

Informational Update Regarding the Proposed Muslim Cemetery

Members of the public have raised a number of issues regarding the proposed development of a Muslim cemetery on land that is situated outside the City's corporate limits but within the City's extraterritorial jurisdiction ("ETJ"). This Informational Update is intended to provide insight and assistance into certain of the issues that have been raised. This update is a snapshot in time and is not an all-encompassing analysis of every factual and/or legal potentiality or concern expressed or which may otherwise be extrapolated from the Proposed Cemetery Property (defined herein-below).

- The Islamic Association of Collin County (IACC) is proposing a private cemetery on property south of West Audie Murphy Parkway (US 380), east of CR557, between Home Grown Plants and A&A Landscaping. We have received verbal confirmation of the sale but have not been able to confirm the closing.
- The property is located just outside the Farmersville corporate limits however the property is located within the Extraterritorial Jurisdiction (ETS) of the City of Farmersville.
- Because this land is outside the City's corporate limits the City cannot enforce its zoning ordinance to prohibit, or otherwise regulate, the planned cemetery use for the land being platted.
- The City has the authority to regulate the platting of subdivisions of land in the City's ETJ under Chapter 212 of the Texas Local Government Code and an Interlocal Agreement between the City and Collin County. However, when it comes to the approval or disapproval of a plat, Section 212.010 of the Texas Local Government Code requires that the municipal authority responsible for approving plats **shall** approve a plat if the plat conforms to all of the City's rules adopted under Section 212.002 of the Texas Local Government Code, the City's current general plans for development within the corporate limits and ETJ of the City, and State law applicable to platting.
- In order to refuse a plat the governing body shall document the technical reason for refusing the plat.
- If a plat is not approved and no vote is taken (no vote, tabled) by state law the plat is considered automatically approved at the end of 30 days.
- In order to develop and plat the land the IACC has entered the three-step development process with the City of Farmersville which includes Concept Plan, Preliminary Plat, Final Plat.

- The IACC has applied and completed the Concept Plan process, the first step of the land development process to lawfully subdivide their land.
- The City Secretary is heavily involved in making sure procedurally the City of Farmersville platting process is followed. She uses a checklist and other procedural documentation to make sure each step is followed. The checklist documents are on the City of Farmersville website.
- The City Engineer (DBI) is responsible for a technical review of each document and ensures the documents meet the City of Farmersville ordinances. The city engineer will make sure the zoning ordinance, subdivision ordinance, and design manual is followed. The city engineer also makes sure the requirements from the comprehensive plan are followed.
- The concept plan complied with the requirements of the City's ordinances and was accordingly approved by the Planning and Zoning (P&Z) Commission on 28 May 2015.
- To comply with our ordinances land dedication for a road to connect CR557 with CR560 was required and was shown on the documents.
- The documentation reviewed and approved by P&Z can be found on the city website at: www.farmersvilletx.com>Government>Planning & Zoning Commission Meetings> 2015 Planning & Zoning Commission Meetings> 05/28/2015 Special P&Z Agenda and Packet
- Concept Plans do not require City Council approval.
- The preliminary plat for the proposed development has not yet been submitted to the City for consideration.
- There are several steps remaining for before the platting phase is complete and development can proceed including preliminary platting, final platting, and building permitting.
- A standing room crowd was present during the P&Z meeting on 6 July 2015. They used all of the thirty (30) minute public forum at the beginning of the meeting to voice opposition to the development of the land for cemetery use by the IACC.
- A standing room crowd was present during the City Council meeting on 14 July 2015. They used the majority of the thirty (30) minute public forum at the beginning of the meeting to voice opposition to the development of the land for cemetery use by the IACC. Channel 8 and Channel 11 news organizations were present.
- Information from a meeting with the IACC on 13 July 2014 to discuss if they wanted to continue the platting process:
 - Present at the meeting
 - City of Farmersville
 - Ben White, City Manager
 - Alan Lathrom, City Attorney
 - Edie Sims, City Secretary

