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**PLANNING & ZONING COMMISSION**  
**September 7, 2010**  
**Minutes**

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Members Present: Bruce Bixby  
Ovelia Campos  
Gary Glenn  
Fred Famble  
David Todd

Members Absent: Tim McClarty  
Clint Rosenbaum

Staff Present: Jon James, Director of Planning and Development Services  
Dan Santee, City Attorney  
Ben Bryner, Planning Services Manager  
Zack Rainbow, Planner II  
Matt Jones, Planner II  
Alysha Pasieta, Executive Secretary  
Kelly Messer, Assistant City Attorney  
Tony Neitzler, Assistant Director Community Services

Others Present: Norman Whitworth  
Jean Whitworth  
Tony Nietz  
Anne Blackburn  
Mr. & Mrs. Wayne Freeman  
Mike Thompson  
John F. Harney  
Lydia O'Guinn  
Darrell Napre  
Greg McNutt  
Raymond McNutt  
Janice Marryman  
Garnet Roberts  
Shaun Martin  
Paul Johnson  
James Graenser  
Jennifer Welch  
Dave Boyll  
Pete Worley

**Item One: Call to Order**

Mr. Famble called the meeting to order at 1:30 p.m. and declared a quorum present.

**Item Two: Invocation**

Mr. Famble gave the Invocation.

**Item Three: Approval of Minutes**

**Mr. Gary Glenn moved to approve the minutes of the August 2, 2010 meeting with a correction to Radford Hills on page 5. Ms. Ovelia Campos seconded the motion and the motion carried unanimously.**

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

**Item Four: Plats**

a. No Plats were submitted for approval

**Item Five: Zoning**

a. Z-2010-14

Public hearing and possible vote to recommend approval or denial to the City Council on a request from McMurry University to rezone property from RS-6 (Single Family Residential) and GC (General Commercial) to CU (College University) zoning, located at 2525 S. 14th St., 1433, 1441, 1449, and 1457 Portland St.

Mr. Jones presented the staff report for this case. The request is to rezone property from RS-6 and GC to CU. The subject parcel totals approximately 1.0 acres and is currently zoned RS-6 (Single Family Residential) and GC (General Commercial). The RS-6 properties are currently undeveloped and the GC property has been developed with a restaurant.

The adjacent properties have RS-6 zoning to the south and west, CU (College University) zoning to the east, and GC zoning to the north and west.

The area was annexed in 1946 and was zoned to RS-6 and GC sometime after it was annexed.

Currently the properties zoned RS-6 are undeveloped and the GC property has been developed with a restaurant. The adjacent properties to the west have a mix of general commercial uses as well as single family homes. The properties to the south are developed with single family homes, the properties to the east are used by McMurry University, and the properties to the north across S. 14th Street are developed as commercial uses. The Future Land Use section of the Comprehensive Plan designates this general area as low density residential, as well as College/University. The subject property is also along an Enhancement Corridor. The applicant is requesting the zone change to allow for expansion of McMurry University. The request is compatible with the surrounding uses, the Future Land Use Map, and the Comprehensive Plan.

Property owners within 200 feet of the rezoning request were notified. No (0) comment forms were received in favor or in opposition of the request. Planning staff recommends approval of the request.

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

**Mr. Bixby moved to approve Z-2010-14. Ms. Campos seconded the motion and the motion carried by a vote of five (4) in favor (Bixby, Campos, Glenn, and Todd), none (0) opposed, and one (1) in abstention (Famble).**

b. Z-2010-15

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Myra Johnson to rezone property from LI (Light Industrial) to PD (Planned Development) zoning, located at 401 Plum St.

Mr. Bryner presented the staff report for this case. The request is to recommend approval or denial to City council to rezone 401 Plum St. from LI to PD. The subject parcel totals approximately 0.96 acres and is currently zoned LI (Light Industrial). The parcel previously had a building that was recently destroyed by a fire. It is now considered vacant. The adjacent properties have LI zoning to the north, south, east, and west.

The area is part of the original town and was zoned LI in 1977.

Currently the property is zoned LI and is undeveloped. The parcel previously had a building that was recently destroyed by a fire. The adjacent properties to the north, south, east, and west are developed with industrial/warehouse uses. The Future Land Use section of the Comprehensive Plan designates this general area as the central business district. Additionally, the South Downtown Master Plan identifies this area as transitioning away from Light Industrial type uses to a more of mixed use type uses such as retail and residential. The applicant is requesting the zone change to allow for 0 setbacks. The previous building had been constructed with 0 setbacks on the front, rear, and northern exterior side. With the site development standards in the attached PD ordinance, the requested zoning would be compatible with the surrounding industrial uses as well as the Comprehensive Plan and South Downtown Master Plan.

