
PLANNING & ZONING COMMISSION
September 5, 2006
Minutes

Members Present:

Eddie Boykin
Ovelia Campos
Fred Famble
Jack Harkins
Jeff Luther
Lydia M. Long
Tim McClarty

Staff Present:

Dan Santee, First Assistant City Attorney
Jeff Armstrong, Development Services Manager
Bob Lindley, City Engineer
Gloria Brownell, Planner I
Justin Fortney, Planner I
JoAnn Sczech, Executive Secretary (Recording)

Others Present:

Donald Taylor
Roy Helen Acres
Darrell W. Moore
Bill Beam
Mark Zachry
Brad Poorman
Kristie Poorman
Tom Choate
Darryl Schriver
Lynn Hays
David Taylor
Paula Shahan
Jack Stricklin
Linda Stricklin
Cara Holt
Janice Menyons
Joel Cox
T.O. Suterland
Andy Stanton
Martha Smiley
Brian Abercrombie
James McKee
Jeff Norwood
Paul Graham
Sara Graham
Kenneth L. Musgrave
Ken Musgrave
Quanah Parker
Bob Hammond

Media Present: Sarah Kleiner, Abilene Reporter-News.

Item One: Call to Order

Ms. Campos called the meeting to order at 1:33 p.m. and declared a quorum present.

Item Two: Invocation

Mr. Famble gave the invocation

Item Three: Approval of Minutes

Mr. Boykin moved to approve the minutes of the August 7, 2006, meeting as submitted.

Mr. Harkins seconded the motion and the motion carried unanimously.

Ms. Campos read the opening statement for the Planning and Zoning Commission.

Item Four: Plats

Gloria Brownell provided information for completed plats (Agenda Items a., b., c., d., and e.). Ms. Brownell stated that staff is recommending approval of these plats as all meet Subdivision Regulation requirements. Item f. is incomplete and not ready for consideration by this Commission.

Ms. Campos opened the public hearing and asked if anyone wished to speak regarding any of the plats being presented for approval. No one came forward and the public hearing was closed.

Mr. Harkins moved to approve Items a., b., c., d., and e. Mr. McClarty seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

Mr. McClarty moved to deny Item f. Dr. Long seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

Item Five: Rezoning Requests

a. Z-2006-24

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Weatherbee Construction, agent David Todd, to rezone property from AO (Agricultural Open Space) to PDD (Planned Development District) zoning, located on the southeast corner of Dub Wright Boulevard and Jennings Drive. Legal description being 6.33 acres out of the William Bishop Survey #43, Abilene, Taylor County, Texas.

Gloria Brownell provided the staff report for this item. The request is to rezone 6.33 acres from AO to PDD. The property is currently vacant and adjoins vacant property to the south. A single-family home is located directly east and Dyess Air Force Base is located northwest of the tract across Dub Wright Boulevard. The subject property was annexed in 1959 and has been zoned Agricultural Open Space since that time.

The applicant is requesting to develop the majority of the property with Self-Storage units with possible commercial uses along frontage of Dub Wright Boulevard. The property's proximity to Dyess Air Force Base heightens the need for a quality development with an attractive appearance. With this in mind, staff felt that a PDD would be appropriate to ensure the long-term quality of the development and to allow enhanced appearance standards for the structures that

will be visible from the right-of-way. The aesthetic provisions in the proposed ordinance are consistent with the recently-approved PDD located north of the parcel across Jennings Drive (Z-2006-23). It offers reduced setbacks to increase the buildable area of the tract if parking is not located between the structures and the right-of-way and includes provisions for landscaping, building materials, screening, sidewalks, and driveway access to enhance the appearance and accessibility along the corridor adjacent to Dyess Air Force Base.

The Future Land Use portion of the Comprehensive Plan designates a large area around the request as a location for low-density residential development. However, non-residential uses are generally considered appropriate when located at the intersection of an arterial and a collector. The PDD was designed to provide flexibility throughout the development process that would be consistent with some of the mixed-use goals mentioned in the Comprehensive Plan.

Furthermore, the Thoroughfare Plan designates Dub Wright Boulevard as a Visual Pathway and addresses the designation specifically with the following recommendation:

These are roadways around or into the City that give the passer-by a lasting impression of the City. Therefore, development along these highways should be carefully monitored so as to maximize positive images of the City. Concentrated efforts from both the public and private sectors to enhance and preserve the visual quality along streets can be achieved through the application of Planned Development Districts (PDD). These zoning districts are “designed to promote, through unified planning and development, more efficient land use, more sensitive treatment of natural features, harmonious integration of diverse activities, and creative design.”

Review of zoning requests, subdivision plat submittals, and public improvement projects on designated visual pathways should be considered for the following guidelines:

- Landscaping
 - Landscaping, compatible with pedestrian safety and sight distance requirements, is recommended in the area between the street right-of-way and adjacent building lines.
- Design
 - Screening is recommended for open storage waste disposal containers, loading areas, and outdoor storage.
 - Parking should be discouraged on the street and encouraged to locate at the side or rear of buildings. (Adopted 1985)

Property owners within 200 feet of the rezoning request were notified. No responses were received either in favor or in opposition of the request.

Planning staff recommends approval of the attached PDD ordinance.

Ms. Campos opened the public hearing.

Mr. Paul Johnson stated that he is working in conjunction with Mr. David Todd and representing Mr. Weatherbee on the development of this project. Mr. Johnson stated that office construction is planned for the development to the north of this project. The intention is to make this a high quality development along Dub Wright Boulevard. The PDD provides flexibility depending upon market requirements for the area.

