ms. Jarrell further advised that screening requirements would be the same for office uses.

Marjorie Stormer, citizen of the City, spoke in opposition to the request and expressed concerns regarding the aesthetics of a screening wall that may be put in place. She requested a wall be erected rather than only landscaping. Elaine Cordner, citizen of the City, spoke to the protection that should be provided by residential zoning and the complaints made against an area towing company. She spoke in opposition to attaching a specific use permit that would remain in effect. Mr. Shafaian-Fard spoke to concerns regarding the construction of a screening wall and requested consideration of "slide block" construction and Ms. Jarrell spoke to this type not being on the current approved list. Deputy Mayor Pro Tem Lambert spoke to possible future consideration by code enforcement of new techniques. No one else spoke either for or against the request. The Public Hearing was closed.

Ms. Jarrell responded to Deputy Mayor Pro Tem Lambert stating that the towing service began as an office use and spoke to code issues brought to the attention of Property Standards Staff. She advised that the ordinance states that the screening wall should be masonry or reinforced concrete, that there are no other restrictions or regulations other than a ban on slide-in panels, and that "poured in place" concrete would be allowed in this case. Ms. Jarrell stated that keeping materials on site or parking a fleet of vehicles is the defining point between office uses and contract construction and spoke to upcoming discussion by the Planning and Zoning Commission. She stated that under the current definition of the ordinance the proposal would be considered Contract Construction.

Mayor Pro Tem Stahel stated concern that the granting of a specific use permit may allow an owner to bring in equipment at a future date and his inclination to deny the SUP and leave the Certificate of Occupancy alone. He stated concern that the Council might be forced into a consideration that would not be necessary in 45-60 days when the Planning and Zoning Commission has concluded their discussions. Deputy Mayor Pro Tem Lambert stated concern that there is no screening wall and spoke to possibly tabling the specific use permit portion of the request for 60 days to allow time for the Commission to come forward with recommendations.

**Zoning Case 2005-01 (cont'd)**

Ms. Jarrell advised that Staff will continue working with the applicant on the screening wall issue since it is a requirement and to adjacent property owners working out some of the particulars. Mayor Evans spoke to waiving the requirement for another fee should it be found that a specific use permit is necessary.

Upon a motion made by Mayor Pro Tem Stahel and seconded by Council Member Magnuson, the Council voted 8-0 to table an ordinance as requested in Zoning Case 2005-01 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, granting Specific Use Permit No. 560 so as to allow the additional use of Contract Construction on 1.0± acre of land located on the northeast corner of K Avenue and Pecan Lane in the City of Plano, Collin County, Texas, presently zoned Light Commercial; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date for ninety days and to waive additional costs should a specific use permit be necessary.

**Public Hearing and consideration of Zoning Case 2004-54** – To amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), Subsection 3.113 (Superstores) of Section 3.100 (Supplementary Regulations for Principal Permitted Uses and Specific Uses), and Section 3.1500 (Residential Adjacency Standards) of Article 3 (Supplementary Regulations) and related sections of the Zoning Ordinance regarding superstore use. Applicant: City of Plano. Tabled 01-24-05 and 02-22-05 [Regular Agenda Item (5)]

Upon a motion made by Mayor Pro Tem Stahel and seconded by Council Member Johnson, the Council voted 5-0 to remove the item from the table. Council Members Stovall, Magnuson and Callison were away from the bench.

Director of Planning Jarrell spoke to the Council's interest in applying specific use permits only when the proposed location was within a certain distance of a residential zoning district. She spoke regarding defining what it is about superstores that requires additional regulation and how they differ from other shopping centers. Ms. Jarrell stated that options for considering distances include prohibiting superstores within certain distances unless the requirement is waived or requiring a specific use permit (SUP) within a certain distance of residential development. She reviewed areas along S.H. 121, the Dallas North Tollway, U.S. 75, and S.H. 190 where an SUP would be required if the Council were to apply a 500-foot distance requirement.

Mayor Evans opened the Public Hearing. Hal Stebbins, citizen of the City, spoke in support of utilizing SUP's for superstores and considering the proximity of residentially zoned areas along with the impact of traffic, crime, property values and other factors extending far beyond the immediate vicinity. He spoke to the difficulties of exempting certain areas for regional competitiveness, to looking at the net sales tax a new store is likely to generate and to SUP's allowing for flexibility in meeting the long-term needs of the City.

Tom O'Dwyer of Argent Property Company, spoke to the SUP process being viewed by the development community as a negative factor and cited issues including the time involved in the process and stated that for users of space it is a "red flag" presenting an obstacle/barrier to overcome before a commitment can be made. He spoke to retailers looking for an area that would be less cumbersome and recommended in lieu of an SUP, that the City consider adopting a more specific zoning ordinance that would address the parameters and criteria for big boxes.

