

# Planning and Zoning Minutes

November 12, 2019 Regular Meeting

## **APPROVED at December Meeting**

Meeting Location: Saint Hedwig City Hall

Called to order at 7:01 P.M.

Secretary Fornof—Present

Commissioner Jones—Present

Commissioner Robinette—Absent

Commissioner Mais—Present

Commissioner Maddox--Present

Commissioner Polasek—Present

Alternate Commissioner Schaefer-- Present

Quorum established.

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Topic 01: Reading and approval of Minutes for October 15, 2019 meeting.

Amendments/ Corrections

- Commissioner Polasek noted some general typos.
- Commissioner Jones noted missing phrase under topic 5 needs to have “for septic systems” added.
- Also noted: bottom of same page add phrase” for submission at the courthouse for filing”
- Under topic 7, change secondary bullet point from confusion to confusing.
- Under topic 9, change import to important.
- Commissioner Polasek noted that on page 9, 4<sup>th</sup> bullet strike “of”
- Topic 5 second from bottom bullet change to “asked”

Motion made by Commissioner Polasek to accept as written with minor adjustments noted.

The motion carried.

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Topic 02: Review the Planning and zoning Commission Log

- Commissioner Polasek and Secretary Fornof discussed formatting issues with the Log. Secretary Fornof was able to clarify for Commissioner Polasek.
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Topic 03: Citizens to be heard

- Tom Daniels
  - Is interested in purchasing property at 11605 LaVernia Road but has questions regarding if he can store his luxury porta potties on sight.
  - 13.92 acres, ag exempt
  - Business “A Royal Flush” air conditioned port a potties.
  - Just wanted to park them there
  - Business is located in San Antonio.
  - Just wanted to make sure that it would be o.k. for this use prior to proceeding with the purchase of the property.
  - Provide pictures and a website. Aroyalflush.net
    - Viewed the website photos.
    - Not more than 18 units total.
    - Pumped out prior to storage.
    - Look like cargo trailer.
    - Will live on site.
    - Nearest neighbor approximately ½ mile away.
    - Located west of 1604 near Rakowitz intersection.
- Arthur Strzelczyk
  - Inherited property behind the baseball diamond and brother has property along 1346 near Graytown road. Would like to trade property with him for his children to build a house.
    - There is no road frontage on his piece.
    - Would like to do an even acreage swap.
    - Would need to survey the same size of property off of his brother’s 9.16 acre tract on the Graytown side.
- Commissioner Polasek asked commissioner Jones to verify how the land is currently zoned.
  - Commissioner Jones verified that it is currently zoned A-1R.
- Secretary Fornof noted that the front part of the property might be Historic.
  - Confirmed that it appears to be A-1R on the FLU map.
  - Not in the Historical
- Commissioner Polasek noted that that the land he owns was subdivide prior to the zoning.
  - Not sure how to address being less than 2 acres.

No other citizens to be heard.

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Topic 04: New Business- Item 1 Zoning ordinance determination for possible development

- Secretary Fornof confirmed that this was pertaining to Mr. Daniels case.
- Commissioner Jones asked for questions or comments from the Commissioners.
- Commissioner Polasek noted
  - It is currently a 5 acre minimum
  - Secretary Fornof noted that it may be in the ETJ