- IACC, Owner
 - Khalil Abdur-Rashid
 - Akram Syed
 - Shams Islam
 - Shakeel Farooqui
 - Ejaz Bashir
 - Half and Associates, Owner's Engineer
 - Lenny Hughes.
- The IACC made it clear they wanted to continue to the next step, Preliminary Plat.
- Ben White and Alan Lathrom informed them there was tremendous opposition in the community to the establishment of the IACC cemetery.
- It was reinstated that right-of-way would have to be dedicated to the city in accordance with our ordinance and in accordance with our comprehensive plan. Their current concept plan showed this correctly.
- Funding for the IACC portion of the street development would be needed as the property developed.
- The IACC controls a section in Restland Cemetery in Richardson. They envisioned the Farmersville Cemetery would have a similar look and feel.
- This cemetery would meet all the requirements of the State of Texas.
- A perpetual bond will be established for the maintenance and care of the cemetery. At the time it is believed it would be around \$500,000.
- The only structure planned for the cemetery site is an open air pavilion.
- There is no individual ownership planned for the gravesites.
- There is no training facility planned for this site.
- There is no terrorist activity associated with this site.
- There are no plans for a mosque at this site.
- There are no future plans to buy additional land around this site.
- Burials will consist of a wooden casket placed in a concrete vault at the appropriate depth as approved by the State of Texas.
- The area adjacent with West Audie Murphy Parkway is planned to be a commercial strip center for rental to support the perpetual care of the cemetery.
- The IACC was upset that a small percentage of the Islamic faith has chosen to radicalize and was killing so many people in the Middle East including their own. The IACC does not support this activity.
- The IACC will support group meeting(s) to get the word out regarding their intentions.
- They invited anyone to contact them to discuss this matter.

- Location; Lack of Zoning Authority: The subject property is located east of FM 557 and south of West Audie Murphy Parkway, between Home Grown Plants and A&A Landscaping, in an area that is outside the City's corporate limits ("Proposed Cemetery Property"). **Because the Proposed Cemetery Property is situated outside the City's corporate limits, the City cannot regulate, or prohibit, the use of the Proposed Cemetery Property for a cemetery through the City's Zoning Ordinance.**
- Platting Authority: The City does have the authority to regulate the platting of subdivisions of land in the City's ETJ under Chapter 212 of the Texas Local Government Code and an Interlocal Agreement between the City and Collin County. The Proposed Cemetery Property could be developed as a Muslim cemetery without approval of a plat but for the fact the City's Thoroughfare Development Plan indicates a future four-lane divided roadway running along the eastern boundary and across a portion of the Proposed Cemetery Property that requires dedication to the City. Absent such roadway dedication requirement, the size and location of the Proposed Cemetery Property falls within the five-acre exception to platting as the Applicant has indicated the plots in the cemetery will remain the property of the IACC and will not be conveyed to the decedents' respective families.
- Limited Discretion Concerning a Plat When it comes to the approval or disapproval of a plat the City has very little, if any, discretion to disapprove a plat. **"The municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations."** Tex. Loc. Gov't Code 212.005. (Emphasis added.) In addition, Section 212.010 of the Texas Local Government Code mandates that the municipal authority responsible for approving plats **shall approve a plat** if the plat conforms to all of the City's rules adopted under Section 212.002 of the Texas Local Government Code, the City's current general plans for development within the corporate limits and ETJ of the City, and State law applicable to platting. *Id.* at § 212.010. (Emphasis added.) Texas law requires that a city act on a plat within thirty days after the plat is filed. *Id.* at § 212.009(a). In fact, if the Planning and Zoning Commission and/or the City Council fail to disapprove a plat within that thirty day time frame, the plat is deemed by Texas law to have been approved. *Id.* If the municipal authority responsible for approving a plat disapproves the plat, it must document the technical reason(s) for disapproval upon the request of the property owner. *Id.* at § 212.009(e).
- Platting Concept Plan Approved: To date, the owners of the Proposed Cemetery Property, the Islamic Association of Collin County (hereafter "Applicant" or "IACC"), have submitted a platting concept plan ("Concept Plan") to the City for review and potential approval. This Concept Plan is the first step in the Applicant's request for approval of a plat that will allow the lawful subdivision and development of the

Proposed Cemetery Property. The Concept Plan, which was submitted for approval by the IACC, did not seek or request any variances or waivers from the City's Subdivision Regulations. The Concept Plan was reviewed by the City's Engineer and determined to comply with the requirements of the City's ordinances.

The Concept Plan was forwarded to the Planning & Zoning Commission, together with the City Engineer's report regarding the Concept Plan's compliance with the Subdivision Regulations, for the Commission's review and consideration. The Planning & Zoning Commission reviewed the Concept Plan together with the City Engineer's report on May 28, 2015, and approved the Concept Plan as required by State law. Concept Plans do not require City Council approval. The preliminary plat or final plat for the proposed development has not yet been submitted to the City for its consideration. A preliminary plat and a final plat require consideration by both the Planning and Zoning Commission and the City Council and final approval by the City Council, unless deemed approved under Texas law (as discussed above).

- State Regulation of Cemeteries: Cemeteries are regulated, in part, by five different State Agencies:
 - Finance Commission of Texas;
 - Texas Funeral Service Commission;
 - Texas Department of Health;
 - Texas Historical Commission; and the
 - Texas Banking Commission.