Property owners within 200 feet of the rezoning request were notified. Staff received one (1) comment form in favor and none (0) in opposition of the request. Planning staff recommends approval of the request.

Mr. Bixby asked staff if they had seen the applicant's design.

Mr. Bryner stated that staff has seen a rendering; they originally requested a variance to the setbacks and did provide a rendering that consisted of a metal building with some colors.

Mr. Bixby asked if staff thought the building met the ambiguous material standards outline in B.1.a of the proposed PDD.

Mr. Bryner stated the building would not meet the material standards because it had metal siding. In the City's Land Development Code for Central Business it requires enhancements to the facade and prohibits standard concrete block or metal siding. Other materials would be acceptable.

Mr. Bixby asked if the building met requirements for B.1.b articulation.

Mr. Bryner stated that the applicant did have variations in the color, which potentially would work.

Mr. Todd asked if a variance for setbacks was requested through the Board of Adjustments.

Mr. Bryner stated that a variance was requested and it was denied by the Board of Adjustments.

Mr. Todd asked what was supposed to be the outcome of the slab; was it supposed to be demolished.

Mr. James stated that as part of the City's Building Code when a building burns down or is demolished the slab has to be removed. However, the owners received special permission in this case to leave the slab, but normally it is the expectation.

Mr. Todd asked if there was enough room to put an eight foot wide sidewalk in the landscaping.

Mr. Bryner stated there was room for the sidewalk.

Mr. Famble opened the public hearing.

Mr. Paul Johnson, applicant for the property, stated that they are requesting the zone change in order to put a pleasant building on the property. Mr. Johnson feels it would allow them to take advantage of the pad that was there and to utilize the property. We intend to put a thirty-six thousand (36,000) square foot building with a clear span and twenty-six foot eave heights. We believe our architect's rendering will produce a more attractive building for the area. We also feel it will be a nice upgrade that will coincide with the evolving idea of making this area part of downtown. We spoke with the Railroad Company that owns the land to the east of our property regarding an easement. The tracks are no longer active and the Railroad Company has no issue with granting an easement. The easement will allow our trucks to maneuver more easily and we hope to put "dock highs" on the east side of the building. The easement will allow for docks to be in place without interfering with streets. The building structure we plan to build is a very difficult type of building to find. It will be an attractive building for users and will bring more business to the City. We have the building acquired for the property and we would like to address the zoning requirements for a Central Business. Our architect produced a color scheme for the façade in which he used masonry such as brick and stone to make the building more attractive and at the same time keep our cost down. If we were to put brick or stone on the entire façade it would increase our cost and make it difficult to fund.

Mr. Bixby asked if the façade and building material requirements was the only hurdle for the property.

Mr. Johnson stated it was the only hurdle. He stated a façade other than what they've planned for would probably cost eighty (\$80,000) or ninety thousand (\$90,000) dollars which would be difficult to justify.

Mr. Famble closed the public hearing. The P&Z Commission discussed the request. Mr. Bixby asked if it was the first time the Board has had a discussion regarding this particular building and property. Mr. Bixby stated that he thought that the ordinance should be amended to allow for this building to be built.

Mr. Todd stated that he agreed with Mr. Bixby. The area has looked that way for thirty (30) years. He stated that the City is trying to enhance the area and at some point in time someone has to start the progression toward that goal.

Mr. Famble asked if there were eight foot (8) eave heights.

Mr. Bixby stated the eave heights weren't the issue. It was the B.1 building materials that posed a problem. He stated that he thought it needed to be altered on the ordinance.

Ms. Campos stated that the brick around the loading dock would make the building look very nice. She stated it was better than the alternative.

Bixby motioned to change B.1 a and b to include ten (10) percent masonry.

**Mr. Bixby moved to approve Z-2010-15 requiring 10% of the building facade be masonry rather than standard concrete block or metal instead of 100% as required by the Central Business Building Standards. Ms. Campos seconded the motion and the motion carried by a vote of five (5) in favor (Bixby, Campos, Famble, Glenn, and Todd) and none (0) opposed.**

**Item Six: Conditional Use Permits**

a. CUP-2010-01

Public hearing and possible vote to recommend approval or denial to the City Council on a request from Bullet Development, LLC, for a Conditional Use Permit request for petroleum or gas well, located at the southeast corner of Neas Rd. and Caldwell Rd., being approximately 90 Acres.

