
PLANNING & ZONING COMMISSION
September 8, 2009
Minutes

Members Present: Bruce Bixby
 Fred Famble
 Tim McClarty
 Clint Rosenbaum
 David Todd

Members Absent: Ovelia Campos
 Gary Glenn

Staff Present: Jon James, Director of Planning and Development Services
 Dan Santee, City Attorney
 Kelley Messer, Assistant City Attorney
 Ed McRoy, Assistant Director of Planning and Development Services
 Ben Bryner, Planning Services Manager
 Matt Jones, Planner I
 Zack Rainbow, Planner I
 JoAnn Sczech, Executive Secretary, Recording

Others Present: Dan Sefko, Dunkin, Sefko and Associates
 Gayle A. Potter
 Dave Boyll
 Karen Allmand
 Russell Day
 Blanca Gonzalez
 Robert Cockrell
 Randy Williams
 Dwight Williams
 Tony Downing
 Nathan Lenthold
 Dennis Reiling
 Dalton Johnson
 Dick Burgess
 Tom LeVieux
 Ron Knaus
 Colin R.
 Jack D. Qualls
 Randahl Lohse
 Debra Lohse
 Clay Lohse
 Sharon Qualls
 Andrew Carlson
 Wayne Lohse
 Stan Eggar
 Evelyn Young

Laddie C. Galloway
Desa Lee-Laird
John Iman
Eddie Chase
Chance Ferguson
Dale Evans
Amy Alford
H. D. Burton
Buddy Samford
Jerry Welk

Item One: Call to Order

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

Item Two: Invocation

Mr. McClarty gave the Invocation.

Item Three: Approval of Minutes

Approval of the minutes of the August 17, 2009, Planning and Zoning Commission meeting.

Mr. Rosenbaum moved to approve the minutes of the August 17, 2009, meeting. Mr. Famble seconded the motion and the motion carried unanimously.

Item Four: Plats

- a. MRP-1009
Public hearing to consider a plat of Lots 201 & 202, Block 7, A Replat of Lots 101, 102, & 103, Block 7, of a Replat of Lots 1 thru 3, Block 7, Section 2, of a Replat of Block 7, Section 2, East Horizon Add. and Continuation of Section 2, East Horizon Addition, City of Abilene, Taylor County, Texas.
- b. MRP-1609
Public hearing to consider a plat of Lot 106, a Replat of Lots 5, 6, & 7, Block 38, Continuation of College Heights Addition, to the City of Abilene, Taylor County, Texas.
- c. MRP-2309
Public hearing to consider a plat of Lots 201 thru 211, Block A, A Replat of Lots 101-112, University Hills II, Abilene, Taylor County, Texas.
- d. MP-2409
Public hearing to consider a plat of Section 2, Skyline Estates, Abilene, Taylor County, Texas.
- e. MRP-2809
Public hearing to consider a plat of Stovall Estates, Section 2, Abilene, Taylor County, Texas.

Mr. Zack Rainbow presented information regarding the plat listed on the agenda. Mr. Rainbow stated that staff is recommending approval of the plat as it meets the Subdivision Regulation requirements.

Mr. McClarty opened the public hearing and asked if anyone wished to speak regarding the plat being presented for approval. No one came forward and Mr. McClarty closed the public hearing.

Ms. Famble moved to approve MRP-1009, MRP-1609, MP-2309, MP-2409, and MRP-2809. Mr. Rosenbaum seconded the motion and the motion carried by a vote of five (5) in favor (Bixby, Famble, McClarty, Rosenbaum and Todd) of MRP-1009 and MRP 1609 to none (0) opposed. The motion to approve MP-2309, MP-2409 and MRP-2809 carried by a vote of four (4) in favor (Bixby, Famble, McClarty and Rosenbaum); one (1) abstention (Todd); and, no (0) opposition

Mr. McClarty read the opening statement for the Planning and Zoning Commission.

Item Five: Rezoning Request

a. Z-2009-09

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Oscar Gonzales to rezone property from AO (Agricultural Open Space) to MH (Mobile Home) zoning, located at 7809 West Lake Road.

Mr. Matt Jones presented the staff report for this case. The subject parcel totals approximately 100 acres and is currently zoned AO (Agricultural Open Space). The parcel currently has a Mobile Home Structure sitting on the property. The adjacent properties have AO zoning to the north, south, east, and west, with a small piece of MH (Mobile Home) zoning to the south as well.

