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## PLANNING & ZONING COMMISSION

May 2, 2005

### Minutes

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Members Present: Neomia Banks  
Eddie Boykin  
Ovelia Campos  
Jack Harkins  
Tim McClarty

Members Absent: Jeff Luther  
Floyd Miller

Staff Present: Jon James, Director of Planning and Development Services  
Jeff Armstrong, Development Services Manager  
Dan Santee, First Assistant City Attorney  
David Sartor, Building Official  
Gloria Brownell, Planner I  
JoAnn Sczech, Executive Secretary (Recording)

Others Present: Don Roder  
Kenneth L. Musgrave  
Larry Earley  
H.E. Jenkins  
Kathy Cypert  
Bob Hammond  
Carolyn Pecina  
Ezequiel Pecina  
David Fuentes  
Don Harrison  
Rick Weatherl  
Bill Enriquez  
Fred Robinson

#### **Item One: Call to Order**

Mr. Harkins called the meeting to order at 1:34 p.m. and declared a quorum present.

#### **Item Two: Invocation**

Mr. Jack Harkins gave the invocation.

#### **Item Three: Approval of Minutes:**

The minutes from the April 4, 2005, meetings were approved with the following corrections:

- The name of Aaron Waldrop was omitted from *Others Present*
- Mr. Floyd Miller's name was omitted from those approving the minutes of the March meetings.

**The minutes of the April 4, 2005, meeting were approved as corrected unanimously (Boykin, Campos, Harkins, and McClarty).**

**Item Four: Plats**

Ms. Gloria Brownell, Planner I, stated that the plat identified as item “b.” was incomplete and would not be considered at this meeting. Information was provided regarding the plats to be considered at this meeting (Items a., and c). **Mr. Boykin moved to approve plats a. and c. as submitted. Mr. McClarty seconded the motion and the motion carried by a vote of four (4) in favor (Boykin, Campos, Harkins, and McClarty) to none (0) opposed.**

**Item Five: Rezoning Requests**

a. Z-2005-13

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Cracker Barrel Old Country Store, Inc., Agent, Don Roder, to amend existing PDD 91, located at Highway 351 and I-20. The legal description being Lot 2, Block 1, Wal-Mart SuperCenter Addition, Abilene, Taylor County, Texas.

Mr. Armstrong provided the staff report for this case which is a two-part request:

•Request:

- a. Amend PDD to add 0.9-acre tract
- b. To allow an additional free-standing sign, 60 feet in height, 200 square feet in area.

•Notification: Comment forms were mailed; however, no comment forms were received either in favor or in opposition of the request.

•Staff Recommendation:

- a. Addition of the 0.9-acre tract to PDD: Approval
- b. Request for additional signage: Denial

Mr. Armstrong stated that the current sign requirements for this PDD allow one pole sign in the Wal-Mart area (35 feet maximum height and 175 square feet maximum area) and each out-parcel and Wal-Mart may have one monument sign (6 feet maximum height and 75 square feet maximum area.) This is the ordinance approved by the City Council and is in affect at this time. The applicant is requesting to place a freestanding pole sign (60 feet in height and approximately 200 square feet in area) on the proposed restaurant location. The current Sign Regulations for the City of Abilene do not allow signs greater than 50 feet in height. Mr. Armstrong provided photographs of the area. Mr. Armstrong stated that there is a great deal of “sign clutter” in this very small area that the Comprehensive Plan addresses as an issue that should not be perpetuated. Mr. Armstrong stated that if the Commission has an interest in allowing larger scale signage due to I-20 and the overpass that signage be limited to those parcels fronting onto I-20 and limiting the height to 20 feet and the area to 150 square feet. Staff’s recommendation is to leave the ordinance as originally adopted.

Mr. Harkins opened the public hearing.

Mr. Don Roder, Identity Manager for Cracker Barrel Old County Store, provided the Commissioners with “Target Test Booklets” illustrating the proposed sign superimposed onto photographs taken at various intervals (seconds to exit) along I-20 (east and west). Mr. Roder stated that it is very important for the restaurant to have some type of permanent visibility for traffic traveling on the interstate.