Each of the foregoing agencies regulates a different portion of the cemetery business. No one agency appears to have total advance oversight of the cemetery business to address all of the concerns raised by the public.

- Location of Cemeteries: Texas Health & Safety Code § 711.08 generally prohibits the placement of a cemetery:
 - in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;
 - in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;
 - in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;
 - in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or
 - in or within five miles of the boundaries of a municipality with a population of at least 200,000.”

Tex. Health & Safety Code § 711.008. The population of the City does not trigger any of the foregoing restrictions. In addition, none of the cities within close proximity to Farmersville trigger this area of prohibition so as to prohibit the placement of a cemetery on the Proposed Cemetery Property.

- Exception to Siting Restrictions for Certain Columbariums and Mausoleums:
Notwithstanding the foregoing restrictions, there are a number of exceptions that allow the siting of a columbarium or a mausoleum in or within the specified distances set out above. (A columbarium is the structure within which urns holding a deceased's cremated remains are placed.) Those exceptions include: (1) a columbarium that is owned by and is a part of or attached to a building owned by an organized religious society or sect which entity is a 501(c)(3) tax-exempt corporation ("501(c)(3) church"); (2) a columbarium that is owned by and is on land that is part of the campus on which an existing principle church building is located owned by a 501(c)(3) church; (3) a columbarium on the campus of a private or independent institution of higher education that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with a 501(c)(3) church if a place of worship is located on the campus; (4) a mausoleum that is constructed beneath the principal church building owned by a 501(c)(3) church and has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building and is used only for that purpose; (5) a perpetual care cemetery situated in and approved by a city having a population of at least 1 million located predominantly in a county of less than 1,000 square miles subject to other and additional conditions; (6) a private family cemetery established and used by a 501(c)(3) tax-exempt corporation on land that is owned by the corporation and located in a county with a population of more than 125,000 that is adjacent to a county with a population of more than 1.5 million and in which more than 75 percent of the population lives in a single city. See Tex. Health & Safety Code § 711.008.
- Depth of Graves: The following regulations establish the minimum depth below which the top of a grave must be placed. "Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY.
 - The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:
 - less than two feet below the surface of the ground if the container is not made of an impermeable material;
 - or
 - less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.
 - The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by first subsection above.
 - This section does not apply to burials in a sealed surface reinforced concrete burial vault.

- A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.
 - An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.” Tex. Health & Safety Code § 714.001.
- Licensing: A funeral director and an embalmer are both required to be licensed by the Texas Funeral Service Commission. Tex. Occup. Code § 651.251. In addition, a funeral establishment is required to have a license from the Texas Funeral Service Commission before it conducts a funeral business. Tex. Occup. Code § 651.351. Further, a cemetery is required to have a license from the Texas Funeral Service Commission unless it is “a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination.” Tex. Occup. Code § 651.353.
- Condemnation and Cemeteries
 - Cemeteries Condemnation Power: A cemetery organization may by condemnation acquire property in which remains may be interred. Tex. Health & Safety Code § 711.033(e). The cemetery must be located and operated in accordance with the distance requirements prescribed in Section 711.008 and the land being acquired must be adjacent to the cemetery. *Id.* at (b). That is, some part of the property to be acquired must have a common boundary with the existing cemetery, or a common boundary with a public easement, a utility easement, or a railroad right-of-way, some part of which has a common boundary with the cemetery. *Id.* In no event shall the closest points of the property to be acquired and the cemetery be more than 200 feet apart. *Id.*
 - Condemnation of Cemetery Land: A county does not have the right to condemn land that is being used for cemetery purposes. Tex. Loc. Gov’t Code § 261.001(b); Tex. Transp. Code § 251.101(b). In addition, the Texas Highway Commission does not have the right to condemn land that is being used for cemetery purposes. Tex. Transp. Code § 203.051(e). A city may condemn land for a cemetery, and does not appear to be prohibited from condemning a cemetery but there are numerous other issues that would severely restrict a city’s exercise of condemnation authority over a cemetery. See Tex. Loc. Gov’t Code 251.001.
- Rejection of Muslim Cemetery by Other Cities: It has been reported that other cities were able to reject or refuse the location of a Muslim cemetery in their respective communities. Searches have been performed of the websites for McKinney, Plano, Murphy, Frisco, Wylie and Melissa. There is no record of any request or application related to a request for a Muslim cemetery on any of these websites. Personal

exchanges have been held with staff members of Plano, McKinney and Frisco in which it has been confirmed these cities have not received a request or engaged in discussion relating to the location of a Muslim cemetery in or about their respective corporate limits. There are Mosques situated in McKinney, Plano, Frisco, Allen, Garland and other cities in and about Collin County.