Mr. Jones presented the staff report for this case. The request is to recommend approval or denial for a conditional use permit request for petroleum or gas well. The applicant owns the mineral rights to approximately 480 acres. The majority of the area is zoned AO (Agricultural Open Space) and is undeveloped. There is some MH (Mobile Home) zoning in the area that has been developed with mobile homes.

The area was annexed in 1980 and was zoned AO when it was annexed. The MH zoning along Caldwell St. was approved in 1981.

Currently the property is zoned AO and MH. The majority of the AO property is undeveloped, with a few single family residential dwellings spread throughout. There are also several mobile home dwelling units within the subject property that would not allow for the drilling of petroleum or gas. The Future Land Use section of the Comprehensive Plan designates this general area as low density residential. The applicant plans to drill for petroleum or natural gas. The drilling of petroleum or natural gas in this area is generally ok, as long as the applicant takes the necessary steps to obtain a drilling permit from the City of Abilene, to make sure that all requirements are met, including separation standards from residential areas.

Property owners within 200 feet of the radius were notified. Staff received five (5) comment forms in favor and seven (7) in opposition of the request. Planning staff recommends approval of the request. A drilling permit must still be approved by City Council.

Mr. Bixby stated the Commissioners should be discussing or take under advisement the recent Council Decision to overturn the last oil drilling case involving Sojourner Drilling.

Mr. James stated that as part of the directors report the council approved the rezoning for the oil drilling by a vote of 7 to 0.

Mr. Bixby stated in the Sojourner Drilling case the property was zoned SC (Shopping Center) and had requested to be rezoned GC (General Commercial) to allow for drilling. After several months City Council permitted drilling in that area.

Mr. Todd asked Mr. James if the Land Development Code required a Conditional Use Permit.

Mr. James stated that it is a requirement of the New Land Development Code and that there is a discussion item on the memo to discuss it in further detail.

Mr. Famble opened the public hearing.

Mr. Gregg McNutt, his father owns 3741 Caldwell Rd. His sister, two brothers and he own the land that is being proposed for drilling. He stated that the drilling company has already staked out the area and planned where they're going to be drilling. He wants to eventually build houses on their land and the oil well will hinder his plans. His father has had the land for quite some time and has used it to run horse and cattle. He stated that he has seen what happens to areas such as Odessa and Midland where oil wells have been drilled. The wells produce a bad smell and contaminate the water in the wells. He stated that they depend on the wells to water their horses and cattle. He stated that he and his sister opposed the drilling.

Mr. Todd asked Mr. McNutt if they own all of the 480 acres. Mr. McNutt stated that they only own 90 of the 480 acres.

Mr. Todd asked if the Oil Company had the land leased from them. Mr. McNutt stated that they did not and that his family doesn't have the mineral rights to the property.

Mr. Bixby asked whether Mr. McNutt had the executive lease rights. Mr. McNutt stated that his family doesn't have mineral rights to the property. He received the land from his uncle and assumed he had the mineral rights but in fact did not.

Mr. Todd asked which 90 acres him and his sister owned. Mr. McNutt pointed out their 90 acres on the map.

Mr. Glenn clarified that 3741 was owned by his father and asked Mr. McNutt if he was a partial owner in the property. Mr. McNutt stated that his three brothers and sister also have partial ownership of the property.

Jean Whitworth, owns property at 3701 Caldwell Rd. She stated that Jolly Roger dead-ends into their driveway where it turns into Caldwell Rd. Mrs. Whitworth stated that they have 11 acres where their horses, cows and donkeys graze. She asked for clarification on whether or not their water well would be affected by the pipeline. She noted that on the notification map there was a black line around the area to be drilled. She wasn't sure what the black line meant.

Mr. Famble stated that the black line was a border line for those to be notified that had nothing to do with where the oil pipeline would be.

Mr. Jones stated that nothing would be done to affect her water well.

Jennifer Welch, owns property at 4065 Caldwell Rd. Mrs. Welch stated that she and her husband own 11 acres and even though the drilling isn't exactly on their property she believes it would affect them. She stated that they have the capability to drill for water and have not at this point in time. She stated that they are opposed to the drilling.

Pete Worley, owns property at 614 F Neas Rd. He stated that he doesn't think the drilling is highly recommended by the majority of the residents in the area. In his opinion drilling operations should not be approved; he stated that he was opposed to the drilling.

Mr. Famble closed the public hearing. The P&Z Commission discussed the request.

