
PLANNING & ZONING COMMISSION
October 4, 2010
Minutes

Members Present: Bruce Bixby
 Ovelia Campos
 Gary Glenn
 Fred Famble
 David Todd
 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
 Kelly Messer, Assistant City Attorney

Others Present: Barbara Pinter
 Dave Boyll

Item One: Call to Order

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

Item Two: Invocation

Mr. McClarty gave the Invocation.

Item Three: Approval of Minutes

Ms. Ovelia Campos moved to approve the minutes of the September 7, 2010 meeting with a. Mr. Famble seconded the motion and the motion carried unanimously.

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

Item Four: Plats

a. MRP-3210

A public hearing to consider a plat of Lot 101, Blk 17, Replat of a Portion of Lot 1, Blk 17, Edgemont Subdivision, City of Abilene, Taylor County, Texas.

Mr. Bryner presented the staff report for this case.

Planning staff recommends approval of the request.

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

Mr. Rosenbaum moved to approve MRP-3210. Mr. Todd seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, Rosenbaum, Todd and McClarty), none (0) opposed.

Item Five: Conditional Use Permit

a. CUP-2010-02

Public hearing and possible vote to recommend approval or denial to the City Council on a request from NTCH NM, LLC, for a Conditional Use Permit request for an Antenna Tower-Commercial, located at 1002 Elm Street.

Mr. Jones presented the staff report for this case. The request is for a Conditional Use Permit to allow for an Antenna Tower at 1002 Elm Street.

The subject property totals approximately 0.20 acres and is zoned HC (Heavy Commercial). The lot is fenced in by a chain-link fence with barbed wire along the top and is largely covered with concrete. There is a gate large enough to allow large vehicles to enter the site.

The area was annexed in 1895 and was zoned AO sometime after it was annexed. It was then later zoned to HC. The Board of Adjustment approved a Special Exception to allow a Communications Antenna in July of 2006. The Special Exception expired because a building permit was not acquired to build the tower within 180 days of approval.

Currently the property is zoned HC. The properties to the north, south and west are developed as commercial uses. The property to the east is the Travis School, which is still owned by AISD but not in use as a school. Across Elm St. approximately 100 feet to the south of the subject lot are residential uses. Comprehensive Planning Analysis The Future Land Use section of the Comprehensive Plan designates this general area as existing commercial. The commercial antenna tower requires approval of a site plan and must obtain a building permit from the City of Abilene to make sure that all requirements are met.

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

Ms. Campos commented that the AISD property mentioned by staff is actually Travis Opportunity Center for secondary students.

Mr. Bixby stated that the case number on the agenda and the staff report were not the same; one was listed as 01 and one as 02.

Mr. Jones stated that the correct case number was 02.

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

Mr. McClarty closed the public hearing. The P&Z Commission discussed the request. Mr. James asked the legal staff if the discrepancy with the case number would pose a problem.

Mr. Santee stated that since the location and the request were correct it would not pose a problem.

Mr. Glenn moved to approve CUP-2010-02. Mr. Famble seconded the motion and the motion carried by a vote of seven (7) in favor (Bixby, Campos, Famble, Glenn, Rosenbaum, Todd and McClarty), none (0) opposed.

Item Six: Ordinance Amendment

Public hearing and possible vote to recommend approval or denial to the City Council on a proposal to amend the Land Development Code, Section 2.4.2.1 (Land Use Matrix) and 2.4.3 (Requirements Applicable to Specific Land Uses) regarding Petroleum or Gas Wells.

Mr. Bryner presented the information regarding the Ordinance Amendment to the Land Development Code.

