

MINUTES OF THE PLANNING COMMISSION MEETING
October 26th, 2009 (PG 1)

The regular meeting of the Mission Planning Commission was called to order by Chair Mike Lee at 7:00 PM Monday, October 26th, 2009. Members also present: Jim Brown, Jim Mitchell, Richard Peak, Stuart Braden, Carla Mills, Mitsy Donnelly, Charles Hannon and Mark Maurer. Also in attendance: City Planner Danielle Murray and Planning Commission Secretary Nakeisha Webster.

WELCOME OF NEW PLANNING COMMISSIONER

Mr. Lee welcomed Margaret "Mitsy" Donnelly to the Planning Commission.

APPROVAL OF MINUTES OF SEPTEMBER 23RD, 2009

Mr. Brown moved and Mr. Braden seconded a motion to approve the minutes of the September 23rd, 2009 meeting. There was one abstention (Mills). The vote was taken (8-0-1). The **motion carried**.

Mr. Lee moved agenda item 3 to agenda item 2.

SPECIAL PRESENTATION – PETE HEAVEN OF LATHROP & GAGE

Ms. Murray stated that Mr. Heaven is present to answer any questions regarding voting, motions or actions during PC meetings.

Pete Heaven with Lathrop & Gage came forth and presented Roberts Rules of Order to the Planning Commission. Mr. Heaven stated that the rules that he has presented states the essentials. What you want to do, what do you say when you want to do it, can you argue about it and what is the necessary vote. It is nothing more or less than common sense.

Mr. Heaven stated that there always needs to be an affirmative act. The failure of a motion means that you will need to take another motion and have it pass; So that there is an affirmative act whether it is a denial or approval.

Mr. Heaven also stated that the board can reconsider their own action at the same meeting or the next regular business meeting, but beyond that it cannot be considered any further.

Mr. Brown asked if the reconsideration is usually based on the introduction of some new information.

Mr. Heaven replied typically yes.

Mr. Heaven stated that if it came up at the third meeting after you take action and you find out something that would change your position then it is a motion to rescind your earlier action and then you have a new motion as opposed to reconsideration.

Mr. Braden asked how far you can go to rescind it.

Mr. Heaven stated that there is no clear time line.

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Mr. Hannon asked if the Planning Commission only makes recommendations, and the City Council has final say.

Mr. Heaven replied yes, generally that is true.

CASE #09-13 PRELIMINARY & FINAL PLAT – PUBLIC HEARING
TEX L. NEW ADDITION
6909, 6915, 7017, 7021 JOHNSON DRIVE &
5918 BROADMOOR STREET
APPLICANT: DOUG FERRAR, SHAFFER, KLINE & WARREN

Ms. Murray presented the staff report.

At this time the applicant is requesting approval of a four lot plat in order to sell the property. The existing buildings, which were built as early as the mid 1940's, are too close together to allow for lot lines to be drawn around them with sufficient setbacks to meet the current zoning codes for the industrial district. Because of this, the proposed plat contains non-conforming dimensions. The Zoning Code does not allow for the creation of a new non-conforming situation in this way, so before the Planning Commission may consider the proposed plats, a variance to the side yard setback dimension must first be granted.

The Board of Zoning appeals approved the variance-side yard setbacks for the projected application. The plat is now conforming.

If re-development of these properties occurs in the future, they will continue to be subject to the non-conforming situation regulations for everything except what an approved variance specifies. The Form Based Code for this block has less restrictive setbacks than then industrial zoning district so new construction will likely not have the same constraints.

The applicant is proposing to plat a cross access easement on the Plat. Across Tract A on the plat the applicant is proposing to add a 20 foot wide underground utility and cross access agreement which will be shown on an updated version of the Plat with wording along the side to explain the content.

Ms. Murray stated that there would be a second condition added to the approval that states that a revised plat is required.