The area was annexed in 1983 and the subject property was given AO zoning when it was annexed into the City of Abilene.

Currently the property is zoned AO and has been used as such with the exception of the mobile home on the property. The properties surrounding this property are all zoned for agricultural use and the majority of the lots are currently being used as such. The MH zoning to the south of this property was originally AO zoning and was rezoned to MH zoning in 2003 to allow for a mobile home to be placed on the property.

The Fort Phantom Lake Comprehensive Plan designates this area as low-density residential. The requested MH zoning could be considered compatible with the future land use map if it were a smaller area that could not be subdivided into a MH Subdivision or used as a MH Park, given that a similar case in the area was approved in 2003. Therefore the original request of the 100 acre tract of land would not be compatible with the Fort Phantom Lake Plan, but a smaller MH zoning designation would be compatible with the plan.

Property owners within 200 feet of the rezoning request were notified. Two (2) comment forms were received this morning in favor of the request and none (0) were received in opposition.

Planning staff recommends that a small portion of the subject property be zoned MH, to allow for the current structure on the property to become a conforming structure, but the remainder of the property remain AO, as to not allow for the future subdivision of the property for MH zoning uses.

Mr. McClarty opened the public hearing.

Mr. Dick Burgess stated that he was surprised that there was no opposition to this request.

Mr. James, Director of Planning, stated that opposition was voiced from residents at Lake Fort Phantom; however, these individuals are not within the 200 foot notification area.

Mr. Burgess stated that his concerns are:

- The size of the area to be rezoned

- The number of mobile homes that can be located in this area

- The septic systems involved in this rezoning are not addressed

Mr. Jones stated that staff is recommending the rezoning of a small portion of the parcel. This area is not intended for future subdivision for mobile homes. The purpose of the rezoning is to bring the nonconforming mobile home located on the property into compliance (legal conformance use).

Mr. Bixby asked Mr. Jones to address the septic tank issue.

Mr. James stated that septic systems are regulated through other City ordinances and any development, regardless of the zoning, would be required to meet the septic requirements and inspected by an Environmental Health Inspector.

Mr. Roger Huber, President of the Fort Phantom Lake Association, stated that for a number of years this association has had great concerns about mobile homes located in this area. The Lake Association has worked for many years to improve the standards of homes and quality of life at the Lake. Mr. Huber asked the Commission to consider the hard work of the individuals at the Lake prior to favorably recommending this zone change to the City Council.

Ms. Blanca Gonzales, proponent, stated that the mobile home is not close to the lake and only one mobile home will be placed on the property.

Mr. McClarty closed the public hearing.

Discussion followed regarding the length of time the mobile home has been at this location and if water and sewer connections were in place.

Mr. McClarty reopened the public hearing and asked Ms. Gonzales to come forward to address the Commissioners' questions.

Mr. Todd asked how long the mobile home has been at this location.

Ms. Gonzales responded that the mobile home has been at this location only two or three months. Currently, the only utilities are electric and water. There is not septic system and that is the reason for coming before this Commission requesting a zone change so that a permit may be obtained for a septic system.

Mr. McClarty closed the public hearing.

Mr. McClarty moved to deny Z-2009-09. Mr. McClarty seconded the motion to deny and the motion carried by a vote of five (5) in favor (Bixby, Famble, McClarty, Rosenbaum and Todd) to none (0) opposed.

Item Six: Zoning Ordinance Amendment

a. Public hearing and possible vote to recommend approval or denial to the City Council on a proposal to amend Sections 23-319 of the City of Abilene Zoning Ordinance regarding Airport Zoning.

Mr. Jon James stated that a revised Airport Zoning Ordinance was presented to the Planning and Zoning Commission approximately one to one and one-half years ago. This Ordinance was forwarded by this Commission to the City Council and adopted. Subsequence to this adoption, several citizens have come forward to express their feelings that items were included in this ordinance that perhaps should not have been included. The Council placed a moratorium on the implementation of certain sections of the Airport Zoning Ordinance, particularly the regulating of land uses and noise attenuation (height restrictions were not included in the moratorium). The Council's charge to staff was to meet with a citizen committee to review the ordinance and bring back a recommendation for changes based on the Committee's concerns. Staff met with this group approximately 10 times over the past year. Today, staff will present the recommended changes and review changes recommended by the Committee which staff does not support.

