
PLANNING & ZONING COMMISSION

October 19, 2009

Minutes

Members Present:

Bruce Bixby
Ovelia Campos
Fred Famble
Gary Glenn
Tim McClarty
Clint Rosenbaum
David Todd

Staff Present:

Jon James, Director of Planning and Development Services
Dan Santee, City Attorney
Ed McRoy, Assistant Director of Planning and Development Services
Ben Bryner, Planning Services Manager
JoAnn Sczech, Executive Secretary, Recording

Others Present:

Bill E. Cox
John Cain
Tom Choate
Julie & Terry Hagin
Carrie Blaschke
Cindy Haley
Dave Boyll
Desa Lee-Laird
Eddie Chase
Emmet Lovelady
Whitney Root
Jim Tallant
Wayne Barnett
Janet Barnett
Charles Shoemaker, Sr.
Jessica McGaughey
Lindsey McGill
Dr. Robert Wiggins, Sr.
Jerry Mash
Carol Chisum
Glenn Barney
Pam Redman
John Blake
John Iman
Larry Robertson
H.D. Burton
Audrey Perry
Jerry Elmore
Steloise A. Elmore
Rob & Cheryl Cunningham

Steve Majors
Diane Keeble
Weezie Fitzhugh
Janie Cox
Terry & Laura Browder
Carol Pevey

Item One: Call to Order

Mr. Tim McClarty called the meeting to order at 5:30 p.m. and declared a quorum present.

Item Two: Invocation

Mr. McClarty gave the Invocation.

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

Item Three: Plat

- a. MRP-3409
Public hearing to consider a plat of Lot 1, Block A, Atlas Industrial Addition, Continuation 2, To the City of Abilene, Taylor County, Texas.

Mr. McClarty stated that this plat was tabled at the Commission's October 5, 2009, meeting to the next regular meeting of the Planning and Zoning Commission scheduled for November 2, 2009. Therefore, this plat will not be considered at this meeting.

Item Four: Short Term Rentals

Public hearing, discussion and possible vote providing direction to staff on regulating Short-Term Rental uses within the City.

Mr. McClarty stated that this item was tabled at the Commission's last meeting and called for a motion to remove the item from the table.

Mr. Bruce Bixby moved to remove this item from the table. Mr. Gary Glenn seconded the motion and the motion carried unanimously.

Mr. Jon James presented the staff report this item. Mr. James stated that this item was listed as a separate item on the Commission's agenda so that if this issue required a lengthy discussion it would not delay the discussion of the Land Development Code. Staff research provided the following information:

⇒ Definition:

Typical definition draws the line at 30 days rental

- ⇒ Basic Options provided to Commission for regulating these units:
 - Regulate as Single Family home (current ordinance)
 - Regulate as “Short Term Rental” with additional requirements/conditions
 - Also, require discretionary approval, such as a Special Exception or Conditional Use Permit
- ⇒ One-time short-term rentals related to real estate transactions can be exempted (If the Commission’s decision is to regulate these short-term rentals differently from a single family home, staff could craft exemptions for those types of rentals relating to a real estate transaction.)

Some of the concerns raised throughout this discussion by nearby residents include:

- ⇒ Noise
- ⇒ Parking
- ⇒ Parties/Events with lots of people
- ⇒ Trash
- ⇒ Property Values
- ⇒ Security/Safety
- ⇒ Neighborhood Character
- ⇒ *Long-term maintenance*
- ⇒ *Maybe they all won’t be as nice as existing examples*

The questions before this Commission are:

1. Is this type of use significantly different from any other single family home?
2. What are the potential negative impacts that should be addressed through regulation, if any?
3. Is some of this use OK, but not too many?

Options for the Commission to consider include:

- ⇒ Limit to certain zoning district
- ⇒ Limit concentration/spacing (max per block or distance separation between similar uses)
- ⇒ Require discretionary special permit
- ⇒ Require registration
- ⇒ Periodic permit renewal
- ⇒ Required record-keeping
- ⇒ Maximum occupancy/vehicles
- ⇒ Others limits?

Mr. Glenn asked that the letter providing Mr. James’ interpretation of these uses be projected on the viewing screen so that everyone in attendance could review this information.

Mr. James stated that the determination as to the category for this type of use was done so utilizing the current zoning ordinance. Mr. James stated that this interpretation was appealed to the Board of Adjustment. This Board upheld Mr. James’ interpretation. At this meeting the Commission is being asked to decide how should these units be regulated under the Land Development Code – not the current ordinance?