Stephen Scott, Director of Legacy in Plano, spoke to issues related to attracting new sources of tax revenue, developments that exceed 80,000 square feet and requested the definition be narrowed to more specifically define what is trying to be achieved. He stated that the process may result in the City being less competitive and losing out to surrounding neighbors. He spoke to the lower level of traffic generated at a furniture store despite its size. Deputy Mayor Pro Tem Lambert spoke to the possible conversion of this site to a superstore and Ms. Jarrell spoke to different parking requirements for furniture stores and developments within Legacy Town Center. She spoke to apartments in this area being part of the Central Business-1 zoning district so that a proposed 500-foot setback from Residential zoning would not apply and spoke to the definition of a superstore as any Retail use over 80,000 square feet and not being limited to general merchandise establishments. Ms. Jarrell advised that Council could exclude uses in the definition, requested that it be based on traffic generation or another such factor and further that existing categories be utilized. Mr. Scott stated that there are some uses that do not necessarily have problems that could fall victim to such exclusion and spoke regarding the effects if such businesses are lost. He spoke to addressing issues but to better defining the goals. Deputy Mayor Pro Tem Lambert spoke to the City of Frisco requirement for specific use permits along Preston Road and Mr. Scott spoke to competition for Plano being along S.H. 121 where they are allowed by right. No one else spoke either for or against the request. The Public Hearing was closed.

City Attorney Wetherbee provided clarification for Deputy Mayor Pro Tem Lambert stating that there would be concern about whether requiring a setback from residential zoning would be considered a uniform regulation and stated that the Council could include criteria so that a superstore may be allowed so long as it is not within a number of feet and could include a waiver. Mr. Lambert spoke to currently having no flexibility when considering the orientation of buildings and to concern regarding cut through traffic into neighborhoods. He spoke to a 500 feet setback ensuring that something would be built between the superstore and the residential area. Ms. Jarrell spoke to the overlay districts addressing issues such as signage, landscaping and underground utilities rather than uses.

Mayor Pro Tem Stahel stated concern regarding the mass of buildings and increased traffic close to residential neighborhoods. He spoke to having the ability to exercise judgment on the placement and orientation of the building as well as the traffic flow as a necessary legislative function. Mr. Stahel spoke to the time requirements of an SUP not being a deterrent if a developer and retailer felt the location was right. He spoke to directing Staff to come back with an ordinance requiring an SUP within 500 feet of a residential neighborhood whether the development is new or a redevelopment and allowing the Council the opportunity to waive or reduce the distance.

**Zoning Case 2004-54 (cont'd)**

Ms. Jarrell responded to Council Member Stovall regarding the distance requirements for private clubs which include 300 feet from a residential district. Mr. Stahel advised that if the distance were substantial it would allow for a lower use between the big box and either the street or the residential neighborhood. Ms. Jarrell clarified that the distance requirement would be from the zoning district boundary line. She reviewed those areas of the City where an SUP would then be required and advised that there would probably be no more allowed by right at 300 feet versus 500 feet.

Deputy Mayor Pro Tem Lambert clarified that if an SUP requirement is adopted, he would recommend a zoning case that would grant SUP's for existing businesses so they would not be considered non-conforming uses.

Mayor Evans spoke to the requirement for an SUP telling developers that the City has no zoning and that they will need to proceed on contingency.

Ms. Jarrell advised the Council that a Traffic Impact Analysis is required for a use that expected to generate over 5,000 trips per day which equates to approximately 55,000 feet of retail space. Council Member Stovall spoke to some types of stores that would not generate more than 5,000 trips per day and thus would not fall into the superstore category nor require an SUP and Development Review Manager Elgin spoke to the dilemma of trying to apply both traffic and size criteria. Ms. Jarrell advised that the Council could exclude furniture store uses from the definition if it is felt they do not have the same traffic generation or effect on residential neighborhoods. Mayor Evans spoke to consideration of a traffic component and to looking at the definition of "superstore."

Mayor Pro Tem Stahel spoke to the Council exercising some legislative oversight of superstores. Deputy Mayor Pro Tem Lambert spoke to the difficulty of writing zoning regulations to cover every case and the SUP process allowing the ability to look at each individually. Mayor Evans spoke to the discussion demonstrating the uncertainty a businessman would face and to the need for some level of certainty and structure contained in the Zoning Ordinance. She spoke to possible reconsideration of the superstore definition.

Deputy Mayor Pro Tem Lambert stated agreement with Mayor Pro Tem Stahel's position calling for legislative oversight.