Proposed Changes to Airport Zoning Ordinance:

1. Revise ordinance to explicitly allow an individual home, including manufactured housing, on a lot of 1 acre or larger (permit may still be required) except within the Clear Zone. **Section 319.4.B.5.a**
2. Allow one new home on an existing legally-platted lot, or a lot subdivided prior to 1984, even if less than 1 acre. **Section 319.4.B.5.b**
3. Ensure that ordinance is clear that existing legal development is grandfathered. **Section 319.6.A**
4. Add a provision that allows for replacement of an existing home, even if not otherwise allowed. **Section 319.6.F**
5. Allow for the replacement/restoration of an existing grandfathered business or structure if damaged or destroyed. **Section 319.6.G added.**
6. Exempt from permitting accessory structures, vegetation, fencing, etc. (i.e. everything but primary structures) if less than **50** feet in height, except within the Clear Zone. **Section 319.7.A.1**
7. Exempt single-family homes, including manufactured housing, from noise attenuation requirements where homes are allowed. **Section 319.4.B.7 removed**
8. Remove any reference to the AICUZ and include all regulatory requirements, definitions, and use charts within the City's ordinance. Also, base any land use and noise requirements on static boundaries of the Clear Zone and Accident Potential Zones. **AICUZ references removed throughout; also see Section 319.4.B.5, 6, and 7.**
9. Allow for a citizen committee (appointed by County Commissioners) to review any future changes to the ordinance prior to consideration by P&Z and Council. **Section 319.12**
10. Noise attenuation removed from ordinance altogether (both residential and non-residential development) within the area affected by Dyess AFB. **Section 319.4.B.7 removed**
11. Defining which land uses are permitted and not permitted within each zone, without reference to AICUZ. **see Table 319.4.B.5.d**

12. Details of permitting process, including which activities require a permit.
Section 319.7. (see summary of permitting on the following page)

When is an Airport Zone Development Permit required?

- ⇒ A permit is required prior to the construction of any primary structure, including replacement of such a structure.
- ⇒ A permit is NOT required for the remodeling of a primary structure.
- ⇒ A permit is NOT required for the expansion of an existing single-family home.
- ⇒ A permit is required for the expansion of a primary structure other than a single-family home.
- ⇒ A permit is NOT required for construction or installation of an accessory structure, natural growth, or other obstruction that is less than 50 feet in height.
- ⇒ A permit is required for construction or installation of an accessory structure, natural growth, or other obstruction that is greater than or equal to 50 feet in height. *Permit can be issued for a site with recurring activity.*
- ⇒ A permit is required for any change in the use of a property that would trigger the need for a Certificate of Occupancy if within the city limits.

Summary of Changes Recommended by the Committee, but NOT Recommended by City Staff:

1. Allow expansion on the site of an existing grandfathered business.
Staff comment: *This provision is still under review by City staff and Dyess officials.*
2. Allow a property owner to create a legal platted lot, with grandfathered rights, from a tract that was illegally subdivided in the past.
Staff comment: *Tracts of land that were created in violation of both the City's Subdivision Ordinance and the Texas Local Government Code should not be allowed to plat without meeting all of the requirements and standards in place at the time of platting.*
3. Do not require a permit for the replacement of a primary structure.
Staff comment: *Requiring permits is necessary to allow proper review of proposed new developments in this critical area to ensure compliance with airport zoning standards.*
4. Raise the threshold for requiring a permit from anything over 50' in height to anything over 50' in Clear Zone, 90' in APZ I, and 150' in APZ II. (Committee noted that there is an existing 90' tall transmission line in APZ I.)
Staff comment: *Staff's initial recommendation was to exempt from permitting any structure less than 35' in height, a typical maximum height for a single-family home. Upon hearing the committee's concerns, staff recommended increasing this height to 50'. The 50' height is NOT a height limit, but rather is the height at which a permit is required so that the proposed structure may be reviewed for compliance. We think it is reasonable to require a permit and review for any structure that will exceed 50' in height. According to Dyess officials, this is the height recommended by the state in the TxDOT guidelines for airport zoning.*
In addition, staff is recommending reducing the permit fee from \$100 to \$50.
5. Allow office, retail, and service uses in APZ I with the following limitations: building limit of 5,000 sf and no more than 10 employees per site.
Staff comment: *The Land Use Chart has been modified to separate service uses into two classifications. Per this revision, one group of lower intensity service uses will be allowed within the APZ I, as requested by the committee. However, the more intensive or retail-oriented service uses would remain as prohibited uses. All office and retail uses remain as prohibited.*

Mr. McClarty opened the public hearing.