Ms. Campos closed the public hearing.

Mr. Boykin moved to approve Z-2006-24. Mr. Harkins seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

b. Z-2006-25

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Taylor Electric Cooperative Inc., agent Thomas W. Choate, Attorney at Law, to rezone property from AO (Agricultural Open Space) to PDD (Planned Development District) zoning, located 2582 Waldrop Drive. Legal description being 3.7 acres out of Subdivision 7 of the Fasshauer Subdivision of Surveys 10 and 12, Lunatic Asylum Lands, Abilene, Taylor County, Texas.

Jeff Armstrong provided the staff report for this request. Mr. Armstrong noted a correction to the acreage for this request – the acreage should be for 3.01 acres, not 3.7 acres as indicated on the agenda. This request is to rezone a 3 acre parcel from AO to PDD for an electric substation. More than a year ago, an electric substation was constructed on the site, which includes several electrical structures, a metal building, chain-link fencing, and a driveway from Waldrop Drive to the facility. This area was annexed in 1980 and has had AO zoning since that time.

This request is for a PDD. The facility as constructed and as proposed in the PDD ordinance, would have significant restrictions on signage and lighting, would require landscaping, and would limit the use to only the substation.

The area is sparsely developed with single-family residences. The rest of the area is open space or used for agricultural purposes. Approximately ¼ of a mile to the east is an AEP electric substation.

Sufficient electrical service is necessary for the development of land. To accommodate this development, electrical facilities, such as the one under consideration, are often found in close proximity to residences.

Taylor Electric needs a new facility to provide adequate electric service to the increased customers that they have in the southern parts of Abilene. This facility would provide the necessary capability.

Property owners within 200 feet of the rezoning request were notified. Four responses were received in opposition of the request and no responses were received in favor of the request.

Planning staff recommends approval of the PDD rezoning request.

Mr. Boykin stated that in viewing the aerial photograph of the site there appears to be quite a bit of debris on the site.

Mr. Armstrong stated that there is (or there was when the photographs were taken) quite a bit of debris on the property; however, the property has not been inspected recently. Mr. Armstrong stated that the PDD could be crafted to require the screening of outdoor storage.

Ms. Campos opened the public hearing. Ms. Campos stated that this case has been before this Commission previously; therefore, the five-minute time frame will be closely followed.

Mr. Tom Choate, agent for Taylor Electric, requested additional time to respond to all objections regarding this substation. Mr. Choate stated that Mr. Darryl Schriver, General Manager and Chief Executive Officer for Taylor Electric would be making a brief presentation and then Mr. Choate would conclude his presentation.

Mr. Darryl Schriver provided information regarding Taylor Electric Coop and the need for this substation. Application highlights include:

- Meet or exceed code requirements
- Address customer growth
- Address Taylor Electric's obligation to serve under PUC standards and by their own utility rights
- The current location is owned by Taylor Electric; it is off the main roadway; it is central to the needs of the customers; it is beneath existing transmission lines with a minimal amount of construction; allows the least amount of takings or rights of condemnation; and addresses 2,380 new residential customers in south Abilene.
- Approval of this application will provide the least amount of impact and provide Taylor Electric with the most amount of service according to their City franchise.
- Distribution feeders were buried in the right-of-way on Waldrop Lane.
- Taylor Electric has been in the south Abilene area since the existence of their system; they have had aerial lines in the area for several years; and, requested the Commission seriously consider approval of this request.

Mr. Tom Choate, attorney for Taylor Electric, stated that his goal for being at this meeting is to explain to the Commission why they are here, what is different from the last time they were before the Commission, and why this rezoning request should be approved.

Mr. Choate stated the "why" is the need in light of the rapid growth in the area. The lack of availability of an alternative site in the area centrally located to the need of the subject area is the second reason. And lastly, they have a legal right under the Zoning Ordinance and under the ordinances of the City of Abilene to submit this application and to request the Commission consider the request. What is different from the last time Taylor Electric appeared before this Commission is that alternative sites have been explored in the subject area that could be utilized centrally to service growth areas. Taylor Electric has been unable to locate suitable property that could be purchased. Certain conditions must be met for location of the transmission station: (1) availability of transmission lines; (2) accessible via a black-top road or all-weather road; and (3) security concerns.

Mr. Choate stated that electrical service must be provided and the infrastructure of Taylor Electric must grow with the demand. There will be a substation somewhere in this area and the question is whether Taylor Electric will be able to utilize their own land which they purchased for this purpose – meeting all requests and regulations of the City of Abilene. If this request is not approved, the alternative is, it appears, that for the first time in Taylor Electric's 68 year history they must consider a condemnation proceeding. Mr. Choate stated that if this request is not approved, they will possibly be forced into the condemnation proceeding.

Mr. Choate stated that in the past there have been complaints or objections to the number of poles in the area. Mr. Choate stated that these poles are not the property of Taylor Electric and Taylor Electric is not proposing placing additional poles in the area. All of the existing poles are the property of AEP – and not one existing line or pole will be affected by the Commission's

decision today. These poles and lines will remain on the Stricklin's land, the Shahan's land, and the Poorman's land unless AEP removes them. Mr. Choate stated that he has met or spoken with these property owners and no consensus has been reached. Mr. Choate stated that Taylor Electric even proposed to purchase the Stricklin home and property and have not been successful in this endeavor. Mr. Choate stated that the only issue to be determined today is whether this request is an appropriate use of this piece of property under the current Zoning Ordinance. Mr. Choate stated that they (he and Taylor Electric) think it is, the answer is clear that it is an appropriate use and should be approved because:

1. This PDD application and everything Taylor Electric has been willing to do is completely within or exceeds the requirements of the code;
2. The customer growth and the TEC obligations under the PUC regulations;
3. It is an idea location; owned by Taylor Electric, off the roadway, central to the existing need, directly under an existing transmission line, and avoids the condemnation process.
4. It affects 2380 new residential customers that will be serviced now and in the future by this particular substation.
5. Approval of this request will impact the least number of people and provide the most service to the growing population of south Abilene.