At the Planning & Zoning (P&Z) Commission on September 7, 2010, the Commission was presented with a discussion item concerning the need for a Conditional Use Permit for Petroleum or Gas Wells. Staff indicated to the Commission that an item would be added on the next agenda for potential changes to the Land Development Code (LDC). The Commission agreed that approval of a Conditional Use Permit is not needed. The following sections are proposed to be amended:

Section 2.4.2.1 Land Use Matrix

Section 2.4.3 Requirements Applicable to Specific Land Uses

Staff is proposing to allow Petroleum or Gas Wells as a permitted use by right where a Conditional Use Permit is currently required. Additionally, staff is proposing that a condition be added to the Land Development Code stating that a drilling permit approved by City Council shall be required. There are quite a few requirements that have to be reviewed and signed by multiple departments when reviewing a drilling permit. 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 as well. This has been the past practice and has worked well. The City Council has complete discretion in approving or denying drilling permits. Due to these conditions, the requirement for a Conditional Use Permit only adds another layer of review to the approval process and does not add any additional zoning controls.

Staff recommends approval of the proposed amendments for Sections 2.4.2.1 and 2.4.3.

Mr. Bixby questioned the appropriateness of AO (Agricultural Open Space) being used as a temporary zoning category; considering the fact that drilling is permitted within that zone.

Mr. Bryner stated that staff found AO to be an appropriate for that particular use. He stated firstly, drilling permits require notification and secondly City Council can set conditions for the drilling property. Mr. Bryner also made mention to the drilling permit having distance requirements. The requirements would eliminate smaller properties, only allowing for drilling on larger properties.

Mr. James stated that staff has treated AO zoning as a temporary holding zone to allow for different zone changes in the future. For instance, if a tower is developed on a piece of property zone AO any future development would have to accommodate the tower.

Mr. Todd questioned whether a drilling permit would be permitted on a large residentially zoned property that had not been developed. He also questioned why drilling and zoning were being addressed together when in fact the drilling permit is inclusive enough to cover all aspects.

Mr. Bryner stated that there had been several cases in which undeveloped residentially zoned properties have been reverted back to AO zoning

Mr. Todd stated with the two previous drilling applications, the Board discussed drilling issues rather than discussing zoning issues. Mr. Todd stated that drilling issues should be heard by the City Council rather than the Planning and Zoning Commission.

Mr. McClarty opened the public hearing. No one came forward and the public hearing was closed. The P&Z Commission discussed the request.

Mr. Bixby stated the Planning and Zoning Commission objective should be to consider which zones are for drilling activities and City Council address the permit requirements. Mr. Bixby stated that AO needs by the remaining conditional use. Mr. Bixby stated that the objective would allow the Board to inform the community on which areas drilling would be permitted. He stated that a few issues may be eliminated if AO were to be addressed by the remaining conditional use.

Mr. McClarty stated when a developer wants to develop a large piece of property zoned residential, with drilling in one area and residential in the surrounding area; City Council should be the authority on drilling.

Mr. Todd stated that the Board shouldn't have to deal with the same issues that arose from the Sojourner Drilling Case.

Mr. Bixby stated that the Board was following the requirements set forth in the Land Development Code and in following those requirements made their decision.

Mr. Todd asked why the Board didn't approve the land development in the Sojourner case.

Mr. Bixby stated the property was originally zoned general commercial and later rezoned to a PDD to permit drilling. He stated that the zone change didn't change the nature of location nor did it eliminate the existing issues.

Mr. Todd stated the Board only discussed the drilling activities in regards to the Sojourner Drilling case when in fact should have been discussing zoning regulations.

Mr. Bixby stated if City Council wants to change the Land Development Code then the Board needs make a recommendation. Mr. Bixby stated that the Planning and Zoning Commission directive should be to give direction to the community on where oil drilling should be permitted.

Mr. Famble asked if by placing P's all across the board it would accomplish Mr. Bixby's concerns.

Mr. Bixby stated by leaving it blank would accomplish it.

Mr. Todd questioned whether the Board would consider zone changes.

Mr. Bixby stated the Board should consider zone changes on what's right for a particular piece of property not based on who wants to drill.