Mr. Dennis Reiling, President of the Board of Directors of the View Caps Water Supply Corporation, stated that every water supply corporation has a great interest in the demographics of the community. Mr. Reiling stated that there has been no effort from anyone to inform them of an issue that would involve their community. Mr. Reiling stated that because of this exclusion, there are major errors and impositions being made of this community, although not necessarily intended. Mr. Reiling stated that the water code demands that a water supply corporation plan ahead and upgrade the system to ensure adequate and safe water supply. Community growth is the only for a water supply corporation to justify this up upgrading expense. The Water Supply Corporation plans do consider the county septic permitting program that already demands land area, which limits residential density to mostly one acre per household and all but eliminates multi unit housing. Mr. Reiling stated that unfortunately with the recent changes in the ETJ demanding over-sized pipelines, fire hydrant taps and now this ordinance oppressing growth, pipelines have been installed with inadequate use. This causes non-conservative flushing and expensive upkeep. This has forced an unfair financial expense in the WSC's water rate. Mr. Reiling stated that a high percentage of the WSC's expense is in mandated equipment and inspections that have no investment return. Mr. Reiling stated that they do not need to pay permit fees to the City for operations outside the City limits. Too much time and money has been spent trying to amend the Airport Zoning Ordinance.

Mr. Rosenbaum asked he was correct in his understanding that Mr. Reiling is in support of the proposed changes.

Mr. Reiling responded, "Absolutely."

Mr. Robert Cockerell, CFO of Smith Pipe Company, stated this ordinance is not need for Dyess Air Force Base under Section 23-319. Mr. Cockerell stated that this area is outside the City limits and the only reason for this Ordinance is the ETJ. Mr. Cockerell stated that a 5,000 square foot building that is limited to only 10 employees does nothing for them. They purchased this land for expansion of their operation.

Mr. Rosenbaum stated that what is being discussed today are amendments to Section 23-319. Mr. Rosenbaum asked Mr. Cockerell if it is his desire to have Section 23-319 eliminated altogether.

Mr. Cockerell responded affirmatively. Mr. Cockerell stated that the only restrictions required for this area are height restrictions, radio restrictions, and navigational restrictions for Dyess AFB.

Mr. Rosenbaum asked Mr. Cockerell if he would be in agreement with approving the Ordinance with the recommended changes.

Mr. Cockerell responded that he would not be in favor of that at all. Mr. Cockerell stated that the following restrictions should be adopted:

- Height Restrictions – to 150 feet

- Navigational Restrictions – associated with Dyess Air Force Base

- Radio Restrictions

Mr. Cockerell stated that the preference would be to do away with Section 23-319 and keep the three restrictions mentioned above.

Mr. James stated that the Review Committee worked diligently with the City to develop the recommended changes. Mr. James stated that this Committee's consensus was to do away with Section 23-319 and if it was determined that this ordinance must be in place, they stipulated the changes they would like to have adopted.

Mr. Dale Evans stated that he built a home in Abilene on Highway 707 in 1974. The airplanes at Dyess were flying over his home then and they are flying over his home now and they do not bother him. The standards within this ordinance for repairing his home, if damaged, are cost prohibitive.

Mr. McClarty asked Mr. Evans if he was aware that the noise restrictions originally in the Ordinance had been removed.

Mr. Evans stated that he did not know this and expressed his appreciation to the Commissioners.

Mr. Chance Ferguson stated that he is present at this meeting in support of the View-Caps Community and to inform the Commission that they do not agree with what is being proposed. Mr. Ferguson stated that the main problem is government by the City of Abilene without representation (since they are outside the City limits). Mr. Ferguson stated that regulations imposed by Taylor County are sufficient.

Mr. Randall Lohse stated that this is a very complex issue. Mr. Lohse cited Item 2. regarding a legally platted lot. Mr. Lohse stated that the reason for bringing up this issue is that several individuals have asked to plat property which was not subdivided in accordance with the City of Abilene's platting regulations and they were told that this could not be done. Mr. Lohse asked that it be stated, in writing, that he could replay as long as all the platting requirements were met.