Mr. Santee asked the height of the sign, top to bottom.

The response was that the sign is 10 feet 4 inches.

Mr. Santee stated that at 50 feet, the sign would still be visible in all pictures. If the print portion of the sign is slightly over 10 feet, the sign would be visible from all angles at the 50 foot height, which would be the maximum under the ordinance outside of the PDD.

Mr. Roder stated that this is true for the majority of the photographs on which the sign is superimposed.

Ms. Campos asked Mr. Roder if the proposed sign location is the only possible location.

Mr. Roder responded that two areas were considered – the current site and a site behind the Holiday Inn [in the photograph provided]. Traveling eastbound there is more leeway as to where the sign is placed. Traveling westbound with the Holiday Inn and other signs, the location of the sign had to be moved closer to the current Dairy Queen sign. Mr. Roder stated that many factors come into play regarding sign placement: direction; curve of interstate highway; perspective; entrance ramp; etc.

Mr. Kenneth Musgrave stated that he is the primary developer of this area. Mr. Musgrave stated that he recognizes the problems stated at this meeting regarding signage. Mr. Musgrave stated that the ramps off I-20 are going to be changed – he is meeting with TxDOT almost weekly. The proposal currently is that the current off ramp will become an on ramp and the on ramp will become an off ramp and the ramp will be move back 800 feet toward Loop 322.

Mr. Larry Earley stated that he welcomes the Cracker Barrel Restaurant; however, like the City, he does not like the sign clutter. With the moving of the on/off ramps, perhaps blue TxDOT signs can be obtained for this area. Mr. Earley stated that he does not feel the height of the proposed sign is proper.

Mr. Harkins closed the public hearing.

Mr. Boykin stated that the Comprehensive Plan speaks to cleaning up the City and sign clutter. Mr. Boykin stated that if the Commission allows this sign, there will be at least seven (7) others, if not more, making the same request and the Commission would have a difficult time denying their requests.

Mr. McClarty stated that even though Cracker Barrel is not as powerful a magnet as Wal-Mart; it is a strong magnet. Mr. McClarty stated that he would like to see Cracker Barrel located somewhere down the interstate (to the next intersection), to create additional development rather than just having this pocket of development in one spot.

Mr. Boykin stated that he felt the denial of the signage will not deter Cracker Barrel from building at this location.

Mr. James stated that revising the Sign Ordinance has been identified as a high priority for this Commission and the City Council. Decisions, such as the one that will be made today regarding signage for the Cracker Barrel Restaurant, will set the precedence for future policies and Sign Regulations revisions.

**Mr. Boykin moved to approve an amendment to PDD 91 to add 0.9 acres to the PDD. Ms. Campos seconded the motion and the motion carried by a vote of five (5) in favor (Banks, Boykin, Campos, Harkins, and McClarty) to none (0) opposed.**

Part two of this request regards signage.

Mr. James stated that, based on the Comprehensive Plan, staff is strongly opposed to 40, 50 or 60-foot pole signs. Mr. James stated that this may be a case where the photographs speak to this – if a 35-foot sign does not work for visibility, there is not a great deal of difference between a 35-foot, 20-foot or 6-foot sign – all of these signs will not provide the visibility desired.

Mr. Santee stated that this request will move forward to the City Council and Mr. Musgrave provided information that there are negotiations underway to change the exits/entrances. Mr. Santee stated that it is quite possible if the exits are moved, that none of the signs will be visible prior to arriving at the exit ramp. This location of the exit ramp is information that will be helpful to both Cracker Barrel and to the City Council.

Mr. James stated that this situation is similar to the sign situation on the loop. Regardless of the size of the sign, the exit was so far back that no sign is visible from the exit point; therefore, the sign served more of an “informational” purpose. This is accomplished by a monument sign or a 20-foot sign. Relying on billboards or the TxDOT blue signs will provide exit information. Staff is in discussions with TxDOT regarding potential locations for the blue logo signs.