Commissioners asked Mr. Choate about the exploration of particular alternative sites.

Ms. Campos stated that she believes the same situation will be encountered no matter where the substation is located because there will be other residents who will object to the location.

Mr. Jack Stricklin stated that he is frustrated because he thought this issue had been resolved. Mr. Stricklin stated that they have never disputed that there is a need for electrical providers and individuals have the right to choose their electrical provider; however, there is a proper procedure for accomplishing this. This request has been denied by the Board of Adjustment, the Planning and Zoning Commission, and the City Council. And, basically, nothing has changed – this is the same request. Mr. Stricklin stated that he called the City on January 31, February 1, 3, 7, and 28 to notify them that Taylor Electric was continuing construction on this site. Mr. Stricklin stated that he did receive an offer from Taylor Electric to purchase his home and two (2) acres of land. This offer came with a 20-day time limit to accept or reject the offer. Mr. Stricklin stated that there are other sites available for this substation.

Mr. Mark Zachry, attorney, representing Mr. and Mrs. Stricklin stated that if the Commission reviewed the application submitted and ordinance proposed last year, it could be determined that in substance these documents are almost identical. Mr. Zachry urged the Commissioners to consider the following:

- Load analysis data provided by Taylor Electric
- Ordinance regulations regarding electrical substations (allowed as right of use in HI, LI, HC, and PI, with conditions)
- The proposed PDD is for a single use for a single party (how many other similar PDDs exist?)
- Effect on the Stricklins in terms of there being an electrical distribution facility and an electrical substation that literally “sandwich” their home in a HC or HI zone
- Burden of Taylor Electric in this case – i.e., “In the Zoning Ordinance it is stated that no proposed amendment shall be recommended by Planning and Zoning or passed by

Council except on substantial proof that it is in accord with sound zoning practices and will serve and promote the above described purposes.”

Mr. Brad Poorman stated that he disagrees that the situation has changed since this case was last considered – it is the identical situation as when the case was last heard by the Planning and Zoning Commission. If proper procedures had been followed, then all the landowners would have had the opportunity to voice their opposition prior to commencement of construction. Mr. Poorman stated that in his opinion the only way this right can be regained is if the Planning and Zoning Commission’s decision today is based, not on what is on the site today, but as if there was no substation on the site and correct procedures had been followed. Mr. Poorman stated that he can see no material difference in the original request except that land is more expensive than they (Taylor Electric) anticipated. Also, ignorance of the law is no excuse and requested the Commissioners to ask themselves how they would vote if the substation did not exist and the land was not owned by Taylor Electric, especially in light of the objections of the surrounding neighbors.

Ms. Paula Shahan stated that she was the owner of the 30 acres to the west of the substation. This property has been family owned for many years. Once the City Council denied the request and Taylor Electric had been instructed to dismantle the substation, Ms. Shahan signed the land over to younger family members. Ms. Shahan stated that Mr. Choate called her regarding the substation, they spoke on the phone about this matter, and she informed Mr. Choate that if the situation changed or if she had questions she would contact him. Ms. Shahan stated that she left it up to Mr. Choate and Taylor Electric (if they wished the substation to remain) to contact her if they wished to purchase her 30 acres. Ms. Shahan stated that she received no call from Mr. Choate or Taylor Electric. Mr. Shahan stated that she and her family are opposed to the substation and do not believe that Taylor Electric has correctly installed this substation.

Mr. Linda Stricklin expressed her concern that their home is “sandwiched” between two substations – AEP on one side and Taylor Electric on the other creating an electro-magnetic field. There are no other substations in the City of Abilene built this close together (nor in the entire State of Texas that they have been able to locate).

Ms. Campos asked for clarification from Mrs. Stricklin regarding the check submitted to the Stricklins by Taylor Electric. Ms. Campos asked if it was correct that Taylor Electric sent a check for the purchase of the Stricklin’s home without any dialog with the Stricklins.

Mrs. Stricklin stated that they had not heard from Taylor Electric for one year (during which time the Stricklin’s assumed the substation would be dismantled). Then six (6) days after Taylor Electric reapplied for rezoning, a check was sent to Mr. Zachry’s office for the Stricklins.

Mr. Zachry stated that for clarification purposes, Mr. Choate called his office to ask if Mr. Zachry still represented the Stricklins in this matter. Mr. Choate met with Mr. Zachry at which time he delivered a letter and check for the Stricklins. Mr. Zachry sent the letter and a copy of the check to the Stricklins. No negotiations took place between Mr. Choate and the Stricklins.

Mr. Choate stated that Taylor Electric has made numerous proposals to the Stricklins through Mr. Zachry. Mr. Choate stated that he has not received one single counter-offer, negotiation, or comment from the Stricklins. Mr. Choate explained to Mr. Zachry the proposal and the reason for this type of action. The letter provided by Mr. Choate to the Stricklins provided how they determined fair market value plus an extra dollar amount for the Stricklin’s property.