Mr. Clayton Lohse requested that his father, Randall Lohse, speak on his behalf.

Mr. Lohse stated that there is absolutely not reason to require a permit or a fee for replacement of a primary structure. Mr. Lohse stated that a one stop shop or a checklist to implement procedures required by the ordinance, such as the permitting process. Any permitting fees should be paid to Taylor County.

Mr. Greg Pope stated that he owns several acres in and around the clear zone. Mr. Pope asked that No. 9 of the proposed changes be placed on the screen for viewing: ***Allow for a citizen committee, appointed by County Commissioners, to review any future changes.*** Mr. Pope stated that this has been added because there were not meetings prior to enforcement of this ordinance. Mr. Pope stated that he is against the ordinance – it is too burdensome and too restrictive.

Ms. Amy Alford stated that there is a great deal of confusion and distrust on the part of those affected by this ordinance and by a house bill recently passed. Ms. Alford stated that this issue was first addressed approximately 10 years ago at a City Council meeting. The Council tabled the item and nothing more was heard regarding this issue until the Ordinance was passed by the Council in May of 2008. Ms. Alford stated that those in this area are not worried about noise or plane crashes and there is a great deal of confusion as to what exactly is trying to be accomplished by this ordinance and the recently-passed house bill. Ms. Alford stated that she hopes the Commission has empathy for those affected by these documents.

Mr. McClarty asked those in attendance for a show of hands of those who would like for the ordinance to “go away.” Mr. McClarty stated that it appears that everyone in the audience responded affirmatively. Mr. McClarty stated that the Planning and Zoning Commission does not have that authority. Such requests must be made to the City Council. Mr. McClarty stated that this Commission is working to provide some compromise in the form of the 12 issues provided at this meeting. Mr. McClarty stated that it appears to him that everyone in the room and the City are in agreement with these issues and in disagreement with five (5) issues. Mr. McClarty stated that this Commission will attempt to reach a compromise on the five issues.

Ms. Sharon Qualls asked who has the right or power to make this ordinance go away.

Mr. McClarty responded the City Council has that right. This Commission is a recommending body to the City Council.

Mr. Gayle Potter stated that he owns about one mile of property along FM 707. Mr. Potter stated that he would be addressing Issue #5 and requested that he and other property owners be allowed to develop land along this highway for commercial uses. Mr. Potter requested that the following restrictions be removed:

- ⇒ Limit of 5000 square foot building
- ⇒ Limit number of employees to 10
- ⇒ No accounting offices, bookkeeping offices, general office space, etc.
- ⇒ No Retail/Trade in APZ-1

Mr. Potter requested that at the end of Section 23-219.4.B.6, the wording “and other similar uses” remain in the Ordinance.

Regarding Cultural/Entertainment, Mr. Potter requested the following uses be allowed: Go Cart Track, Golf Course, Driving Range, Motorcycle Track, Park, Playground, Shooting Range, Stables, etc.

At this point, Mr. McClarty stated that those present interested in the Land Development Code, it appears that this item might not be discussed at this meeting.

Commissioner Stan Eggar, Taylor County Commissioners Court, thanked Mr. James and Mr. Bryner for their work with the citizens of the View area to develop these proposed recommendations. Commissioner Eggar asked for clarification regarding Issue #2, Illegally platted lot or track. Will these tracts be allowed to be platted according to the regulations in effect at the time the lots were platted (if these individuals are willing to go through the platting process)?

Mr. James responded that platting would not be subject to the rules in effect at the time the lots were originally (illegally) platted. Platting would be in accordance with the rules in effect now. If the proponent met all the platting requirements, they would be allowed to plat the property.

Mr. Jerry Walls stated that he would like to address the 50 foot height restriction proposed by this ordinance. Mr. Walls stated that a 50-foot restriction is over burdensome and restrictive. Mr. Walls stated that part 77.13 A. 1. of the FAA regulations states that the FAA shall be notified of any construction or alteration of structures more than 20 feet in height above the ground – not 50 feet. Mr. Walls stated that FAA regulations 77.15. A. states that no person is required to notify the FAA of construction or alteration of a structure that would be shielded by an existing structure of prominent and

substantial character. Mr. Walls provided the Commissioners with a graph illustrating ILS approach slopes around Dyess.

Mr. Tom LeVieux stated that the ordinance was amended and a 150 foot height was allowed in APZ-2 a permit would not be required (as in the case of the rigs assembled by Smith Pipe).