Ms. Campos stated that if the Commission votes to approve a 35-foot sign and Mr. Roder approaches his home office with the new information provided by Mr. Musgrave regarding the moving of the entrance/exit ramps and the blue signs would eventually be installed, then, this would make a difference regarding signage. Ms. Campos stated that she felt it important to adhere to the Comprehensive Plan recommendations regarding signage.

**Mr. Boykin moved to amend the request and follow City staff’s recommendation of a maximum height of 20 feet (secondary recommendation).**

Mr. James asked for clarification on this motion: Is this only for this individual tract, for all tracts along the interstate, or for all of the out parcels?

Mr. Boykin stated that he thought the Commission was addressing this specific site.

Mr. James stated that the entire PDD is being considered (modified) so in the sign section of the PDD reference is made to all other signs being monument signs.

Mr. Boykin stated that he would like to limit the motion to this specific site.

At this point Mr. Boykin withdrew his motion.

**Mr. McClarty moved to deny the request to allow an additional freestanding sign, 60 ft in height, 200 square feet in area. Mr. Boykin seconded the motion and the motion carried by a vote of five (5) in favor (Banks, Boykin, Campos, Harkins, and McClarty) to none (0) opposed.**

b. Z-2005-15

Public hearing and possible vote to recommend approval or denial to the City Council on a request from the Ball Family Trust to rezone property located in the 2400 block of Old Anson Road from RS-6 (Single Family Residential) and RS-6/H (Single Family Residential and Historic Overlay Zoning) to PDH (Planned Development Historic District). The legal description being 19.7 acres out of Tract 20, Steffens and Lowden Addition, and Tract 101, Block A, New Life Temple Assembly of God Addition, Abilene, Taylor County, Texas

- Request: Rezone property from RS-6/H to PDH
- Notification: Two (2) comment forms were received in opposition (one (1) comment form represents two parcels of land.).
- Staff Recommendation: Approval

Mr. Armstrong stated that the Landmarks Commission considered this item on April 26, 2005, and they have forwarded a recommendation of approval. Members of the Landmarks Commission are present at this meeting and can answer any questions the Commissioners may have regarding this rezoning request.

The area in question consists of four (4) tracts of land and the Landmarks Commission will review development on any tract except tract 4 (located on the east side of Old Anson Road).

The proposed PDD provides for a view Corridor Buffer around the historic structure and the surrounding yard and provides for limits of signage and driveways. Each tract is proposed to have a various use: Tract 1 will be allowed to have RS-6, RM-2 uses (development of up to 24 units per acre), an Antenna Tower (existing), Radio Studio, TV Studio, and Recreation Building. Tract 2 proposed uses would include RS-6, Group Residential (this includes the historic structure on the site), and Social Service Organization. Tract 3 uses would include RS-6; College/University; Church/Place of Worship; and Kindergarten/Child Care. The church which currently exists on the east side of Old Anson Road will be reconstructed on the opposite side of the street and include a Bible College on the Vogel Avenue end of the property. The Bible College will include classrooms; dormitories; and other gathering areas. Tract 4 uses include RS-6; College/University; Church/Place of Worship; and Special Education & Rehabilitation Center.

Mr. Harkins opened the public hearing.

Mr. Fred Robinson, Architect for this project, addressed the Commission. Mr. Robinson stated that Note #2 on the zoning map provided to the Commissioners specifically states that the site development plans and building plans require a Certificate of Appropriateness from the Landmarks Commission for tracts 1, 2, and 3. The multi-family housing units located on Tract 2 will be for senior citizens. This development will be privately owned by a developer, utilized for tax purposes.

Pastor Ezequiel Pecina stated that he is the Pastor of New Life Temple located on Old Anson Road. Pastor Pecina stated that on the property where the existing church is located they would like to develop a "Dream Center." The Dream Center is a live-in work/discipline based intensive one year program for men, women and youths (rehabilitation for drug/alcohol abuse and anger management).

Ms. Carolyn Pecina stated that the housing that will be constructed will be "affordable housing," which has strict criteria and is income based. The primary target group for this multi family housing will be senior citizens.