- Secretary Fornof noted that if it is in the ETJ it would not be an issue for us because our ordinance is in the city.
- Commissioner Jones asked that we pull up the BCAD listing for the property to cross check if it is in fact in the city.
  - Pre-existing 9-year-old residence on site now.
  - Upon closer inspection of the BCAD plat, it was confirmed that the property is within the city in its entirety.
- Secretary Fornof noted that it is not “clean” in the ordinance
  - Not for sale
  - Close to a home business
  - Cross checked the schedule of uses
  - Not mobile homes
  - Would allow him to work from home
  - No signage
- Commissioner Jones question for the commissioners is “what would we call this?”
  - A home business?
    - Mr. Daniels noted that they have an office located in San Antonio, this will just be for storage
    - There will be no signage promoting the business
    - No traffic coming and going.
  - Commissioner Jones noted that whatever we do will establish a precedent
- Commissioner Polasek cited an example from a previous occasion on Pittman road for “You Store it” units.
  - They were storing them on site for the business and they had to be removed from Pittman road.
  - Was not certain of the details but recalls that the items had to be removed from the property.
  - Kim looked at the possibility of “special Use” in this case but did not find anything conclusive.
  - Kim noted the example of the barrel guy.
    - Was an ag related use.
    - Commissioner Jones noted that Special use might be the best path forward.
- Commissioner Jones asked Commissioner Mais to take a close look at page 11 in the ordinance under the Special uses section. Seems to apply to the Historic district.
- Went back to page 7 section c.
- Commissioner Polasek noticed that behind the El Rodeo restraint there are tractor trailers parked and also at 1346 and 1518 and was wondering if there was some use or allowance that we could apply to this case.
  - Secretary Fornof noted that in both cases the parking area is “prepared” with some degree of paving.
  - Commissioner Polasek noted that she would not be opposed to a remedy similar to the barrel case on 1518.
- Commissioner Maddox raised the question of what to call this and that perhaps we consider this personal property. Did not see anything that really excludes this approach.

- Mr. Daniels confirmed that he has a total of 18 units but they would very rarely be in one place at one time.
- Commissioner Jones noted that we could all agree that this is an atypical situation but not really something that we would have an issue with.
  - Seems like a tiny foot print relative to the property
  - Worst case scenario we could circle back to the special use permitting procedure.
- Commissioner Mais suggested that we present it to the attorney for review and ask for advice on the best route to take.
- Commissioner Polasek stated that if we go the special permit use route would offer everyone the best protection.
- Commissioner Jones asked for documentation for us to forward to the attorney for review.
  - Noted that we should be able to have an answer for the first part of December
  - Asked that Mr. Daniels provide us documentation to submit to the attorney for review.

Topic 05      New Business Item 2. Subdivision Ordinance Variance Determination (Strelczyk Case)

- Secretary Fornof referred the commissioners a graphic in the packets
  - Noted that subdivision of property falls into an area of the ordinance that has “holes” in it in terms of other than creating subdivisions.
  - Referred to variance section of the subdivision ordinance to see if we could for a one-time division of property.
    - Commissioner Jones noted that this falls under the subdivision ordinance as specified by Texas Local Government Code 212.
    - Secretary Fornof noted that a simple ordinance follows the 4 rules for a variance found at the top a page 15 in the subdivision ordinance. Commissioner Jones read these aloud.
- Commissioner Jones asked Mr. Strelczyk to confirm how the transaction would work?
  - Would his brother have access to the property that he wants to trade.
  - They do have access to the property but it would be crossing through farm land.
    - Just trying not to chop it up too much.
    - Confirmed that the swap would be for the part of his brother’s property fronting Graytown road.
- Commissioner Mais asked for verification of the location of the property to be sub-divided.
- Commissioner Maddox’s question is if this is only going to be 1.63 acres how could we could grant a variance for this?
- Secretary Fornof noted that they would have to submit the variance request paper work. This would be a variance from the subdivision ordinance.
- Commissioner Maddox raised his concern regarding the precedence that this potential action would create moving forward.
  - Secretary Fornof noted that anyone can come in and ask for a variance.
  - Commissioner Polasek noted that her concern is that the land is less than 2 acres. She went on to refer to past request for subdivisions of similar size.