Mr. Stricklin stated that prior to the City Council meeting last year, the Stricklin's met with Taylor Electric. This meeting was to occur under two conditions: (1) an agreement of confidentiality be signed; and, (2) that the Poormans and the Shahans also be given an opportunity for a settlement. Mr. Stricklin stated that an agreement could not be reached. Following denial of the request by the Council, the Stricklins heard nothing from Taylor Electric until Mr. Zachry delivered the letter from Taylor Electric with the check enclosed. Mr. Stricklin stated that they notified Taylor Electric through Mr. Choate that they were rejecting the offer; however, the conditions discussed prior to the 2005 Council meeting were still the conditions under which the Stricklins would meet with Taylor Electric. Forty-five days after this letter was mailed, a response was received from Taylor Electric. Taylor Electric returned the confidentiality agreement but with four or five if the original conditions eliminated, which rendered the confidentiality agreement virtually useless for the Stricklins.

Mr. Timothy Southerland stated that he has followed this case in the newspaper for the past year and cannot believe what he is hearing at this meeting. Mr. Southerland stated that he is an electrical engineer and understands cellular damage due to inductive current and if this (the Stricklins property) is between, he would not live there. Mr. Southerland stated that he felt is time for the "big guys" receive punitive damages for their wrongdoing. Mr. Southerland stated that the fact that they (Taylor Electric) has not been condemned or in contempt of compliance of the law and the decisions of this municipality is terrible and does not understand how they have gotten away with this.

Ms. Cara Holt stated that she believes that Taylor Electric is wrong and they need to take down the substation.

Ms. Campos closed the public hearing.

Ms. Campos opened discussion among the Commissioners.

Mr. Luther stated that if you are a business like Taylor Electric and are the "people's company," as Taylor Electric has stated they are, that company has an obligation to locate a site for a substation where the neighbors will not object. Mr. Luther stated he would rather see a substation installed within a vast area of vacant land and have the homes built around the substation – in this case the property owner has the choice of location. Mr. Luther stated that he feels the issue here is that the homes were in place when the substation was constructed.

Mr. Harkins stated that one issue concerning him is that this request was denied three times in the past and publicly it was stated that the substation would be dismantled; therefore, the availability of alternative sites is an issue (whether or not Taylor Electric conducted an extensive search for an alternate site plays into this in a very big way for him personally).

Mr. McClarty stated that he is viewing this case strictly from a zoning issue – is that piece of land appropriate for this use. Mr. McClarty stated that his thought is that it appears to be an appropriate use for that piece of land based on the number of people it will affect.

Ms. Campos stated that she agrees with Mr. McClarty regarding the zoning; however, the fact that this request was denied three times and Taylor Electric stated that volunteers had been secured to dismantle the substation – part of the decision must be based on principle.

Dr. Long moved to deny Z-2006-25. Mr. Luther seconded the motion and the motion carried by a vote of four (4) in favor (Harkins, Long, Luther and Campos), two (2) in opposition (Boykin and McClarty) and one (1) abstention (Famble).

c. Z-2006-34 (TABLED)

Mr. McClarty moved to remove this item from the table. Dr. Long seconded the motion and the motion carried unanimously

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Hopper Development Corporation, agent Ann Stinson of Tractor Supply Company, to amend PDD-75, located at 4450 and 4590 Southwest Drive. Legal description being Lots 1 & 2, Block 1, Home Depot Addition, Abilene, Taylor County, Texas.

Jeff Armstrong provided the staff report for this item. This item was considered at the Commission's August meeting. The request is to amend PDD-75 ordinance regarding outdoor storage and display. The PDD has two lots: one is the location of Home Depot and the other is Tractor Supply. Both businesses have outdoor display and some storage. The Tractor Supply lot has a substantial amount of items outdoors in the parking lot and on landscaped areas in excess of what is allowed in the existing PDD ordinance.

The applicant has accommodated much of the storage under the existing ordinance. However, Tractor Supply wishes to utilize the large landscape island in the middle of the parking area for outdoor display. They are willing to limit that display to one item of each product. Staff's opinion is this area is intended to be landscaping and this sort of display should not be approved.

Staff received complaints regarding the outdoor display at the Tractor Supply store. Part 7: 2.L of PDD-75 states, "Display of goods shall be prohibited in landscaped and parking area." Upon investigation, staff determined that there are many items stored or displayed on the Tractor Supply property in violation of the PDD ordinance, both in the parking area and landscaped area. The Home Depot has a small number of items displayed in landscaped areas, in violation of the PDD ordinance.

The PDD was created in an attempt to have quality development in a PDD consistent with the Wal-Mart Supercenter PDD located just to the east. These PDDs were also intended to reduce the negative impacts of "big box" development on nearby residential areas. A number of PDDs have been considered recently that limit outdoor display to a percentage of the property, without stating exactly where. Outdoor display is always prohibited on required parking spaces and generally prohibited in required landscaped areas. According to the approved site plan for Tractor Supply, there are 106 parking spaces, 11 more than required. However, the existing PDD ordinance states that display can not be in any parking spaces.

Tractor Supply is proposing an amendment to specify where outdoor display may be located. The graphic provided to staff shows 46 of the 106 parking spaces on the site to have display items. This would mean that 35 required parking spaces could be taken up by display. Display is also proposed for 3 landscaped islands in the parking lot.