Mr. Billy Enriquez stated that he has concerns regarding a rehabilitation facility close to a little league baseball field. Mr. Enriquez stated that the Sears Neighborhood needs decent, affordable housing – but,

single family housing not multi family or apartment complexes. Mr. Enriquez stated that communication between the developer and the neighborhood is necessary.

Mr. Harkins closed the public hearing.

Mr. McClarty stated that he has no problem recommending that this item be tabled until next month to allow the developer and neighborhood to meet and discuss concerns.

Mr. Harkins recommended passing this on to the City Council. Between now and the time the Council holds a public hearing on this item, the parties could meet to discuss the development.

Mr. Armstrong stated that the public hearing for this item would be held on May 26, 2005. That will give the parties approximately three (3) weeks to meet.

**Mr. Boykin moved to approve Z-2005-15. Ms. Banks second the motion and the motion carried by a vote of four (4) in favor (Banks, Boykin, Harkins, and McClarty); one (1) abstention (Campos); and, none (0) opposed.**

c. Z-2005-16

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Kathy Cypert to rezone property located at 6102 Buffalo Gap Road from RS-8/COR (Single Family Residential with Corridor Overlay) and AO/COR (Agricultural Open Space with Corridor Overlay) to RM-3/COR (Multi Family Residential with Corridor Overlay). The legal description being one acre out of the Greenwall Survey, and Tract 6 of G.J. Roberts Survey, Abilene, Taylor County, Texas.

Request: Rezone from RS-6 & AO to RM-3 - Note: The Corridor Overlay would remain.

Proposed Uses: Duplexes or Single-family residences on a single lot.

Notification: One (1) response was returned in opposition to the request. Jeff Armstrong read the response sent in opposition from the Wylie Church of Christ.

Staff Recommendation: Approval

Mr. Armstrong stated that staff's opinion is that since Residential Multi Family zoning exists in the area and because RM-3 offers a low-density zoning for multi-family housing (8 units per acre), staff is supportive and recommends approval of the rezoning request.

Mr. Harkins opened the public hearing.

Ms. Kathy Cypert stated that this property would be developed to provide housing units for the elderly.

Mr. H.E. Jenkins, representing the Wylie Church of Christ, stated that the Church's main concern is overflow parking onto the Church's parking lot.

Mr. Santee asked Mr. Jenkins if the Church has given thought to posting and towing?

Mr. Jenkins stated that this has been discussed and could be done; however, they do not feel this is the image the Church wants to present.

Mr. Harkins closed the public hearing.

**Mr. Boykin moved to approve Z-2005-16. Mr. McClarty seconded the motion and the motion carried by a vote of five (5) in favor (Banks, Boykin, Campos, Harkins, and McClarty) to none (0) opposed.**

**Item 6: Ordinance Amendment**

- a. Discussion on a proposed amendment to Section 23-306.5E.(4)(a) and 23-306.5.B(3)(f) of the Zoning Ordinance pertaining to fences surrounding playground areas at childcare facilities.

Ms. Brownell stated that the Site Plan Committee recently reviewed a plan for a new childcare facility. All playground areas for childcare facilities in the City of Abilene require a 6-foot opaque fence surrounding the playground. The “opaque” portion of the ordinance has not been enforced over the past several years; therefore, staff feels that the ordinance can be modified to permit non-opaque fences – still requiring the 6-foot height. This will be changed in two areas: childcare facilities accessory to churches and freestanding childcare facilities.

There were no comments/questions for staff and this item will be placed on next month’s agenda.

- b. Public hearing and possible vote to recommend approval or denial to the City Council on a proposed amendment to Sections 23-306.4 (Permitted Uses), 23-306.5B (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the placement and screening of Freight Containers.

Mr. James stated that the City Council expressed concerns regarding freight containers and made the decision to send the issue back to the Planning and Zoning Commission for further discussion. The current ordinance adopted in 2002 prohibits use of these containers as buildings. The proposed amendment would allow the use of freight containers in some zoning districts with restrictions.