Mr. Bixby asked Mr. Santee if Oil Companies have to make reparation to property owners for damages created by drilling. Mr. Santee stated that he couldn't speak on that particular issue.

Mr. Bixby stated that City Council has made their approval on oil and gas drilling very obvious.

Mr. Todd asked whether or not Sojourner Drilling owns the property and if they could have requested a zone change if they had not owned the property.

Mr. James stated that he was unsure whether or not they owned the property. However, they could have acted as agent for the property owners.

Mr. Santee stated he doesn't recall if they stated whether or not they owned the property. Their intent was to drill two wells.

Mr. Todd stated that it seemed as though the Commission was dealing with a similar case and that the City Council has made their thoughts on oil and gas drilling pretty clear.

**Mr. Bixby moved to approve CUP-2010-01. Mr. Todd seconded the motion and the motion failed by a vote of two (2) in favor (Bixby and Todd) and three (3) opposed (Campos, Famble and Glenn).**

**Item Seven: Thoroughfare Closure**

a. TC-2010-02

Public hearing and possible vote to recommend approval or denial to the City Council on a request from the City of Abilene to abandon All alley rights-of-way in Block B and C of the Hale Resubdivision of the Anderson Addition, Abilene, Texas and the street right-of-way.

Mr. Jones presented the staff report for the case. The request is to abandon all alley rights-of-way in Block B and C of the Hale Resubdivision of the Anderson Addition, Abilene, Texas and the street right-of-way between said blocks, being located between Vine St. and Jeanette St. and between S. 20th St and S. 21st St. as they currently exist.

Improvements to these right-of-ways have never been completed. The right-of-way (ROW) was dedicated for public use but they have never been used as such. The site has been developed with an elementary school.

The applicant intends to close the subject right-of-ways to clean up an existing non-conformity in the property records for the subject properties. The elementary school is planning on expanding and, during the research, found that there are existing right-of-ways that have never been abandoned and that have been built over. The request would clean up an already existing issue as well as provide better property records for the subject properties. The rights-of-way are not planned to be improved and the request does not have any negative impacts on the surrounding property owners or the circulation of traffic in the area.

The Plat Review Committee reviewed the request and is recommending approval of the requested closures with the following conditions: the abandonments are not final until a plat is filed showing the deletion of the right-of-ways; there shall be no lots remaining without street frontage; and, the plat should be filed within 18 months.

Property owners within 200 feet of rights-of-way were notified. No (0) comment forms were received in favor or in opposition of the request. Staff recommends approval of the requested abandonment, with the conditions suggested by the Plat Review Committee.

Mr. Famble opened the public hearing.

Mike Thompson, owns property at 1917 South 20<sup>th</sup> ST. He wanted clarifications on which streets were going to be closed. Mr. Jones pointed out on the map where the thoroughfare closures were going to be and that it would not affect his property.

Tony Neitzler, Assistant Director Community Services stated that he was in favor of the thoroughfare closure. He also stated Bowie Elementary is currently working with AISD to affect a swap of land so that they can facilitate their school re-development in return for a better park site.

Wayne Freeman, owner of property at 2110 Jeanette, asked how the owners would maneuver on and off their property with the thoroughfare closures.

Mr. Jones stated that Bowie Elementary sits on top of the streets and alleys that are going to be affected by the thoroughfare closures. All of the alley rights-of-way and street rights-of-way were dedicated but never improved. The school exists over alley rights-of-way and street rights-of-way. The thoroughfare closure is to allow for the rights-of-way to be abandoned in order to allow for the school to move forward with expansions.

Lydia O'Guinn, owner of property at 2049 Jeanette, stated the notification paper didn't properly explain the thoroughfare closure and, like the others, needed a bit more clarification.

Mr. Famble Closed the public hearing.

**Mr. Bixby moved to approve TC-2010-02. Mr. Glenn seconded the motion and the motion carried by a vote of five (4) in favor (Bixby, Campos, Famble, and Glenn), none (0) opposed, and one (1) in abstention (Todd).**

**Item Eight: Discussion Item**

Discussion on proposed amendment to the Land Development Code regarding Petroleum or Gas Wells.

Mr. James explained that the City's Oil and Gas Ordinance currently has a procedure for an oil and gas permit. There have been questions raised on whether or not a conditional use process is necessary. Mr. James asked the Commissioners to discuss their thoughts on whether or not having both processes was excessive. He stated that the only difference between the Conditional Use Permit and the Oil and Gas Permit is that the Oil and Gas Permit goes before the City Council whereas the Conditional Use Permit goes before the Planning and Zoning Commission for a recommendation to City Council. He stated that there wasn't ample time to get this item on the agenda as an action, but thought necessary to discuss it considering the CUP case being heard today. He stated that this item will be on the next agenda as an



action item. Staff recommends amending the Land Development Code to not require a Conditional Use Permit.