- Commissioner Jones noted that we would just follow the variance procedure but that it would behoove the requester to bump up their request to at least 2 acres.
- Commissioner Polasek noted the difference between the regular ordinance which is at 2.5 acres verses the subdivision ordinance which states 2 acres.
- Commissioner Jones noted that they would have a stronger case if they increased the size up to 2 acres.
  - Mr. Strelczyk asked if they could still build on the 1.43 acre that he already owns.
  - Commissioner Jones responded that he could because it was divided prior to the zoning ordinances. They would only be governed by the deed restrictions.
  - It would still follow the variance process.
- Commissioner Polasek noted that it was an emotional decision.
- Secretary Fornof noted that in this situation there would be frontage and referred back to a previous case that had problems regarding access and easement in the Davis Case.
  - Noted that in the FLU process we looked at smaller properties in the multifamily areas.
  - One option would be to do a second family home. Commissioner Jones noted that the driveway would not work.
- Commissioner Jones noted the 1.63 acres landing in a zoning district with a minimum of 5 acres and pointed out that he cannot recall an instance where a request of the scale has passed council before. It is the A1R district.
- Commissioner Polasek raised the question of re-zoning the entire 9-acre property to 2.5 acre residential.
  - Commissioner Jones noted that any re-zoning would have to refer back to the FLU map as a starting point and he did not think that it would be a sturdy precedence.
  - A re-zoning request would be a big process.
- Commissioner Polasek read from page 17 section 3 of the subdivision ordinance regarding minimum areas and frontages.
  - Estimated that there would be 175' of frontage in this case
  - Commissioner Polasek noted that she would be in favor of rezoning it residential and giving them a variance for 2 acres.
  - Secretary Fornof noted that she though it could be done via the variance process as opposed to the rezoning process.
  - Commissioner Jones noted that he regular ordinance takes precedence over the subdivision ordinance.
    - Commissioner Polasek stated that this was not accurate the zoning takes precedence over the use of the land and the subdivision ordinance takes precedence over the division of the land.
- Commissioner Jones noted that at this time it looks like his best option would be to go with the variance request based in the subdivision ordinance. option bumping up to the 2-acre minimum.
  - Owner of the parcel would have to make the request
  - Complete a form notarized as the owner

- Request a variance from the 300' frontage
- Commission would review the request then move on with the platting process.
- The variance would have to be finalized first before the transfer of the property.
- Noted that we need to seek advice from the attorney on how this would work and comply with both ordinances.
- Commissioner Jones noted the following challenges to Mr. Strzelczyk:
  - Find out if brother is willing to do the 2 acres instead of the 1.63
  - Move on to the request for variance within the subdivision ordinance
  - Will still have to get the attorney to verify the process which needs to happen first.
    - Need a determination from the attorney that if we follow what's in the subdivision ordinance would we have to follow that with the zoning.
- Commissioner Maddox raised the question with the commissioner if they would be inclined to approve this following this process?
  - Commissioner Polasek stated that she was.
  - Commissioner Maddox stated that he was too.
  - Commissioner Jones stated that he was not will to say at this point until he hears what the attorney has to say because of the precedent and that this was not the first time a subdivision request has come up and that historically they have never been approved.
  - Commissioner Mais noted that there could be some unforeseen legal challenge in the future.
  - Commissioner Polasek referred to the FLU map process citing the area to the north of Churchview will still have to be rezoned for 2 acre lots and Commissioner Jones noted that they would have a very strong case because of the FLU map.
    - Would rather see a nice house on 2 acres than some business in this location.

Topic 06: Old Business item 1, Ordinance Conflicts and revisions

- Commissioner Polasek explained to the Citizens that they are not obligated to hang around until the end.
- Secretary Fornof suggested that we shorten the review process for the rest of the evening.
  - We left off at page 39
  - Secretary Fornof distributed a spread sheet of changes.
  - Commissioner Polasek asked about topics that need to be referred to the attorney.
    - Asked if we just have to adjust the wording if we have to have a public hearing on changes that do not affect the outcome.
    - There was some discussion regarding the alternate commissioner's attendance requirements.
- Secretary Fornof asked if we are ready and sure that we have identified the changes that we want at this point.
  - Noted that she will have some time to process the in-line text changes that we have made so far.
  - Run through some of the draft language changes.