Two issues to be addressed include:

1. Building Standards: Treat as building or outdoor storage?

As proposed, freight containers would be treated as a structure subject to the building code requirements. There are three basic types of building code regulations:

–Construction Use

–Temporary Structure (less restrictive)

–Permanent Structure (more restrictive)

- Foundations only required for structures greater than 400 sf or 10’ height – *would not apply to freight containers*

- Natural or artificial lighting required for any **permanent** structure

- Doors with width of 32” to 48” required for **permanent** structure

- Natural or mechanical ventilation required for **permanent** structure

- Electricity is not required, but structure must be tied down if electric is provided

- **Permanent** structures must be able to withstand 90 mph wind load

- *All structures* must meet requirements for floodplains, setbacks, building separation, etc.

- Permit required for each structure

2. Aesthetic Standards: Where allowed? Screening? Etc.

- Regulates as an Accessory and Incidental Use under the Zoning Ordinance

- Freight Containers allowed in the following districts:
  - *Heavy Industrial* and *Light Industrial*
  - *Heavy Commercial* and *General Commercial*?
- Must be screened from the public right-of-way and from view of other districts, excluding those above
- Screening must be with an opaque material of equal or greater height than the structure

The ordinance forwarded to the Council by this Commission recommended treating a freight container just as any other building.

Based on Council discussion, staff developed a new recommendation:

•New recommendation: *treat all freight containers as a temporary structure, regardless of the length of time in use*

In developing this recommendation, staff looked at our 10 peer cities, plus Amarillo:

- 5 regulate as buildings
- 3 regulate as outdoor storage with screening
- 1 prohibits, except on construction sites
- 2 have no regulations–Common requirements:
  - Limited to industrial and/or commercial districts
  - Setbacks
  - Screening
  - Only side or rear of principal building

City Council sent this issue back to the Planning and Zoning Commission to address the following issues:

–Do we treat freight containers like other structures under the building code, i.e., Permanent Structure, *Temporary Structure* or *Outdoor Storage*?

- How should we treat portable buildings?
- The same as always (under the building code)?
  - The same as freight containers?

- What is appropriate screening?
- Industrial vs. commercial?
  - Screening height (height of container too tall?)
  - Aesthetic concerns if not screened

Staff recommends that freight containers be treated as a temporary building regardless of term of use.

How should we treat portable buildings?

- The same as always (under the building code)
- This is one reason staff does not support treating FCs as outdoor storage, because it results in much more unequal treatment of FCs vs. Portables*

What is appropriate screening?

- In Commercial, require screening per draft ordinance
- In Industrial, require screening from less-intensive zoning districts, but not from the right-of-way
- 7' screening height, rather than height of container
- No stacking of containers



- For unscreened containers, all on a site should be the same solid color
- Container should not have signs, logos, or other markings visible from the right-of-way, other than small, incidental labeling

Mr. Harkins stated that it has always been his stance that landscaping be required rather than an opaque fence. He stated that personally he would like to have the requirement for an opaque fence removed and state that all or a majority of the screening will be provided by landscaping.

Mr. Harkins opened the public hearing.

Mr. Bob Hammond, Executive Director of the Abilene Association of Independent Business Owners, stated that what is being proposed is beginning to look good as far as business owners are concerned. The proposed zoning districts for freight containers are supported by the business community. This issue becomes confusing when addressing freight containers as permanent vs. temporary structures; placement in the floodway; and, safety factors. Also, the issue of minimum building separation in the “temporary” classification is a concern. Mr. Hammond stated that there is far too much diversification in the uses for these containers to be addressed for a single ordinance to work well in all situations.

There was discussion regarding preparing an ordinance that addresses only freight (sea) containers. Mr. James stated that the concern he has with preparing such an ordinance is that some detail would be omitted.

Mr. Hammond stated that if the Commission is looking at outdoor storage or temporary structure, he would encourage the Commission to allow fencing as it would be more practical than landscaping and there be no advertisements on the containers.