Mr. McClarty opened the public hearing. Mr. McClarty stated that this issue has been discussed in detail by the Commission and the Commission has heard from those in favor and those in opposition of these units and requested that speakers limit their time to two (2) minutes. Mr. McClarty stated that this issue is NOT about the Browders or the Sayles Ranch – this issue addresses short-term rental units in the City of Abilene.

Mr. David Collins addressed the issue of speeding in the alley. Mr. Collins stated that he requested speed bumps, which were not installed, but a speed limit sign was posted. Mr. Collins stated that the speed limit posted is 15 mph, which is too fast for traffic in the alley.

Mr. Jerry Mash addressed the Commission on behalf of the Abilene Board of Realtors. Mr. Mash stated that the Board of Directors met regarding this issue last Thursday. Mr. Mash stated that the (Realtors) Board of Directors voted on this issue at their meeting and they are requesting that the current regulations not be modified as they are sufficient. Other concerns discussed that their meeting include:

- ⇒ There is a need for this type of rental for recruiting for economic reasons
- ⇒ Short-term rentals for nonprofit organizations
- ⇒ Economic opportunity for guest homes at Lake Fort Phantom

Ms. Cheryl Cunningham requested that the Commission consider the ramifications of regulating these short-term rentals. Of particular concern to her is the potential impact on homes owned by churches and other entities that utilize these homes for the purpose of ministering on a short-term basis. Regulating these properties to limit their occupancy to 30 or 31 days would in many cases invalidate their effectiveness and their usefulness. Ms. Cunningham requested that the Commission not add regulations which she feels are not needed.

Dr. Robert Wiggins, Sr., asked the Commission to consider:

- ⇒ Regulations citywide – control mechanism
- ⇒ Survey neighbors and obtain release to allow these units

Mr. John Blake asked if the Commission had a plan for residential neighborhoods and the preservation of residential neighborhoods. Mr. Blake stated that if hotel/motel taxes are being collected this does not make a single family neighborhood.

Mr. Tom Choate stated that this use and the issues of noise, parking, trash, security, safety, etc., are regulated under the current ordinance. Mr. Choate stated that in the three years that he has been dealing with this issue there has been no evidence of a security or safety problem or caused property value to diminish. Mr. Choate stated that regulations are in place – enforce the regulations in place and there will be no problem. As to the hotel/motel tax issues – this is a revenue item – this is not something that classifies these properties as hotel/motels.

Ms. Desa Lee-Laird stated that 97% of the residents she surveyed are opposed to the concept of this type of business in a residential area. Ms. Laird stated that she believes the neighborhood is broken and asked the Commission to fix it.

Mr. Gerald Elmore urged the Commission to be very careful about initiating additional regulations that would affect everyone in the City.

Ms. Cindy Haley stated that it is her belief that the current ordinance for short-term rentals in the City of Abilene is sufficient and should not be modified, changed or further regulated.

Mr. Wayne Barnett, Realtor, stated that during the last four years he has worked with military personnel and has dealt with numerous short-term leases. Mr. Barnett stated that military personnel have enough pressure and do not need to deal with added regulations of City ordinances. If the rules and regulations in place are enforced, the needs of the City of Abilene can be met.

Mr. Larry Robertson stated that the problem now is that there are not guiding principles for regulating these units. Mr. James stated in his letter that these units do not fit into the categories of any of the regulations. Mr. Robertson stated that a fair hearing needs to be held on this issue and it is a good idea to cover this citywide. Mr. Robertson stated that Mr. James should be given some kind of help and assistance.

Mr. Rosenbaum asked Mr. Robertson for suggestions as to how the Commission might handle this issue of short-term rentals in the Land Development Code.

Mr. Robertson stated that the problem is that there is no definition for "short-term rentals." Mr. Robertson stated that he does not have a definition at this time and this is something that requires some thought.

Mr. Rosenbaum stated that tonight the Commission will either attempt to define short-term rentals or determine if what is in place currently is acceptable.

Mr. John Iman stated that he is in agreement with the statement, "if it ain't broke, why fix it." However, when this issue first came up, the City Planner, the City Manager and the City Attorney agreed that the 1985 Ordinance was antiquated and required updating. Mr. Iman stated that they have followed the advice of the City up to this date – these are single family dwellings and violations should be reported to the City. Mr. Iman stated that they were told that this issue could be resolved no later than February of this year. Mr. Iman stated that when the Land Development Code review came about he asked City staff if they were on the agenda to discuss this issue. The response was "no." Mr. Iman stated that this is not fair.

