

**MINUTES
FAIRVIEW, TEXAS
PLANNING AND ZONING COMMISSION
THURSDAY, APRIL 14, 2016**

The Planning and Zoning Commission met in regular session on Thursday, April 14, 2016 at 372 Town Place, Fairview, Texas. Commissioners present were Chairman Brad Northcutt, Vice Chairman Pat Friend, Scott Almy, John Cox and Ricardo Doi. Commissioners Debbie Flood and Heather Hager were absent. Staff members present were Planning Manager, Israel Roberts; Town Attorney, Clark McCoy; and Town Secretary, Elizabeth Cappon.

1. Call to order

Chairman Northcutt called the meeting to order at 7:00 p.m. and declared a quorum was present.

2. Consider and take action regarding the minutes of the March 10, 2016, Planning and Zoning Commission meeting.

Vice Chairman Friend made a motion to approve the March 10, 2016 minutes. Commissioner Doi seconded the motion and the motion was unanimously approved.

3. Hold a public hearing, consider and take action on a request for approval of a replat of Lot 1, Block E of the Oakwood Estates, Phase III Addition into two (2) lots. The 2.002-acre site is located at 870 St. James Road and is zoned for the (RE-1) One-acre Ranch Estate District. Applicant: Lawrence Ringley, representing Herbert Linder. (Case No. RP2016-01)

Mr. Roberts gave a presentation on a request for approval of a replat of Lot 1, Block E of the Oakwood Estates, Phase III Addition into two (2) lots. The 2.002-acre site is located at 870 St. James Drive and is zoned for the (RE-1) One-acre Ranch Estate District

Mr. Roberts stated the purpose of the replat is create an additional one-acre lot for a separate home. Mr. Roberts stated that the Town has received 11 statements of opposition but only three letters from within the 500-foot notification boundary, including one letter from the HOA.

Mr. Roberts stated the replat is a ministerial review process for the Commission, meaning if the plat conforms to the Town's zoning and the subdivision design requirements, the Commission is required by state law to approve the plat. Mr. Roberts stated that due to this process, staff recommends approval of the replat.

Chairman Northcutt reviewed the rules for the public hearing process and opened the public hearing.

Lawrence Ringley, 701 S. Tennessee Street in McKinney of Ringley and Associates, Inc., stated his firm was hired by Mr. Linder to survey the property, in order to create a separate northern one-acre lot from the 2.002-acre lot. Mr. Ringley stated that he worked with Town staff in order to make the lots compliant.

Herbert Linder, 870 St. James Drive, the property owner, stated that the replat meets all zoning, subdivision regulations and does not request any variances. Mr. Linder stated that the plat is required to be approved.

Mr. Linder addressed the common issues brought forth in the statements of opposition. Mr. Linder stated that in Oakwood Estates Phase II there are already 32 homes, which exceeds the 29 the HOA says, is allowed. He added that in Oakwood Phase III there are currently 70 homes including one currently under construction that neither the HOA nor the Town attempted to stop. Mr. Linder stated that neither of the 29 and 66 limitations that the HOA brought forth are restrictive covenants nor listed on the amended plat.

Mr. Linder submitted a letter from the former HOA President Cheryl Connelly in July 2015, where she states that the HOA is not involved in the replatting process.

Mr. Linder stated that Town staff has reviewed the zoning requirements, plats, HOA covenants and the amended plats without finding any violations. He added that the HOA has admitted that they have not previously requested any waivers or variances for all other homes exceeding 66 in Oakwood Estates. Mr. Linder stated the Town granted an amended plat for 900 Fox Dale, which is current new construction in Oakwood Estates Phase III. He noted that the replat there was also one acre.

Mr. Linder stated that many of the 11 email statements of opposition are from residents not residing in Oakwood Estates. Mr. Linder stated a major concern of these statements is that a one-acre lot is not functional, however, as the area is zoned RE-1, he feels the Town has determined that one-acre is functional. He added that currently Oakwood Estates has 10 lots that are approximately one acre with three exactly once acre with permits approved by both the Town and the HOA.