Staff's opinion is that the ordinance should remain as it was approved. However, any amendments regarding outdoor display should be limited to an area or areas specifically shown on a plan and should not be located on any required parking spaces. As an additional factor, the

site plan shows a “Display Yard” of 17,759 square feet on the east side of the building. No other outdoor storage or display areas were shown on the approved site plan.

Planning staff recommends denial of the request.

Mr. Armstrong stated that staff is opposed to the request because it is felt that the landscaping that was a part of the original ordinance should be retained. If the Commission changes the PDD, staff suggests limits in order to retain some of the landscaping requirements. Tractor Supply acquired this parcel with all the present requirements in place. Mr. Armstrong stated that if this amendment is approved, staff will create a text amendment to the PDD including a site plan that designates the only area upon which display and landscaping can be placed – this method would limit text changes to Tractor Supply and NOT pertain to Home Depot.

Dr. Long stated that her recollection from last month’s meeting was that Tractor Supply was asked to clean up the area (display and not storage) before the Commission’s next meeting. Dr. Long stated that she drove through the parking lot prior to this meeting and the area is still cluttered. Dr. Long stated that her recollection of last month’s meeting regarding this item was that three weeks would be allowed to remove the merchandise from the parking and/or landscaped areas.

Mr. Harkins stated that it was his recommendation that this item be tabled at last month’s meeting. Mr. Harkins stated that what he envisioned was removing eleven parking spaces around the triangle at the east end of the property and designate this area as an outdoor display area, complete with landscaping and screening. Outdoor display could be accomplished without approval from this Commission if it was completed in the manner in which Mr. Harkins described above.

Ms. Campos opened the public hearing.

Mr. Joel Cox, manager of the Tractor Supply operation, stated that his understanding following last month’s meeting was to develop a new plan. Mr. Cox stated that a plan was developed to pave the triangle area behind the building and create a fenced area behind the building for merchandise. Because this area is behind the building, Mr. Cox stated their plan is to remove all merchandise from the front parking lot, with the exception of the display area adjacent to the sidewalk. The triangle area in the front of the building would be utilized to display a representation of merchandise located behind the building. Mr. Cox stated that he met with Mr. Armstrong and an agreement had been reached. Mr. Cox stated that currently this is in the process of getting approval from Tractor Supply.

Dr. Long asked Mr. Cox if he understood that staff is recommending denial of this request.

Mr. Cox stated that staff is not agreeing to Tractor Supply displaying merchandise in the triangle.

Mr. McClarty asked for clarification regarding the merchandise currently displayed in the front of Tractor Supply. Is it correct that all of this merchandise will be moved to the rear of the building?

Mr. Cox stated that this is correct.

Mr. McClarty asked Mr. Cox if he foresaw a problem with the planting of trees.

Mr. Cox stated that he does not have a problem with trees as long as the view of merchandise is not obstructed.

Mr. Donald Taylor stated that he has heard Tractor Supply plead their case at this meeting and he has seen much worse display within the City. Mr. Taylor stated that he felt that Tractor Supply has a legitimate case and should be left alone.

Ms. Campos closed the public hearing.

Mr. McClarty moved that Z-2006-34 be approved with the addition of Exhibit A. Dr. Long seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

d. Z-2006-35

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Kenneth L. Musgrave, agent Tal Fillingim of Jacob & Martin, Ltd., to rezone property from SC (Shopping Center) to PDD (Planned Development District) zoning, located on the north side of Highway 351 approximately 1500 feet east of East Lake Road. Legal description being part of Lot 1, Block F, Section 1, Quail Valley Northeast, Abilene, Taylor County, Texas.

Justin Fortney provided the staff report for this case. The request is to rezone property from SC (Shopping Center) to PDD (Planned Development District). This property is currently vacant developable land. It is northeast of the rapidly growing commercial area around I-20 and Highway 351. The property was originally zoned AO when the western portion was annexed in 1980 and the remaining portion in 1982. In 1983 this property was rezoned to SC and the adjoining property was rezoned to residential multi-family.

The applicant wishes to develop this general area with shopping center uses and self-storage units. They are proposing to build the storage units including climate controlled storage units and Recreational vehicle storage in this PDD. The intensity of this type of land use is very low, but can often be an eyesore. The PDD has been written to allow this use but will also protect the aesthetics of the area.

This subject area is just northeast of a major Commercial Business Activity Center that has been designated in the Comprehensive Plan. Mixed uses, pedestrian-friendly development, and aesthetic enhancement of building facades and site design are mentioned to help create a “more livable, vibrant, and accessible community.” The applicable objectives have been addressed by the proposed PDD.

Planning staff recommends approval of the request. Property owners within 200 feet of the rezoning request were notified. One (1) comment form was returned in favor of the request and none were returned in opposition.

Ms. Campos opened the public hearing.

Mr. Donald Taylor stated that he is opposed to the request, particularly since it will result in “hodge-podge” development in this residential area and will not benefit the homeowners in the area. Mr. Taylor stated that the only property owners in the area asked to approve or disapprove

this request were Mr. & Mrs. Bontke which he believes to be business associates of Mr. Musgrave. This is not a true reflection of the homeowners in the area.

Mr. Kenneth Musgrave stated that he is the owner of the property for which the rezoning is being requested. Mr. Musgrave stated that Mr. Taylor is mistaken – he is not an associate of Mr. Bontke in any fashion.

Tal Fillingim, agent for Mr. Musgrave, stated that the intent for the PDD at this location is to construct storage facilities. Mr. Fillingim stated that they are requesting approval of the PDD as proposed by City staff.