Mr. Bill Cox stated that the last time he appeared before the Planning and Zoning Commission he voiced his opinion that there should be no more regulations than required. Mr. Cox stated that he does not believe additional regulations are required.

Ms. Carol Chisum referred to the letter prepared by Mr. James in which he provides a formal determination of the appropriate land use classification for these units. Ms. Chisum stated that Mr. James states in this letter that the ruling is made based upon assumptions. He did not look at the property or speak with the neighbors so she does not know where Mr. James obtained his information. Ms. Chisum stated that Mr. James' assumption is that he must rule between two options and some assumptions listed in the letter include:

- ⇒ No more than three (3) unrelated people may stay there
- ⇒ The house may not be leased out for events, parties or other such gatherings

Ms. Chisum stated that it is stated in the letter that this determination or ruling is subject to change due to new information. Ms. Chisum stated that now everyone has the information that these are not single family residences and she is unsure if these units are bed and breakfast units. Ms. Chisum stated that it is up to this Commission to look at other cities that have different choices and it is her hope that something can be added to Abilene's regulations.

Mr. McClarty closed the public hearing.

Mr. Bixby asked Mr. James the number of complaints received regarding short-term rentals – other than the Sayles Ranch.

Mr. James responded none that he could recall – none other than within this neighborhood.

Mr. Glenn asked if the City required any type of registration of this type of property.

Mr. James responded, "no."

Mr. Glenn asked if some type of permitting process would be a viable situation so that the locations of such units are known.

Mr. James stated that he could not see a problem if the City only required a permit with no extra conditions or restrictions.

Mr. Bixby questioned if there is a need for a specific ordinance to deal with short-term rentals and bed and breakfast establishments or are the ordinances currently in place sufficient. Mr. Bixby stated that he did not feel this could be accomplished at this meeting if it is decided that an ordinance is needed – it will require a great deal of thought and input citywide.

Mr. McClarty stated that he did not feel this issue requires an ordinance; however, a definition (of short-term rentals) is required.

Following discussion, Mr. McClarty stated that the decision for this Commission is, "Do we want to leave it as it is or do we want to create some type of ordinance?" This decision must be made and, then, depending on the outcome, the Commission will proceed from that point.

Mr. Glenn moved that the standing definition of a short-term rental remains as it is at present and requiring registration with the City and a periodic permit renewal.

Mr. Rosenbaum requested clarification regarding this motion. Mr. Rosenbaum stated that rental properties are not regulated and is unsure how these short-term rental units could be regulated.

Mr. Glenn stated that these short-term rentals are a business and some requirements or inspections should be required by the City.

Mr. Glenn's motion failed for lack of a second.

Mr. Bixby moved that the Commission not take any action on this item as far as creating a definition or an ordinance at this time.

Mr. Famble asked if Mr. Bixby's motion is to table this item.

The response from Mr. Bixby was that the Commission take no action at this time.

Mr. Glenn stated that there is a definition.

Mr. Bixby responded "a new definition."

Mr. Glenn asked Mr. Bixby if he wanted to leave the definition as it currently stands.

Mr. Bixby responded affirmatively.

Mr. Rosenbaum seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

Item Five: Land Development Code

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

Mr. James presented the staff report for this item. Mr. James stated that tonight staff will review four (4) outstanding issues with the Commission to come to a consensus on these issues that will be included in the Land Development Code. Mr. James stated that the Commission will not be asked to approve the entire Land Development Code at this meeting. The changes recommended at this meeting and others recommended at the September 21, 2009, meeting will be incorporated into the Code. When all changes have been incorporated into the Code, it is anticipated that the Commission will take formal action on this item at the November 2, 2009, meeting.

Mr. McClarty stated that he met with Mr. James to review information which he had marked in his Code, particularly those issues where the Committee had raised questions. Mr. McClarty and Mr. James reviewed each item in detail to ensure that the information was correct and/or placed within the Code. Mr. McClarty asked if the Commissioners would receive a final draft containing all corrections for review.

Mr. James stated that on Thursday the Commissioners were sent a link to the revised Code. Mr. James recommended that the Commissioners wait until after tonight's meeting to print the Land Development Code.

Mr. McClarty requested that staff print seven (7) color coded copies of the revised Land Development Code – one for each of the Commissioners.