Mr. Linder addressed the HOA questions about the ownership of the fence and monument sign at St. James and Hart Road. He stated that this issue should not influence the replat but he was still willing to meet with the HOA about it.

Mr. Linder stated he has specific responses to each of the 11 statements of opposition outlined if the Commission was willing to let him exceed the three-minute limitation for each public hearing speaker. Mr. Linder reminded the Commission that the law requires the plat to be approved.

Richard Connelly, 980 Fox Dale in Phase II of Oakwood Estates, current President of the Oakwood Homeowners Association, stated that there is a general consensus among the HOA Board, the HOA covenant committee and some homeowners that lots should never be subdivided. Mr. Connelly requested the Commission deny Mr. Linder's replat request.

Mr. Connelly stated that the Oakwood Estate Phase III plat on file with Collin County notes restrictions that the HOA board views as restrictive covenants. Mr. Connelly stated that Mr. Linder was informed of that by letter in July 15, 2015. He added that Note 8 in the plat references a letter agreement with Town Council on May 9, 1995, on which Item 1 of the agreement states the number of residences in Oakwood Estates Phase III was limited to 66. Mr. Connelly stated that homeowners made their purchase under that representation that no additional homes would be built. Mr. Connelly stated that building an additional home would be contrary to the representation made to their homeowners.

Mr. Connelly stated to abide by state law and Town ordinances, a replat cannot amend or remove covenants or restrictions. He added that this replat survey omits the restrictions on the Phase III plat, which would require a vote of Oakwood Homeowners. Mr. Connelly stated that Mr. Linder was informed of this requirement in the July 15, 2015 letter and no such vote has been held.

Mr. Connelly stated that the Oakwood restrictive covenants state that any changes to them must be in order to correct unforeseen problems, create long-term lifestyle improvements and maintain high level of appreciation for all purchasers. Mr. Connelly added he did not believe this replat met these requirements and in fact depreciated the homes by increasing the density of the subdivision. Mr. Connelly stated approving this request sets a precedent for dividing other similar lots within Oakwood, which was not the developer's intention when it was built.

Mr. Connelly reiterated his request that the Commission deny Mr. Linder's replat request, particularly until Mr. Linder conducts a vote of Oakwood residents in order to amend the Phase III plat restrictions.

Commissioner Almy arrived at 7:19 p.m.

Sim Israeloff, 1000 Fox Dale in Phase II of Oakwood Estates, stated he was the first president of the Oakwood Estates HOA. Mr. Israeloff stated beyond the issues Mr. Connelly already addressed, he felt this was an aesthetics issue. Mr. Israeloff stated that it was not in keeping with the existing neighborhood that has been there 15 years. Mr. Israeloff stated that when he was a member of the Planning and Zoning Commission he felt that changes to existing neighborhoods were the most difficult.

Mr. Israeloff stated that Phase III was designed for a row of two-acre, very wide lots on St. James with a lot of open space. Mr. Israeloff added that open space is something the Town prides itself on.

Mr. Israeloff stated his other issue is the shape of the lot. Mr. Israeloff stated the existing home is only slightly south of the center point of the lot, so the shape of the new lot would not be able to be square, as it could not be once acre and meet the Town's minimum setbacks. Mr. Israeloff stated this follows no natural contour and would be gerrymandering the lot line. He added it would not look like any other lot in Oakwood estates.

Mr. Israeloff stated that the homeowners had an implicit commitment with the developer and the Town to honor the original plat submission without changing the rules later.

Mr. Israeloff stated the Commission was being told that state law requires this to be approved. Mr. Israeloff said that when he was on the Planning and Zoning Commission and Town Council there were very rare occasions when the representatives of the Town voted against the Town Attorney's advice in order to do what was right. Mr. Israeloff asked that the Commission not approve or recommend approval of the replat.

Dan Karnuta, 981 Patrician Court, stated that he has lived in Oakwood Estates for 13 years. Mr. Karnuta stated that the overgrown garden currently on the north part of the lot to be subdivided is more inconsistent with the aesthetics of the subdivision than a home would be. Mr. Karnuta added that he walks his dogs daily along that street and has never noticed that all the lots on St. James are two acres. Mr. Karnuta stated that a nice home in place of the orchard would be an aesthetic improvement to the subdivision.