Mr. Taylor stated that in regard to the so-called retention pond, he would like to see this proposal approved by the City Engineer prior to any construction on the property.

Mr. Fillingim stated that he believes the drainage problem mentioned by Mr. Taylor is in the Heritage Park Subdivision. As a part of the next phase of development, actions will be taken to alleviate the drainage problem in this area.

Ms. Campos closed the public hearing.

Mr. Boykin moved to approve Z-2006-35. Mr. McClarty seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

e. Z-2006-36

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Kenneth L. Musgrave, agent Tal Fillingim of Jacob & Martin, Ltd., to rezone property from AO (Agricultural Open Space) and HC (Heavy Commercial) to PDD (Planned Development District) zoning, located on the north side of I-20 approximately 1700 feet east of Highway 351. Legal description being 26.4 acres out of Surveys 24 & 33, Blind Asylum Land, Abilene, Taylor County, Texas.

Justin Fortney provided the staff report for this case. The request is to rezone property From HC (Heavy Commercial), LI (Light Industrial), GC (General Commercial), and AO (Agricultural Open Space) to PDD (Planned Development District). The southern portion of the property is currently vacant developable land. There is a vacant church building and communication tower located on the northern most portion of the proposed PDD. This property was originally zoned AO when the southern portion was annexed in 1964 and the remaining portion in 1980. The main portion was rezoned to HC in 1994. The other areas that are not zoned AO were rezoned to LI and GC in 1983.

Lowe's Home Improvement Center will be the main business in the PDD. There will also be two out parcels that will have frontage onto I-20. The PDD has been written to allow additional acreage to be added to it in the future without having to amend the text. The applicants wish to extend the PDD up to Highway 351 to provide greater access to the development. They are planning to build a private driveway between I-20 and Highway 351. They are currently proposing to build this driveway to city street standards and may later attempt to dedicate it to the City.

The Comprehensive Plan shows that this proposal is located within a major commercial business activity center. Mixed uses, pedestrian-friendly development, and aesthetic enhancement of building facades and site design are mentioned to help create a “more livable, vibrant, and accessible community.”

The Comprehensive plan lists I-20 as the most important gateway into the City. Gateways are the areas where visitors will form their first impression of the city and as such, should reflect the highest quality and provide a glimpse of Abilene’s local identity. For these reasons it is crucial that this area develops within a PDD that accomplishes these goals.

Property owners within 200 feet of this rezoning request were notified and no comment forms were returned either in favor or in opposition of the request.

Planning staff recommends approval of the request.

Mr. David Taylor, Development Manager for Horn Properties, provided each of the Commissioners with a brochure regarding his company and provided a brief slide presentation regarding Horn Properties – who they are and what they do.

Mr. Taylor stated that they have worked closely with City staff during the past few weeks to develop this PDD. Mr. Taylor stated that there are several items where they are not in agreement with staff. These areas include:

II. C. Building Materials

The 10% minimum of exterior face material seems excessive. Mr. Taylor stated that he has attempted to include painted, split-faced block (decorative block). Mr. Taylor stated that changing this to 5% of the face or adding decorative block is more reasonable.

E. Signage

2) (a) Mr. Taylor asked that a third option be added – only one business be advertised (Lowe’s only). The 50’ height is acceptable but 300 square feet of sign area is required.

2) (b) Two (2) group signs is acceptable; however, the size should be changed to 300 square feet

2) (c) Because these signs will be located off the Interstate, it is requested that these signs have a maximum height of 20 feet with a maximum area of 200 square feet

4) (a) If it was noted that banners would only be temporary, this might eliminate some of the concerns expressed by staff

5) (c) Mr. Taylor requested that streamers, pennants, balloons, and similar devices not be prohibited

5) (d) Requested an announcement sign stating “Lowe’s Coming Soon” (Under this section such temporary signs would not be allowed.

Mr. Matt Smiley stated that the temporary announcement sign for Lowe’s will be in a “v” shape, approximately 6 feet by 6 feet, anchored with 4 by 4 posts. This sign will be up during the construction phase. As soon as the structure is completed, the sign will be removed.

F. Landscaping and buffers:

1)(v) Mr. Taylor stated that the only item with which he has an issue is the parking lot screening with landscaping 36 inches in height. Mr. Taylor stated that this seems to be excessive and does not seem to him to be good planning – it has the potential to cause visibility issues and asked that this be removed from the plan.

- I. 4) Mr. Taylor also questioned item i., 4, regarding semi trailers for storage of used appliances - this item does not appear on the exhibit and stated that if everyone was in agreement these units would be located behind the Lowe's store. Mr. Fortney stated that Lowe's is proposing to place tractor trailers on the site to collect used appliances. Once the trailer is filled, the contents would be delivered to a scrap yard. Mr. Fortney stated that this would be permissible if screened with a opaque fence.

Mr. McClarty asked Mr. Taylor to review the proposed signage.

Mr. Taylor stated:

Item 2.b. – keep 30-foot height but change the maximum square feet of signage to 300

Item c. – change the height to 20 feet (recognizing that it is on the Interstate) and a maximum square footage of 200 square feet.

Mr. Donald Taylor, retired heavy construction superintendent, stated that the City of Abilene is about 20 years behind on construction procedures and materials. Mr. Taylor stated that the gentlemen that addressed the Commission prior to him is absolutely correct on his materials. These materials are allowed in many, many places but not in Abilene. Mr. Taylor stated that he feels Abilene needs to update their restrictions and get with the rest of the country.