Mr. McClarty stated that if the Commission approved Item 4. with the recommendations of 50 feet in the clear zone; 90 feet in APZ-1; and, 150 feet in APZ-2 no permits would be required.

Mr. Dalton Johnson stated that he initiated the original opposition to these regulations approximately 15 years ago. Mr. Johnson stated that he and others present at this meeting were able to prevent these regulations from being adopted. Mr. Johnson stated that the original regulations were very restrictive. Mr. Johnson stated that ordinances are needed for the planes flying over the City rather than telling citizens what can and what cannot be done on their property.

Mr. Ron Canalas stated that he cannot believe that this height issue is being discussed when the runways at LaGuardia, San Diego and many more locations have buildings practically next to the runways. Mr. Canalas stated that he has lost three contracts with three different companies because Dyess has stated that he is too close to the runways. Mr. Canalas stated that he would like to see an end to all these regulations.

Mr. Tom LeVieux stated that this ordinance came about last year, which included the AICUZ, and is extremely oppressive. Mr. LeVieux stated that he has worked with the City and speaks for a group of citizens who would rather not have this ordinance. They accept the fact that the ordinance is in place and individuals need to work within the ordinance guidelines whether they like it or not. MR. LeVieux stated that they have worked with the City and believe the ordinance is at the 80% level – a level with which just about everyone can accept. Mr. LeVieux stated that there are problems with the five issues where the Committee and City staff does not agree:

- ⇒ Allowing expansion on a site of an existing grandfathered business
- ⇒ Allowing a property owner to create a legally platted lot
- ⇒ No permit for replacement of a primary structure
- ⇒ Allowing retail/trade business along the highway

Mr. Randall Lohse asked to speak on Issue 5: Allow office, retail, and service uses in APZ I with the following limitations: building limit of 5,000 sf and no more than 10 employees per site. Mr. Lohse stated that there is no reason for some of the smaller business (Farm and Garden Supplies, Farm Equipment/Products, Lumber, Building Materials, Monuments, etc.) to be located at this location (along FM 707). Mr. Lohse request that all 83 of the items listed in the Permitted Use Chart, including the wording, “and other similar uses” and Cultural/Entertainment uses be permitted.

Mr. Rosenbaum asked Mr. Lohse if he was in agreement with the proposed changes.

Mr. Lohse stated that he can live with many of the changes; however, some of the issues still require “tweaking.”

Mr. McClarty stated that a compromise has been worked out for many of these issues and the five issues listed (disagreement between Committee and City staff) are the ones that need to be discussed in detail in

order for the Commission to come to a decision, as a group, as to what will be recommended to the City Council.

Ms. Evelyn Young stated that she is sorry that this issue was dumped on this Commission. Ms. Young expressed her appreciation to the Commission for attempting to assist the citizens in this area. Ms. Young stated that the ordinance is onerous and oppressive and the fees are outlandish.

Ms. Karen Allmand asked the Commission if they could recommend to the Council to drop this issue.

Mr. McClarty stated that they could make this recommendation; however, he did not believe the Commission would make this recommendation.

Mr. Chance Ferguson asked if the AICUZ zone is the area within eight (8) miles in any direction of a perimeter fence where any type of training was conducted by Dyess AFB. Mr. Ferguson asked how this related to the House Bill recently discussed in a Town Hall meeting with Representative Susan King.

Mr. Dan Santee stated that if Mr. Ferguson's property falls under the Airport Zoning regulations adopted by the City of Abilene, then his property is not regulated by the House Bill referenced by Mr. Ferguson. Mr. Santee stated that if the Airport Zoning Ordinance is removed, then they would fall under the House Bill – as is the case with the City of Tye.

Mr. McClarty closed the public hearing.

Mr. McClarty made the following personal comments regarding this issue:

1. Expanding the Ordinances and Codes into the ETJ is because this Commission must answer to the Citizens of the City of Abilene. The Citizens of Abilene created a comprehensive plan which looked at trends within the City. What was discovered is that many citizens are moving outside the City limits so that it would not be necessary to deal with ordinances, permits, and regulations. This caused: (1) substandard structures and infrastructure; and, (2) Abilene was shrinking in population and a great deal of land not being utilized within the City (created Infill Development incentive).