Amy York, 861 St James of Phase III in Oakwood Estates, stated that she lives across the street from the home to be subdivided. Ms. York stated that she would rather see an orchard than a home. She added that she moved to Fairview for the space and safety of the large lots. Ms. York stated adding another home would compromise that and her quality of life. Ms. York added that this would set a bad precedent for subdividing two-acre lots. Ms. York stated that she was adamantly opposed to the replat.

Wynne Allen, 1021 Hart Road, stated that she is not in Oakwood Estates but across the street from the home. Ms. Allen stated that she felt that she should have received a 500-foot notification but did not. Ms. Allen requested that the Commission deny the replat. Ms. Allen stated it goes against the character of St. James. Ms. Allen stated another driveway at St. James and Hart Road would impair traffic and safety as well as increasing parking issues in the area. Ms. Allen stated there was precedent for denying such an RE-1 application in Fairview Meadows.

Chairman Northcutt closed the public hearing.

Chairman Northcutt asked Mr. Roberts for clarification if the restrictions in the 1999 letter included with the final plat filed with the county. Mr. Roberts stated that was partially done. Mr. Roberts stated that the developer's agreement language was added to the preliminary plat from 1995, but those documents are not on file with the County. Mr. Roberts stated the final plat from 1996 talked about limiting the number of building permits rather than the number of residences, which would have limited even home remodels. Mr. Roberts added that in 2015 the Town Council amended the code of ordinances to define clearly the meaning of building permits in this subdivision.

Chairman Northcutt asked if prior to that ordinance the Town should not have issued any building permits within Oakwood Estates if they wanted to follow the developer's agreement. Mr. McCoy clarified that the notes on the final plat not the developer's agreement control the issue at hand. Mr. McCoy added that the Town has made that change, building permits are now allowed passed the 66.

Chairman Northcutt stated that it is a ministerial mandate for approval if an item conforms to the zoning. Chairman Northcutt stated in Ms. Allen's example in Fairview Meadows, there were different open space dedication and zoning issues with the final plat. Chairman Northcutt stated this plat does conform to the current RE-1 zoning. Chairman Northcutt stated there is nothing in the replat that precludes the Commission from proceeding in the ministerial review process.

Vice Chairman Friend stated that it was never intended to be subdivided. Chairman Northcutt stated that the final plat does not state that it cannot be subdivided, it only limited to 66 building permits, which even if that meant the number of homes in the subdivision, it has already been exceeded. Mr. Roberts stated there are currently 70 homes in the development.

Vice Chairman Friend asked how they got from 66 to 70 homes and if any of them were similar subdividing cases. Mr. Roberts stated that the preliminary and final plats both showed 71 lots, 66 was a number in the original developer's agreement.

The Commission and Mr. McCoy had an extended discussion regarding precedent for such a case and similar cases as well as the intent of the documentation versus what was formally documented. Mr. McCoy stated that the Commission has less discretion regarding platting cases than zoning cases and if the replat complies with town regulations, state law dictates that the body recommends approval as a ministerial act.

Vice Chairman Friend asked if the setbacks would require a variance where the Town would have discretion. Mr. Roberts stated the east-west lot line was set by the surveyor with the help of staff in order to meet the setback requirements.

Commissioner Almy stated that while the Commission does not know why the developer's agreement was not filed with the final plat, the final plat supersedes any preliminary plats. Commissioner Almy stated that while he understood it is an emotional issue, he felt the Linders' property rights should also be respected.

Commissioner Doi and Mr. McCoy had a discussion regarding the ordinance clarifying the building permit language in the plat. Commissioner Doi stated that he does not believe that it was the intent of the final plat and the developer's agreement to allow more than 66 homes but that their intent was not accomplished in the final plat. Commissioner Doi and Mr. McCoy had a discussion regarding the developer agreement's applicability to the case. Commissioner Doi stated he was not in favor of replatting two-acre lots into one-acre lots but given the facts, he did not feel the Planning and Zoning Commission could deny the request. Mr. Doi suggested better language be used in future final plats to prevent the issue from occurring again. Mr. McCoy stated the development should have originally been zoned Planned Center (PC) and that is what the Town would do now.