Mr. Glenn moved to remove this item from the table. Mr. Famble seconded the motion and the motion carried unanimously.

Mr. James reviewed the following issues:

20. What is a reasonable time for the City Manager, or his designee, to hear an appeal of a Stop Work Order of construction or development activity
(Section 1.2.6.4, page 1-32)
 - Five business days (draft ordinance)
 - *24 hours (Committee recommendation)*
 - 2 business days (Staff alternative)

Mr. James stated that currently there is no appeal process in place other than an informal appeal to the proper authority. This provides the mechanism for an appeal.

Mr. McClarty stated that he has encountered situations where a project was stopped and there are very high costs associated with such a shutdown.

Mr. Santee asked Mr. James if he would feel confident overruling the Building Official's decision that codes are not being met and a project is shut down.

Mr. James stated that this brings up another question – is the intent of this section to both hear and make a decision on the appeal. The wording currently is to **hear** the appeal.

Mr. Rosenbaum stated that he has no problem with the “2 business days” timeframe.

Mr. McClarty opened the public hearing.

Mr. Eddie Chase stated that a shutdown that occurs on a Thursday concerns him because this most likely delays a project until Monday or Tuesday of the next week. Mr. Chase stated that one day seems to be agreeable with him.

Mr. Santee asked Mr. Chase if it would be helpful if this section was worded as follows: “hear the appeal within one business day and render a final determination no later than the second or third business day.” Mr. Santee stated that there needs to be some closure.

Mr. Chase stated that this wording would work.

Mr. Bixby asked Mr. Santee if it is correct that he is making a separation between a hearing and a decision.

Mr. Santee stated that this is correct because it sounds as though the occurrence is an evolving situation and if a final decision is forced with a specific decision, it may not be what is needed or wanted. Mr. Santee stated that it seems that the goal here is to provide one procedure that will fit a very broad range of situations.

Mr. McClarty closed the public hearing.

Mr. Bixby moved that the appeal hearing be no later than 5:00 p.m. on the next business day following the stop work order and the ruling would be no later than 5:00 p.m. the following business day. Mr. Rosenbaum seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

21. Should the City be able to revoke an approved permit or application, if it was initially approved mistakenly based on a mistake by the City not the applicant?
(Section 1.2.6.8(1), page 1-33)

- *Yes, but the decision to do so should be by the board or commission authorized to hear such appeals and is not solely a staff decision
(draft ordinance) – Staff & Consultant’s recommendation*
- *Yes, through the normal procedure under current ordinances, whereby staff can revoke an approval without a hearing*
- *No, once a permit or application is approved, even by mistake, it should be honored
(Committee discussion, no recommendation)*

Mr. James stated that proposed Land Development Code would require that the revocation not simply be a staff initiated item but would be forwarded to a board of commission. The board or commission would vary based on the item, e.g., zoning issues would be forwarded to the Planning and Zoning Commission. This would provide an additional review of the revocation.

Mr. James stated that this comes back to the issue of who is responsible. Mr. James stated that ultimately the legal responsibility to comply with the ordinances is that of the property owner, the applicant or the developer – not the City.

Mr. Santee stated that he is opposed to all three of the choices listed above. Mr. Santee stated that if a permit is issued by mistake the City should be allowed to revoke the permit.

Mr. McClarty opened the public hearing. No one came forward and the public hearing was closed.

Mr. Rosenbaum asked if there is an appeal process in place for a revoked permit.

Mr. James stated that there is no formal procedure; however, the permit applicant can always go up the chain of command.

Mr. Santee stated that perhaps this should be modeled after the stop work order discussed in Item 20.

Mr. Todd moved to approve Item 1 above but the decision to revoke the permit would be made by the City Council. Ms. Campos seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

22. If a Concept Plan for a Planned Development District (PDD) shows individual building locations (i.e., it provides detail similar to a full Site Plan), how much variation to building size and location should be allowed with amending the PDD?

- Changes to the building of more than 10 feet or more than 10% in size should require PDD amendment (draft ordinance)
- *Eliminate 10 feet and increase percentage change allowable for building size to 50% (Committee discussion – no recommendation)*
- Alternative Option: Eliminate 10 feet and leave percentage at 10%, but clarify in the ordinance that individual building sizes and locations will not be required – only building envelopes

Mr. Bixby asked Mr. James to explain leaving the percentage at 10% in the Alternative Option.