Council Member Magnuson spoke to the request being driven by opposition to specific superstores and stated concern with making regulations too restrictive and difficult for developers to come in. She spoke to the effect restrictions would have along S.H. 121 and in the redevelopment of certain retail centers. Council Member Johnson spoke to providing some oversight for internal neighborhood streets, but stated that along the corridors the retailers should be able to go in without a long process. He spoke to the intent of zoning being to set the rules up out front and to protecting property owners and regarding the commercial development inherent along highways.

### **Zoning Case 2004-54 (cont'd)**

Mr. Johnson spoke in support of a 300-foot separation and regarding the merits of discussing traffic or use type, but also noted that some corridors should be open where a developer can come in and not go through undo regulations. He spoke to retailers looking for highway locations where there is visibility and access. Mr. Johnson spoke to Plano Parkway being more of an internal street.

Ms. Jarrell spoke regarding most of the zoning on Plano Parkway as being Planned Developments which would not allow superstore development with a couple of Light Industrial locations. She also clarified that the recommendation from the Planning and Zoning Commission was to retain the specific use permit requirement for Retail zoning but that Council consider applying the design landscaping setback requirements city-wide.

A motion was made by Council Member Magnuson to approve one recommendation of the Planning and Zoning Commission and to amend standard (7) of Subsection 3.113 (Superstores) of Section 3.100 (Supplementary Regulations for Principal and Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) to read as follows: “(7) Where the property immediately abuts a residential zoning district, unless separated by a Type ~~D~~ C or larger thoroughfare, a minimum 30-foot wide landscape edge must be installed in addition to the screening required by Section 3.1000. The landscape edge must include a combination of berms, evergreen shrubs, and a mix of evergreen and deciduous overstory (shade) trees (minimum four inch caliper) placed a minimum 25 feet on center. Plantings may be grouped” as requested in Zoning Case 2004-54. Mayor Evans seconded the motion, however no vote was taken at this time.

Ms. Jarrell reviewed the other recommendation of the Planning and Zoning Commission that:

Amend standard (1) of Subsection 3.113 (Superstores) of Section 3.100 (Supplementary Regulations for Principal and Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) to read as follows:

“(1) These criteria shall apply to new superstore construction in ~~Retail~~ any zoning districts ~~only~~. These criteria shall not apply to the use, reuse, modification, or consolidation of existing retail space developed on ~~the date of the adoption of this ordinance~~ or before January 24, 2005, or to the expansion of existing retail space existing on ~~the date of adoption of this ordinance~~ or before January 24, 2005, by no greater than ten percent of the existing ground floor area.”

Council Member Callison spoke to the need for oversight in some areas, to having some trigger for a specific use permit, but also having the corridors be opened up and to having something come back for consideration. Deputy Mayor Pro Tem Lambert spoke to the oversight in place on interior streets. Council Member Johnson spoke to the effect of Light Industrial zoning along Plano.

**Zoning Case 2004-54 (cont'd)**

A revised motion was made by Council Member Magnuson and seconded by Mayor Evans to approve both recommendations of the Planning and Zoning Commission to amend standard (7) of Subsection 3.113 (Superstores) of Section 3.100 (Supplementary Regulations for Principal and Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) and standard (1) of Subsection 3.113 (Superstores) of Section 3.100 (Supplementary Regulations for Principal and Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) as requested in Zoning Case 2004-54 *and to require a specific use permit for superstores in the Light Industrial-1 and Light Industrial-2 zoned areas*. No vote was taken at this time.

Ms. Jarrell clarified those areas along the corridors where residential zoning could be located and stated that because there would be separation by a screening wall there would still be additional landscaping required for anything less than a six-lane thoroughfare. Ms. Wetherbee advised that adding a traffic requirement to trigger a specific use permit would complicate the situation. In response to Council Member Callison, Ms. Jarrell spoke to the increase in the size of stores. Ms. Callison requested that Staff bring back the recommendation along with its impact. Council Member Magnuson and Mayor Evans amended their motion and second to include instructing Staff to bring back an ordinance for Council consideration. Deputy Mayor Pro Tem Lambert recommended an exhibit be attached showing the areas where an SUP would be required and spoke to bringing back an ordinance and not having additional Public Hearings. Council Member Johnson spoke to having flexibility in the next meeting.

Mayor Evans stated that the motion made (Council Member Magnuson and Mayor Evans) includes instructions for staff to bring back an ordinance for consideration at the March 28, 2005 Council Meeting. The Council voted 6-2 approving both recommendations of the Planning and Zoning Commission and *to require a specific use permit for superstores in the Light Industrial-1 and Light Industrial-2 zoned areas*. Mayor Pro Tem Stahel and Deputy Mayor Pro Tem Lambert voting in opposition.

There being no further discussion, Mayor Evans adjourned the meeting at 10:49 p.m.

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**Pat Evans, MAYOR**

ATTEST:

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**Elaine Bealke, City Secretary**