Mr. Boykin stated that he would like for the Commission to address the three questions posed by the City Council individually.

1. Do we treat freight containers like other structures under the building code, i.e., Permanent Structure, *Temporary Structure or Outdoor Storage*?

**Mr. McClarty moved that freight containers be treated as permanent buildings.**

Mr. Harkins stated that this is the same recommendation as the original recommendation sent to Council.

Mr. Boykin asked if he is correct that this is not staff’s recommendation.

Mr. James stated that this was staff’s initial recommendation. Based on discussions with Council, staff revised their recommendation to treat freight containers as temporary structures.

Mr. McClarty stated that the Commission’s original recommendation was to treat freight containers as permanent structures.

Mr. James stated that this is correct and staff would support the original recommendation.

**Mr. Boykin seconded the motion.**

Mr. Harkins asked staff for clarification that a permanent foundation would not be required unless the container exceeds 10-foot height and 400 square feet.

Mr. James stated that this is an either/or (10-feet in height or 400 square feet).

Mr. Boykin asked if it was correct that there would be no stacking of the containers in any case – permanent or temporary.

Mr. James responded affirmatively.

**Mr. Boykin seconded the motion.**

Mr. Harkins stated that lighting is required, electric is not required.

Mr. James stated that the greatest issue is ADA accessibility.

**Mr. Boykin withdrew his second of the motion and asked Mr. Sartor to address the ADA requirements.**

Mr. Harkins closed the public hearing.

David Sartor, Building Official, stated that if a permanent structure is recommended, then the light and ventilation, egress, accessibility requirements would be applied to freight containers as they are to any other permanent structure. Mr. Sartor stated that under the Building Code, a temporary building which would be allowed for six (6) months negates all of the above-mentioned requirements. This is the reason for staff recommending “temporary structure.”

Mr. McClarty asked about State requirements for accessibility.

Mr. Sartor stated that State requirements would have to be met if the structure is occupied. If the container is utilized only for secondary storage, the container would not have to meet the accessibility requirements.

**Mr. McClarty’s motion failed for lack of a second.**

Mr. Harkins recommended ventilation required, no minimum separation from other containers but include minimum building separation from primary structure.

**Mr. McClarty moved that freight containers NOT be permitted in the City of Abilene. Mr. Boykin seconded the motion and the motion failed to carry by a vote of two (2) in favor (Boykin and McClarty) to three (3) opposed (Banks, Campos, and Harkins).**

**Mr. McClarty moved that freight containers be rated as permanent structures. The motion failed for lack of a second.**

**Mr. Boykin moved that the Commission recommend to City Council that freight containers be treated as temporary structures with ventilation required and building separation between the primary structure and the container (not between each container). Ms. Banks seconded the motion and the motion carried by a vote of four (4) in favor (Banks, Boykin, Campos and Harkins) to one (1) opposed (McClarty).**

2. –How should we treat portable buildings?
  - The same as always (under the building code)?

- The same as freight containers?

**Ms. Campos moved to continue to treat portable building as has always been done. Ms. Banks seconded the motion and the motion carried by a vote of four (4) in favor (Banks, Boykin, Campos, and Harkins) to one (1) opposed (McClarty).**

3. What is appropriate screening?
  - Industrial vs. commercial?
  - Screening height (height of container too tall?)
  - Aesthetic concerns if not screened

**Mr. Harkins moved that screening be required in Commercial areas – landscape screening NOT utilizing opaque fencing; in industrial areas, require screening from less intensive zoning districts but not from the right-of-way; continuous five-foot hedge and tree spacing of 20 feet; freight containers of same color; and no logos or markings. Mr. McClarty seconded the motion and the motion carried by a vote of five (5) in favor (Banks, Boykin, Campos, Harkins, and McClarty) to none (0) opposed.**

7. Director’s Report

Mr. James stated that staff is close to filling the vacant Planner position created by the resignation of Shannon Meinhold.

There being no further business, the meeting was adjourned at 5:20 p.m.

Approved: \_\_\_\_\_, Chairman