2. This ordinance is in place; the Council has heard the concerns of the Citizens regarding this ordinance; and the ordinance was returned to the Planning and Zoning Commission to work out a resolution to the disagreements between those affected by the Ordinance and the City.

Mr. McClarty stated that his recommendation is that the Commission discuss the five issues where the City and the Committee are not in agreement and try to come to a resolution.

1. Allow expansion on the site of an existing grandfathered business.

Mr. Bixby stated that this issue overlaps with issues number 5. Mr. Bixby recommended the consideration of expanding the uses allowed in APZ-1 to industrial uses without restrictions.

Mr. James stated that there is one other restriction that addresses hazardous chemicals/materials, precision equipment in industrial uses.

Mr. James stated that a criterion for some permits is review by Dyess AFB. Any determination that City staff makes regarding hazardous materials could be appealed.

Mr. McClarty reopened the public hearing to ask questions of Mr. Cockerell with Smith Pipe.

Mr. McClarty stated that what this Commission will be recommending to the City Council on Item No. 1 is to allow expansion of his business (Smith Pipe) without restrictions and permits (permits regarding APZ zone) on the property currently owned at this time. Mr. McClarty asked Mr. Cockerell if this would solve his problems.

Mr. Cockerell stated that his will help, very much so.

Mr. McClarty closed the public hearing.

Mr. Bixby stated that his tendency is to recommend retail and other property zoning uses within 500 feet of Highway 277 in APZ-2.

Mr. James stated that staff purposefully created the regulations to treat everything in APZ-1 and APZ-2 the same. The regulations are linked back to protection of the area based on the different characteristics of each of the APZ zones. Mr. James stated that he would be more comfortable with approval of uses in the APZ zones and not differentiating the highway from other areas. Recommendations should like back to the safety and protection of encroachment upon Dyess AFB.

Mr. McClarty reopened the public hearing.

Items One:

Mr. Bixby moved to allow the expansion of existing grandfathered businesses – unlimited (with limitations on chemicals).

Mr. Santee stated that Mr. James would interpret this to be only to the boundaries of the property owned at the time this ordinance is effective.

Mr. Bixby concurred with the statement provided by Mr. Santee.

Mr. James stated that this would include vertically as well, assuming this is not in contradiction with the height restrictions.

Mr. McClarty stated that height restrictions will be discussed in Item Four; therefore, height will be limited up to height restrictions recommended in Item Four.

Mr. Rosenbaum seconded the motion and the motion carried by a vote of four (4) in favor (Bixby, Famble, Rosenbaum and McClarty) to none (0) opposed.

The next item discussed was Item Five.

Mr. Bixby stated that a separate issues was addressed prior to discussion on Issue 5.

Mr. James stated that the Commission discussed industrial uses in APZ-1. The footnotes restrict uses and number of employees. Mr. James stated that his recollection is to retain Footnote 4 regarding hazardous materials but eliminate Footnote 5 regarding the number of employees.

Item Five:

Mr. Bixby moved to allow industrial uses with chemical restrictions in APZ-1. Mr. Famble seconded the motion and the motion carried by a vote of four (4) (Bixby, Famble, McClarty and Rosenbaum) to none (0) opposed.

Mr. James asked for a clarification regarding this motion: The current limitation also mentions precision equipment, noise, vibration sensitive – is it the Commission’s intention to drop these other limitations and only make this restriction related only to chemical and hazardous uses or materials.

The response was affirmative.

Discussed next was limitations on buildings in APZ-2 (square footage or employees).

Mr. James asked for clarification regarding the dropping of Footnotes #2 and #5 where referenced for APZ-2 locations.

Mr. Famble moved that no limitations on either buildings or employees be placed on APZ-2 (dropping Footnotes #2 and #5). Mr. Bixby seconded the motion and the motion carried by a vote of four (4) in favor (Bixby, Famble, McClarty and Rosenbaum) to none (0) opposed.

Mr. Rosenbaum asked the status of Footnote #5 in APZ-1.

Mr. James stated that based on his understanding of a previous motion, Footnote #5 would be removed from Manufacturing uses but it would apply to Heavy Commercial, Wholesale, Transportation, Communication and Utilities and Resource Production Extraction.

Mr. McClarty also added Type 2 Services.

Mr. James stated that this is correct.

The next item discussed was Item Four: Height.

Mr. James stated that in all of the regulations the height level that triggers a permit is the ground level at the site. Mr. James stated that the Commission might want to consider a cushion of 5, 10, or 20 feet to account for the topography changes.