Commissioner Cox stated that there is a precedent of a subdivision occurring in River Oaks II. Commissioner Cox stated that he believed he felt the Town would have to create an ordinance if the Town wishes to stop future lot subdivisions. Mr. McCoy stated that while precedent is not required, state law mandates that if it complies with the Town's zoning, the Commission must recommend approval of the plat.

Mr. McCoy and Vice Chairman Friend had a discussion over the rules that apply to RE-1 and PC zoning. Mr. McCoy stated that the Commission and Council would only have discretion over a zoning change rather than a replat.

Commissioner Cox made a motion to approve a request for approval of a replat of Lot 1, Block E of the Oakwood Estates, Phase III Addition into two (2) lots. The 2.002-acre site is located at 870 St. James Drive and is zoned for the (RE-1) One-acre Ranch Estate District. Applicant: Lawrence Ringley, representing Herbert Linder. (Case No. RP2016-01). Commissioner Almy seconded the motion and the motion was unanimously approved.

4. Consider, discuss and take any necessary action on a policy regarding the absence of a representative for an item listed on the agenda.

Mr. Roberts gave a presentation on a policy regarding the absence of a representative for an item listed on the agenda.

Chairman Northcutt stated he felt Vice Chairman Friend is passionate about the topic.

Vice Chairman Friend stated he felt it was disrespectful for an applicant not to send a representative in their absence if they are unable to attend. Vice Chairman Friend stated that in Rockwall the Commission tabled an item if the applicant was not present. He stated he felt there should be a policy so that the applicants know what is expected of them.

Commissioner Almy stated he agreed but that they should at least be able to send a representative in their place.

Mr. Roberts stated the policy would be need to apply only to zoning cases or public hearings, as some items, such as plats, have timelines mandated by state law. Mr. Roberts stated that only the owner could request a continuance for a plat and that plats have 30 days to be approved or they are automatically approved.

Commissioner Doi stated that he felt that as long as the Commission did not have questions, he did not see why the Commission could not act on it. Commissioner Doi stated if the Commission desired the policy, he would not oppose it, but that if they did institute it, applicants need to be informed of the policy with proper advance notice.

Commissioner Cox stated he felt it was a common courtesy for the applicant to show up. Commissioner Cox stated he felt the policy should be the applicant or a representative of the applicant must be present for the Commission to hear the case.

Mr. McCoy stated for it be enforceable with a fine or penalty, an ordinance would be required but that the Commission could adopt its own policies and procedures without an ordinance. Mr.

McCoy reiterated that this policy would only be able to apply to zoning cases without legal deadlines.

Mr. Roberts stated he could update the submittal requirements documents to reflect the policy.

Commissioner Doi asked about the plat 30-day waiver. Mr. McCoy stated the Town cannot require a 30-day waiver but the Town can request it.

Chairman Northcutt agreed but stated applicants should have an advance warning of the process.

Commissioner Doi asked for clarification on the exact policy. Chairman Northcutt stated the Commission would not hear the case if the applicant or a representative was not present.

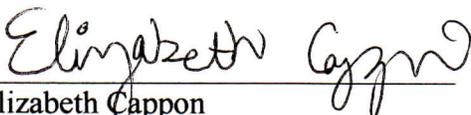
Commissioner Cox additionally noted the Commission has seen several cases where construction has already begun before the applicant began the process with the Commission. He stated that he felt the Town should have authority to delay construction on these items. Mr. Roberts stated the Town could issue stop work orders.

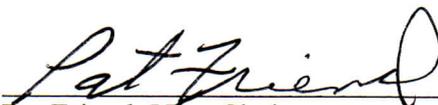
Chairman Northcutt stated that this would be his last meeting as a part of the Planning and Zoning Commission as he was moving from Fairview. Chairman Northcutt thanked his fellow Commissioners and Staff.

5. Adjourn.

Chairman Northcutt adjourned the commission from the meeting at 8:10 p.m.

Respectfully submitted,


Elizabeth Cappon
Town Secretary


Pat Friend, Vice Chairman
Planning and Zoning Commission