Mr. Todd stated he agrees however, the requestor should not have to go through two processes to be permitted to drill.

Mr. Santee stated that Travis McClure, the Land Agent for the City could answer any questions the Board members may have. Mr. Santee stated the majority of permits received are for properties zoned AO. He also stated the process requires a two hundred and fifty (250) foot separation from the well board and a property line that has a residence on it. If the separation needs to be closer than the allowable distance the developer would have to obtain special exception through City Council. Removing the P from AO would eliminate between seventy-five (75) and ninety (90) percent of the permits.

Mr. Bixby stated the permitting of drilling in neighborhood retail is an exceptional case.

Mr. Santee stated a request to drill on anything other than AO and possibly heavy commercial/light industrial seldom occur. The majority of requests are AO properties located on large tracks of land; even the rezoned areas have been large tracks of land.

Mr. Bixby asked Mr. Santee what is thoughts were on AO being used as a temporary zone for property going to be used for residential.

Mr. Santee stated that it's hard to determine what the property owners future intend for the property is going to be. The property owners may or may not hold the minerals rights to their property. The property the City recently annexed had numerous oil wells and the property will remain AO until it is developed. Currently there are subdivisions being developed on that property within in close proximity to the oil wells.

Mr. Bixby stated the Board typically doesn't hear cases in which oil wells are already established but rather hears cases to develop oil wells where none exist.

Mr. Santee stated the many property owners have held on to their properties minerals rights to develop the in the future and to not allow for drilling in at least AO affects those owners.

Mr. Bixby asked the Commissioners if the Board should be directly involved in directing the community.

Mr. McClarty stated that the Board should not be involved. He stated that if he had twenty (20) acres of land that was zoned Office and a developer wanted put an oil well on one corner of it; he would design the property to allow for such. It would be a nuisance to have the Planning and Zoning Commission rezone that corner of my property; it would be easier to go through a permit process with the City Council.

Mr. Bixby asked Mr. McClarty if he would have P's all across the board.

Mr. McClarty stated a drilling permit should be allowed wherever City Council permits.

Mr. McClarty asked Mr. McClure to explain the drilling permit process.

Mr. McClure stated when a company wants to drill a well on City land they need to apply for a drilling permit. The permit requires the company to provide a survey of the property, state the location of the well, and insurance coverage. The permit is originally routed through all the department directors for an internal review and then to the City Council. Chapter 21 of the Oil and Gas Ordinance, no well may be drilled within in 200 feet of an existing buildings or building without out a special exemption. No well may be drilled within 200 feet of a residence without the applicant obtaining a notarized written consent of the residence.

Mr. McClarty questioned whether there was a public hearing section during the permit hearing.

Mr. McClure stated the ordinance requires all property owners within in five hundred (500) feet of the staged well location to be notified.

Mr. Famble questioned whether the process is absent of coming before the Planning and Zoning Commission.

Mr. McClure stated the process is separate and apart from the Planning and Zoning Commission.

Mr. Glenn asked Mr. McClure whether he thought an in-depth look was taken when reviewing the permit; he asked if it was necessary to have the Company come before the Planning and Zoning Commission.

Mr. McClure stated the process is very in-depth; it is a process that has been in place since the 60's.

Mr. Santee stated that the City did a comprehensive overview and rewrite of the Ordinance three years ago. Mr. Santee asked Mr. McClure to expand on the minimum acreage requirements.

Mr. McClure stated there are no requirements on the minimum size.

Mr. McClarty stated there is no reason for the permit to come before the Planning and Zoning Commission when the permit process with City Council is very thorough.

Mr. McClure stated that Mr. Bixby had a valid comment in regards to a residence having valid expect that drilling would not be permitted within residential zoning. However, the other argument is that the permit is going to come before City Council where the residence can address their concerns.

Mr. Todd questioned whether City Council could place any restrictions and conditions on the drilling permit.