Mr. James stated that if building locations are indicated on a PDD, this was meant to indicate a shift of 10 feet in any direction or a 10% increase in the size of the building (variation of building size). Mr. James stated that if the plan indicates the building at a specific size, by how much can the building size be increased before a review is triggered by the Planning and Zoning Commission and City Council.

Mr. McClarty stated that at this time he does not feel comfortable leaving the 10 foot shift in the Code because he requires the flexibility to move building when developing in the future. Submitting a PDD that indicated the placement of buildings would lock him into that plan. Mr. McClarty stated this is the reason for the elimination of the 10 foot shift and keeping the 10% maximum increase in the size of the **envelope**.

Mr. Bixby asked Mr. James if the intention of this section was to increase the size of the envelope by 10%.

Mr. James stated that this was not exactly the intention of this issue but changing the language to reflect Mr. McClarty's recommendation may not necessarily be a problem. This is, of course, with the understanding that the setbacks would not be violated and a PDD can be crafted as required.

Mr. Rosenbaum asked if indicating the building envelope is a requirement of a PDD.

Mr. James stated that under the new ordinance a concept plan requires only what is planned for a site. With this change, building placement would not be required – only the building envelope.

Mr. McClarty opened the public hearing. No one came forward and the public hearing was closed.

Mr. Rosenbaum moved to approve the Alternative Option with the clarification that the 10% stated in this Option applies to the Building Envelope. Mr. Bixby seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

23. An appeal for a denial of an Alternative Parking Plan was recommended. Who should hear this appeal?

- Planning & Zoning Commission
- City Council
- City Council, with P&Z recommendation
- Board of Adjustment

Mr. James stated that in reviewing the minutes of the Commission's last meeting, it was recommended that appeals be heard by the Planning and Zoning Commission. Mr. James stated that after some of the other discussions on this Code, this item is being presented for clarification purposes.

Mr. McClarty asked if the Traffic and Transportation Division of the City has the authority to accept an alternative parking plan.

Mr. James stated that they do and in that case (if accepted) this item would not be presented to the Planning and Zoning Commission.

Mr. Santee asked how this differs from the current variance to the parking requirements

Mr. James stated that some type of "hardship" must be demonstrated for a variance.

Mr. Santee stated that in thinking through this Code, if an applicant is denied through this Alternative Parking Plan, that applicant can still apply for a variance.

Mr. James stated that the intent of this section was to provide a way for staff to approve the alternative parking plan without having to go the Board of Adjustment. Now the question is, if staff denies the request to whom should the appeal be directed. Mr. James stated that perhaps this issue is being over thought and maybe an appeal process is not required – if staff denies the request, the proponent would apply for a variance.

Mr. McClarty opened the public hearing. No one came forward and the public hearing was closed.

Mr. McClarty stated that the problem with a variance from the Board of Adjustment is that a hardship must be proven.

Mr. James stated that if the language in the Land Development Code, if approved, the alternative parking plan would be an appeal not a variance. In this case (appeal) the criteria would be the same as that reviewed by the Traffic and Transportation Division.

Ms. Campos moved that the draft ordinance not be changed - staff approves the alternative parking plan and if denied by staff, the proponent may appeal to the Board of Adjustment. Mr. Famble seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

Mr. James stated that this covers all of staff's outstanding issues.

Mr. McClarty asked if it is correct that the following actions will be accomplished:

- ⇒ All comments received in the meetings and all comments received in the meeting between Mr. James and Mr. McClarty will be incorporated into a final draft
- ⇒ The final draft will be color coded to differentiate comments from the Committee, the Planning and Zoning Commission and City staff and the Consultant

Mr. James clarified this last action. Staff's intent is to only indicate areas where there is still some concern (color coded). For many of the issues where the Planning and Zoning Commission made a recommendation, even if staff disagrees, changes will be made to reflect the Planning and Zoning Commission's recommendation.

- ⇒ Comments will be included for those Sections where City Council discussion is recommended
- ⇒ This will be printed and delivered to the Commissioners at least one week prior to the Commission's next meeting (November 2nd). If this cannot be accomplished within this timeframe, the item will be rescheduled to a future meeting.

Ms. Campos moved to table this item until the Commission's November 2, 2009, meeting. Mr. Glenn seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Fable, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

Item Six: Adjourn

There being no further business, the Planning and Zoning Commission meeting was adjourned at 7:45 p.m.

Approved: _____, Chairman