- Discussed the bottom of page 37 under section E discussed moving back to section 18 because it this is more germane to P&Z rather that BOA.
- Commissioner Jones did not understand with this was but on this page to begin with.
- Noted that section F applies more to the BOA. And agreed that it needs to stay there. The challenge is that he P&Z requirements are in the BOA section.
- Commissioner Jones noted that F was going to change to E and E is going to migrate to page 30.
- Secretary Fornof noted that the P&Z section appears to have been attached to the BOA section.
  - These requirements are found on page 38 for a zoning district change in the middle of the BOA process and section. Starts on 37 E. which applies to P&Z.
  - This information is different from the BOA and geared towards re-zoning. See page 38 Item 1 B.
- Commissioner Jones asked Secretary Fornof what specifically she would pare down?
  - Secretary Fornof directed the commissioners to look at page 39 under Written Documents.
    - Section d. statement of present and proposed ownership...
    - Is similar to the subdivisions that we recently approved.
    - Commissioner Jones asked if some of this is sourced from Texas Local Government code.
    - Secretary Fornof noted that we look at some of this for re-zoning but it may apply more to the subdivision ordinance.
    - Commissioner Jones asked if we should strike section E and F under written documentation.
    - Commissioner Polasek noted that she would like to keep item E.
    - Secretary Fornof noted that section F was put in place as a Federal requirement.
    - Section F the key words are “When Deemed Necessary”
    - Leave in the economic feasibility?
      - Commissioner Jones noted that this may put an un-due burden on the applicants for a change of zoning.
- Secretary Fornof noted that the idea is to make it more appropriate to the zoning ordinance as it is also covered in the subdivision ordinance.
- Commissioner Jones aske the commissioners that if we are basically moving this section to page 30 but leave the architectural drawing section in place.
  - Architectural drawings would not have a place then.
  - Commissioner Jones noted that we may want to flag this for the attorney to see if we really need this.
  - Commissioner Polasek asked page 39 section 3 F. and noted that it may be there to address when highways are being developed that the shortest distance between two points may not always the environmentally favored.
    - Secretary Fornof responded that he State can contract this out and it will no longer be a federal requirement.

- Might be good for flood plain areas.
- Commissioner Maddox asked if we could just add “when deemed necessary”
- Secretary Fornof noted that we could state “environmental impacts if deemed necessary” this would leave the NEPA rules out but we would be covered. The objective would be getting the applicant to tell us what the impacts would be.
- Commissioner Maddox raised the question of how to clarify “if deemed necessary” Do we need to have more detailed language. Who determines what is necessary?
- Secretary Fornof noted that this would apply to just about anything with a creek.
- Commissioner Polasek noted that she would be interested in having something that stated “re-landscaping of your tract of land does not impact your neighbors”
- Secretary Fornof noted that there is already a state requirement in place.
  - The subdivision ordinance addresses a grading plan
- Commissioner Maddox stated that we need to have something relating to the “as deemed necessary” as per state requirements, for section F and perhaps section E.
- Secretary Fornof noted that the public often brings this up in the course of the hearings.
  - Asked the question if this is something that we would want to add to the requirements in terms of an economic analysis for big developments. Noted if we leave it in we would not have to ask for it.
  - Commissioner Jones was state that this may be overkill for rezoning
  - Commissioner Polasek disagreed.
  - How detailed do we need to be?
- Commissioner Polasek noted that we may want to apply this to more intense uses like higher density subdivisions.
- Commissioner Polasek noted that we could apply it by the land use chart in a sort of a sliding scale. From residential up to commercial.
- Commissioner Maddox liked this solution and that we could refer to the table but in the long term this would be a good option.
- Commissioner Jones aske Secretary Fornof if the table format would be good for the submission process?
  - Secretary Fornof noted that this could be a good means to get the focus that we need.
  - Commissioner Polasek asked if we may need to ask for a traffic study of some kind citing a comment that was made by council.
  - Should we ask for a traffic study?
    - Could grab the language from the subdivision ordinance.
    - Secretary Fornof noted that re-zoning would come before subdividing.
- Commissioner Jones recapped:
  - Create a point of reference matrix based on the intensity of use for a change of zoning request
  - Based on what we see in E and F and possibly G.
  - Commissioner Polasek suggested that we include all of item 3 on the table and put x on the items that apply and asked if this was something that secretary Fornof could work on.
- This brings us to section H of page 39

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Topic 07: set date for next meeting

- Agreed on December 3<sup>rd</sup>. with the 10<sup>th</sup> as an alternate.
- Same time same place.

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Topic 08: announcements

Thanksgiving coming up.

Rosary society turkey dinner coming up.

Commissioner Maddox motioned to adjourn.

There was a second and the motion carried.

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