Mr. James stated that this section provides the trigger for requiring a permit. Mr. James stated that the recommendation of this Commission will be reviewed by staff at Dyess to ensure that these height restrictions fit with the slopes.

Mr. Rosenbaum asked what entity governs height restrictions in these areas at the present time.

Mr. James responded that prior to this ordinance, there were areas in which height restrictions were not regulated. This is what prompted this Airport Zoning Ordinance.

Mr. McClarty reopened the public hearing.

Mr. Robert Cockerell with Smith Pipe Company stated that currently a 90 foot electric line is in place across APZ-1. Mr. Cockrell recommended the same height restriction in both APZ-1 and APZ-2.

Mr. Randall Lohse stated that FAA Section 77.15, Construction or Alteration Not Requiring Notice, states that any object that would be shielded by an existing structure of permanent or substantial character or by natural terrain or topographical features of equal in equally greater height, it be located in a congested area, city or town – What this is stating is that a substantial line is in place so anything under 80 or 90 feet need not be discussed.

Mr. Tommy Downing, Community Planner at Dyess Air Force Base, stated that the “slope” mentioned in the ordinance, Approach/Departure Clearance Surface, is a 50-1 slope off the end of the runway. If consideration is being given to the slope at the beginning of APZ-1, a height of about 60 feet, he would recommend that a trigger is in place to review any activity in this area to determine if it is a potential hazard. Mr. Downing said that stating that anything located behind the 90-foot towers is shielded is being a bit overconfident in how the FAA views this.

Mr. McClarty closed the public hearing.

Mr. Bixby raised the issue of permit fees – all permits: height, remodeling, rebuilding, etc. Mr. Bixby stated that he would be in favor of eliminating the permit fees.

Mr. Bixby made the following motion regarding Item Four:

Anything over 50 feet in APZ-1 would trigger obtaining a permit

Anything over 150 feet in APZ-2 would trigger obtaining a permit

There will be no permit fees across the board (Airport Development Permit)

Mr. Famble seconded the motion.

Prior to voting on this item, Mr. Santee stated that for clarification purposes this would not include the application fees for a Variance or Special Exception as these fees fall under the regular fee process. Mr. Santee stated that if this is the Commission’s intent, it should be clarified at this time.

Mr. Bixby stated that he would verify this at this time (does not apply to Variance or Special Exception application fees).

The vote carried by a vote of four (4) in favor (Bixby, Famble, McClarty and Rosenbaum) to none (0) opposed.

Regarding Item Three, Mr. Santee stated that he did not believe any action was required of this Commission. What needs to be done to move this item forward to the City Council is one dispositive motion that passes the ordinance forward with the changes individually voted on at this meeting.

Mr. McClarty moved to forward this Ordinance to the City Council with the changes voted on (amended) at this meeting. Mr. Famble seconded the motion and the motion carried by a vote of four (4) in favor (Bixby, Famble, McClarty and Rosenbaum) to none (0) opposed.

Mr. McClarty commented to those individuals in attendance that the Commission has tried very hard to come to a compromise regarding this ordinance. All concerns have not been resolved but the

Commission did the best that could be done for everyone. This Commission is a recommending body and issues and concerns may be brought before the City Council.

Mr. Santee stated that the date of the public hearing will be October 8, 2009, at 8:30 a.m.

Item Seven: Land Development Code

a. Public hearing and possible vote to recommend approval or denial to the City Council on a proposal to adopt the Land Development Code.

Mr. Famble moved to table this item until September 21, 2009 (time to be determined at a later date). Mr. McClarty seconded the motion and the motion carried by a vote of four (4) in favor (Bixby, Famble, McClarty and Rosenbaum) to none (0) opposed.

Item Seven: Director's Report

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

Mr. James stated that the City Council voted to deny amending Section 23-315 of the City of Abilene Zoning Ordinance regarding parking of commercial vehicles (towing vehicles). The Planning and Zoning Commission recommended approval.

The City Council voted in favor of amending Section 23-306 of the City of Abilene Zoning Ordinance regarding childcare centers. The Planning and Zoning Commission recommended denial of this Ordinance Amendment.

Item Eight: Adjourn

There being no further business, the Planning and Zoning Commission meeting was adjourned at 5:10 p.m.

Approved: _____, Chairman