Mr. Bixby asked if the decision made on case CUP-2010-01 would have changed if the Conditional Use Permit was not a factor. Mr. James stated that Bullet Development would have to obtain an Oil and Gas Permit which would have gone before the City Council.

Mr. Todd asked if they could complete the Oil and Gas Permit at the same time as the appeal. Mr. James stated there would be no appeal for the oil and gas permit if the Conditional Use Permit wasn't a factor.

Mr. Todd asked if Bullet Development could appeal the decision made today when they apply for the Oil and Gas Permit. Mr. James stated that they could and that the design was to allow for such.

Mr. Todd stated that he agrees the Conditional Use Permit should be taken out of the Land Development Code.

Mr. Santee stated that the Oil and Gas Permit is very extensive. He stated that there are quite a few requirements that have to be reviewed and signed by multiple departments. All of the City's requirements for the Oil and Gas Permit are in addition to those that the Railroad Commission requires. There is a public hearing and a notification area with City Council for the Oil and Gas Permits. Considering that none of the information was submitted to the Planning and Zoning Commission, he found it difficult for the Commission to make an intelligent decision on whether or not a Conditional Use Permit should be granted.

Mr. Bixby asked if the zoning requirements in regards to oil and gas development would be the only issue to discuss if the Commission decided to exclude the Conditional Use Permit.

Mr. Santee stated that he was correct and that that had been the situation in previous oil and gas cases.

Mr. Glenn stated there was more information that was brought forth with the Sojourner Drilling case once it had gone to City Council. He stated that they made it clear at the hearing what their development plans were and how they expected to protect the area.

Mr. Todd asked why the Commission was dealing with the drilling aspect when they should be dealing with the zoning aspect. He stated the Commission denied the zone change for Sojourner Drilling because of the drilling aspect but not because it wasn't a good use for the land. Oil Companies should be permitted to drill in any place in which they can obtain a Drilling Permit through City Council.

Mr. Santee stated that one of the requirements on the drilling permit is that the land is properly zoned.

Mr. Bixby stated in the previous case it was easier to make a decision on the zoning because of the fact that drilling is permitted in General Commercial zoning and not in Shopping Center zoning.

Mr. Todd asked if the Commission needed to look into more extensive zoning to allow for drilling.

Mr. Bixby stated that the Commission needed more direction from City Council.

Mr. Famble agreed with Mr. Bixby and asked Mr. James if the discussion at City Council regarding Sojourner Drilling was extensive.

Mr. Todd stated that Sojourner Drilling gave extensive information at City Council and that the Planning and Zoning Commission shouldn't be considering drilling activities. He stated that City Council should be dealing with the drilling activities since they will be issuing the permit.

Mr. Santee stated that Sojourner presented the Planning and Zoning Commission with a presentation similar to one that was presented to City Council. He stated that they presented all of the information that was either in their permit or going to be.

Mr. Bixby stated that he deduced from the presentation that drilling is permitted in Shopping Center Zoning under some circumstances. He stated that the Land Development Code is incorrect if drilling is permitted in Shopping Center Zoning.

Mr. Famble asked whether or not the amendment to the Land Development Code regarding drilling would be an agenda item at the next meeting.

Mr. James stated that the Agenda item would be to change the Land Use Chart to not require a Conditional Use Permit. He stated that in the districts in which drilling is permitted currently through a Conditional Use Permit would be permitted simply by right. He stated if the drilling is in the permitted zoning districts the Planning and Zoning Commission wouldn't hear the case. He suggested that part of the discussion by the Commission should include in which zoning districts drilling would be permitted.

**Item Nine: Director's Report**

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

August 12, 2010 Council Meeting

Z-2010-09

Request from Sojourner Drilling Corporation to rezone property from GR (General Retail) to PD (Planned Development) zoning, located at 3366 Ambler Ave.

Council Decision: Approval as requested by the applicant (7-0)

This was an appealed item with a recommendation of Denial by P&Z.

Amendments to the Land Development Code

Approval of amendments to Sections 4.2.1.3 Off-Street Parking-minimum requirements and standards.

**Item Ten: Adjourn**

There being no further business, the Planning and Zoning Commission meeting was adjourned at approximately 2:25 PM.

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