Mr. Musgrave provided information regarding Horn Properties. Mr. Musgrave stated that when he was developing the Wal-Mart site he was contacted by several National Companies interested in locating in this area. Mr. Musgrave stated that he selected Horn Properties because this company does many fantastic projects all over the United States. Mr. Musgrave stated that Horn Properties will do a good project and be a great asset for Abilene. Mr. Musgrave requested that this project be approved.

Ms. Campos closed the public hearing.

Mr. McClarty addressed the following items:

Item C, Building Materials, Brick, Store or Similar materials are listed. Mr. McClarty stated that he would consider split-face or decorative blocks be included as “similar material.” Mr. Harkins recommended that this item be removed from Item 3 and placed in a different area, perhaps Item 1.

Signs: Item A is a good compromise – decreasing square footage but limited to one tenant.

Mr. McClarty stated that he has no problem with any of the signs. Regarding the last item, construction signs have always been allowed and he would consider this a construction sign. Landscaping: Item F., v. – Mr. McClarty stated that he does not view this requirement as excessive. There may be a problem with approaches and exits – the landscaping should be kept at least 20 to 30 feet away from these areas. Mr. McClarty stated that the landscaping is a nice feature and recommends that this item remain as written with the exception of the distance around the approaches.

Mr. Harkins stated that if the berms, hedges, shrubbery, etc., are only 36 inches high, this will be well below eye level in a car, so, he does not believe this will be an issue.

Mr. McClarty stated that this is probably not an issue as long as it is nice and clear at the intersections (keep it low).

Mr. McClarty stated that semi-trucks (Item I., 4) need to be identified as being located at the rear of the facility.

Mr. Harkins stated that the portion dealing with streamers, pennants, balloons, etc., should remain in the PDD language, as written. The Commission may have to deal with this item at a later time for another site, but for this site the language should remain.

Mr. Fortney asked for clarification from the Commissioners regarding their recommendations:

- Language addressing streamers, pennants, etc., should remain as is. Mr. Fortney stated that banners are allowed as long as they are permanently attached to the building and count toward their maximum allowable percent of the wall area. Mr. McClarty stated that he has no problem with leaving this item as written.
- Regarding the two (2) 10-foot monument signs, the PDD was written so that the PDD could be expanded without text changes. Mr. Fortney asked the Commission that if the two (2) signs are allowed to be 20 feet would the Commissioners like to add another category in the PDD for 20-foot signs or would they like to change all the proposed 10-foot monument signs (in the yellow area) to 20 feet? Mr. Fortney stated that the Commission needs to consider how well the current text will apply if the PDD is expanded geographically. Mr. McClarty asked if the proponent would be required to come before this Commission if the area was expanded. Mr. Fortney stated that this is correct; however, the PDD text would not require amending (only the map would be changed). Mr. Harkins stated that the future signs would not be on the Interstate and, therefore, would be treated differently. Mr. Famble stated that in that case there would be no need to change the signs (monument) from 10 feet to 20 feet. Mr. Harkins stated that there is a need to change the signs from 10 feet to 20 feet for now, if that is the decision of this Commission. Mr. Fortney stated that if it is the consensus of the Commission that the signs on the Interstate should be 20 feet, than an additional category should be added to the PDD (for 20 foot Interstate signs). Mr. Harkins asked why a category for 10-foot signs is required because the yellow area is not being considered at this meeting (not a part of the PDD before the Commission today). Mr. Fortney stated that the benefit would be that staff would not be required to change the PDD text in several months when the PDD is expanded – only the geographic area of the PDD would be amended. Mr. McClarty stated that he would bet that when they come back they will ask for different things all along the back side just like they did for this PDD area. Mr. McClarty stated that this could be addressed when the request is submitted.

Mr. McClarty stated that all the issues stated above are a part of his motion to approve Z-2206-36. Mr. Boykin seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

f. Z-2006-37

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Musgrave and Musgrave, LLP, agent Tal Fillingim of Jacob and Martin, Ltd., to rezone property from AO (Agricultural Open Space) to RS-6 (Single-family Residential) zoning, located at the northern extensions of Liberty Boulevard and Valley Forge Road. Legal description being 9.7 acres out of the Southwest Quarter of Survey No. 21, Blind Asylum Lands, Abilene, Taylor County, Texas.

Gloria Brownell provided the staff report for this case. The request is to rezone the 9.7-acre tract from AO to RS-6 for single-family residential development. The parcel is currently vacant and is the northern extension of the existing Heritage Parks Subdivision. The area was annexed in 1980 and 1982 and has remained AO since that time.

The applicant proposes to extend the existing residential development further to the north. The proposed section is a small portion of a much larger development that was originally reviewed in 1983. At that time, the development was proposed to cover approximately 446 acres on the northeast corner of East Lake Road and Highway 351. The request to rezone the 9.7-acre portion is consistent with the long-term plans for residential use in the area.

The Future Land Use section of the Comprehensive Plan calls for residential development in the area surrounding the request. The proposed portion is adjacent to developed single-family homes on two sides, which makes it undesirable for a more intensive type of development.

Property owners within 200 feet of the rezoning request were notified. Four (4) comment forms were received in favor of the request and one (1) comment form was received in opposition of the request.

Planning staff recommends approval of this request.

Mr. McClarty asked if this subdivision would be required to install sidewalks.

Ms. Brownell stated that the preliminary development plan was submitted prior to approval of the Sidewalk Master Plan and therefore vested under the regulations in place at the time the plan was submitted. This particular section is not subject to these regulations.