Mr. McClure stated City Council has the authority to require any conditions they perceive necessary. The fast majority of the properties being developed for drilling are zoned AO; the company runs into numerous issues when applying for a drilling permit in populated areas.

Mr. Bixby stated when making a recommendation to City Council; there should be an exclusion of particular zoning in which drilling would not be permitted. Mr. Bixby stated a possible recommendation of changing the distance requirement to three hundred (300) feet.

Mr. Santee stated the distance requirement is part of the Oil and Gas Ordinance, which isn't something that would not come before the Planning and Zoning Commission.

Mr. Bixby questioned whether the Board could make a recommendation.

Mr. Santee asked Mr. Bixby if he wanted the Oil and Gas Ordinance Amended.

Mr. Bixby stated he would be more comfortable if there was a greater separation between oil wells and buildings.

Mr. Famble asked if the distance requirement was part of the Land Development Code being amended.

Mr. McClarty stated that it be a recommendation made to City Council.

Mr. Glenn stated City Council changed the Oil and Gas Ordinance three (3) years ago and has the authority to change the conditions on any given well. The Planning and Zoning Commission have no place in setting drilling conditions.

Ms. Campos stated numerous citizens commented on the smells that arose from the drilling around Hardin Simmons. Ms. Campos stated her concerns with allowing drilling in all zones especially residential zones; drilling shouldn't be permitted in those areas.

Mr. Bixby suggested that the proposed ordinance remain as stated. The only changes that should come before the Planning and Zoning Commission are zone changes; those zone changes aren't based on whether someone wants to drill oil on it.

Mr. Todd stated with past cases the Board made recommendations to City Council to deny planned development because of drilling activities. Mr. Todd stated the Oil and Gas Ordinance is sufficient and the permit shouldn't need to come before the Board.

Mr. Santee stated the Board can place a C in zoning areas they feel need the Planning and Zoning Commissions recommendation.

Mr. Bixby motioned to use the proposed ordinance that indicates permitted zoning for drilling and place conditional those zones left blank. Ms. Campos seconded the motion and the motion failed by a vote of three (3) in favor (Bixby, Campos, and McClarty), and four (4) in opposition (Famble, Glenn, Rosenbaum, Todd).

Mr. Famble motioned to place p's in all zones. Mr. Glenn seconded the motion and the motion carried by a vote of six (6) in favor (Bixby, Famble, Glenn, McClarty, Rosenbaum and Todd) and one (1) opposed (Campos).

Item Seven: Directors Report

September 9, 2010 Council Meeting

Z-2010-10 Request from the City of Abilene to rezone property from AO (Agricultural Open Space) and GC (General Commercial) to PD (Planned Development) zoning, located at the southeast corner of West Lake Rd. and being approximately 90 acres. Council Decision: Approval as recommended by P&Z (7-0)

Z-2010-11 Request from the Development Corporation of Abilene, Inc. to amend PD-73 concerning signage and business identification. Council Decision: Approval as recommended by P&Z (7-0)

Z-2010-12 Request from Butterfield Meadows, LLC to rezone property from MD (Medium Density) to PH (Patio Home) zoning, located at the 3500 block of Firedog Rd. Council Decision: Approval as recommended by P&Z (7-0)

Z-2010-13 Request from Joseph Lopez to rezone property from RS-6 (Single Family Residential) to NO (Neighborhood Office) zoning, located at 841 EN 10th Street. Council Decision: Denial of the request as recommended by P&Z (4-3)

Amendments to the Land Development Code

Approval of amendments to Sections Section 2.4.2.1 Land Use Matrix and Section 2.4.3 requirements applicable to Specific Land Uses of the Land Development Code. Council Decision: Approval as recommended by P&Z (7-0)

September 23, 2010 Council Meeting

No items were considered.

Item Eight: Adjourn

There being no further business, the Planning and Zoning Commission meeting was adjourned at approximately 2:22 PM.

Approved: _____, Chairman