Mr. Harkins asked if sidewalks will be required as the parcel is further developed.

Ms. Brownell stated that at present future section of this development will require the installation of sidewalks.

Ms. Campos opened the public hearing.

Mr. Musgrave stated that it is his understanding that Heritage Park is continued development and will be grandfathered and therefore they will not be required to install sidewalks. Mr. Musgrave will be meeting the Mayor and City Manager later this week to discuss this issue.

Mr. Donald Taylor addressed the drainage issues in this subdivision. Mr. Taylor stated that his objection is that there are no plans for additional entrances or exits to this subdivision and the area is becoming much too populated not to have additional entrance and/or exist. Additionally,

a majority of the individuals receiving notification of this rezoning request were builders and the present applicant. The individuals who will be impacted by this request within the subdivision had no say about what is happening. Mr. Taylor stated that he would like to see the drainage issue resolved prior to work commencing on this subdivision.

Mr. Tal Fillingim, agent for Mr. Musgrave, stated that the proposal before the Commission today is an extension of the Heritage Park Subdivision. Regarding the traffic issues posed at this meeting, in the future an additional entrance and exit tying into East Lake Road is planned. The drainage channel will tie into Valley Forge on the north and be extended. Once the next section is developed, work will begin to ensure that drainage is not a continued problem.

Ms. Campos closed the public hearing.

Mr. McClarty moved to approve Z-2006-37. Mr. Famble seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

g. Z-2006-38

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Lyna Parker, agent Quanah Parker, to rezone property from RS-6 (Single-family Residential) to RM-3 (Multi-family Residential) zoning, located at 2766 Beech Street. Legal description being Lot 5, Block 2, Horn and Stephens Subdivision of the North Park Addition, Abilene, Taylor County, Texas.

Mr. Armstrong provided the staff report for this case. The request is to rezone a 7,280 square feet parcel from RS-6 to RM-3. This area has always been zoned for single family residential uses. There is a corner parcel a block to the north that has been rezoned RM-3. However, placing RM-3 mid-block in an RS-6 area is not appropriate. Staff has concerns that this could be viewed as spot zoning, but that is not clear as it would be if this request were for some type of commercial zoning. If the Commission believes this should be considered “spot zoning” then it must be denied. Staff will provide more information about this at the meeting. The structure behind the original house was never permitted as a dwelling and can not be permitted as such without the requested rezoning.

The property is a residential lot in an older, established residential neighborhood. According to Building Inspection Division records, a single-family residential structure was permitted for the property in 1950. In 1975, a permit was issued to construct a 14' x 24' building that had a listed use of “detached storage.” Since that time, the storage building has been added onto and connected to the house without building permits. In addition, at some point the storage building was converted to an apartment without permits and in violation of the Zoning Ordinance. An electrical permit was applied for recently to provide a meter for electrical service to the apartment. When the electrical inspector went to the property it was discovered that the original house had two meters and the inspector did not approve the inspection. Subsequently, the inspector brought the apartment to the attention of the Planning Staff to see if it was permitted and could have its own meter. The result is this request for rezoning. This area was annexed in 1950 and has had RS-6 zoning since that time.

Mr. Armstrong stated that the proponent has the option of applying to the Board of Adjustment for a “granny flat.” However, several restrictions apply for such a structure, e.g., square footage limitation; no separate utility meter; and, cannot be utilized as a rental unit.

Property owners within 200 feet of the rezoning request were notified. One (1) comment form was received in opposition of the request and none (0) in favor.

Planning staff recommends denial of the request.

Mr. Dan Santee stated that the Legal Department’s position is that this could be considered spot zoning. Mr. Santee stated that typically what courts look to is unless there have been conditions that have changed to create a reasonable basis for rezoning an area, supported by a Comprehensive Plan for the use in that area, it could be considered spot zoning. In this case, a trend away from RS-6 zoning is not indicated and this request is for an area mid-block.

Ms. Campos opened the public hearing.

Mr. Quanah Parker stated that he acquired this home about 15 years ago and gave it to his parents as a source of income to supplement their Social Security income. Mr. Parker stated that the one-bedroom structure in the rear of the property was rented with all utilities paid. When utility expenses increased, Mr. Parker recommended that his parents have another meter installed. At this time it was discovered that the structure in the rear was being rented. The inspector would not approve the second meter.

Mr. Harkins stated that currently the property is in violation of not only the Zoning Ordinance but also the building code. Mr. Harkins stated if the structure was brought up to code (building) it could be utilized for a family member.

Mr. Parker asked if the electricity could remain as it is at present?

Mr. Santee stated that the Commission cannot provide advice regarding this matter. If the Commission denies the request, Mr. Parker may appeal the decision of the Planning and Zoning Commission to the City Council.

Mr. Harkins informed Mr. Parker that he has ten days from the date of this meeting to appeal in writing to the City Council.

Ms. Campos closed the public hearing.

Mr. McClarty moved to deny Z-2006-38. Mr. Harkins seconded the motion and the motion carried by a vote of seven (7) in favor (Boykin, Campos, Famble, Harkins, Long, Luther, and McClarty) to none (0) opposed.

Item Six: Director’s Report

- a. Recent City Council decisions regarding items recommended by the Planning and Zoning Commission.

The Commissioners were provided with a memorandum informing them of actions taken by the City Council on recommendations by the Planning and Zoning Commission.

Item Seven: Adjourn

There being no further business, the meeting was adjourned at 5:44 p.m.

Approved: _____, Chairman