Coulter Devries came forth for the Barkley Trust. Mr. Devries stated that they received an offer from a restaurant management company represented by Hillary Murray for Planet Sub and the owners would like to own the property and not rent. The contract is contingent on the ability to provide a legal description.

Mr. Devries stated that when he started the project he retained the services of Doug Ferrar with Shaffer, Kline & Warren and First American Title. They both provided the back ground information for record.

Mr. Devries stated that he contacted Mr. Todd Johnson with Neff Printing and Dr. Roger Maher Chiropractic; concerning his projects and findings.

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Mr. Devries also stated that he has no intent to interfere with Dr. Maher's access. There aren't any access rights or road right-of-way. No one's property line or access will be changed. The goal is to get the properties in a manageable condition to sale and lease in the future.

Mr. Maurer asked if there was a cross easement agreement.

Mr. Devries replied no. That would have to be worked out once a portion of the property is sold. For approval proposed this evening it is not necessary.

Mr. Maurer stated that you could go forth with the plat but at the midterm of sale the cross easements become a condition of the sale.

Mr. Devries replied yes.

Mr. Devries stated that he had a meeting with Mr. Maher and he expressed his concern about access and wanted a guarantee. In the plat they will add text that states, "An underground utility and access easement shown cross Tract A Lots 1 and 2 shall be available for ingress and egress to vehicle and pedestrian access and shall benefit the adjoining property owners to the south and southwest of Tract A and Lot 1 and such right of access agreement shall run with the land and shall be an easement appurtenant thereto and shall inure to the benefit of the future property owners, their heirs, successors, and assigns."

Mr. Brown asked what the width of Tract A is.

Mr. Ferrar replied 55 feet.

Mr. Brown asked if 20 feet of access is granted on the far side away from Mr. Maher's building is 30 feet unaddressed access.

Mr. Brown also asked if there is an explanation for Tract A's peculiar shape.

Mr. Devries stated that the height of one portion of the curb is higher than the other. It was not characterized as highway. It looks likes a roadway.

Mr. Ferrar stated that there is no indication of a highway.

Mr. Brown asked if the land where Panera Bread stands was platted.

Ms. Murray stated that she will check on AIMS.

Mr. Devries stated that it is owned by the Trust, and it was created as a separate tract recorded legal description by Tex New in the 70's and it was the legal description used to convey ownership to Panera Bread.

Mr. Peak stated that he is curious about the corner of Johnson Drive and how it received its original legal description.

Mr. Devries stated that he is unsure, that was before his time.

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Mr. Maurer stated that Hickory Grove is no longer there.

Mr. Lee opened the public hearing.

Dr. Maher came forth and stated that he is not totally against the Plot plan he would like for them to acknowledge the road that is there and has been there since 1925. Dr. Maher has a survey of his property that shows there is a roadway, and a letter from the transportation department, from March 1921 that shows the roadway as an access road. Through Dr. Maher's research the property still belongs to the highway department. If Mr. Devries recognizes that the highway right-of-way exists and gives the Doctor access he will not have any issues.

Ms. Mills asked Dr. Maher if he has recently made an attempt to update the information that he has.

Dr. Maher replied yes. He contacted the Highway Department and Spoke with Burt Morey and he was told that the property had not been transferred to the Wells estate.

Mr. Maurer asked Dr. Maher how long he has owned the property.

Mr. Maher stated that he had gotten a contract for Deed in 1984 and purchased it in 1986 and have been practicing there since 1985.

Mr. Maurer asked Dr. Maher if when he purchased it, if he understood that he had complete access to the property.

Mr. Maher replied no, because the survey's showed it was a road there.

Mr. Hannon asked would he be concerned now that he wouldn't have access if they go ahead with the Platting process.

Dr. Maher stated that he would be concerned about the access, if it would be controlled by a private individual versus the highway department. He would be more comfortable with the highway department because they have the equipment, the money and means to maintain it if it deteriorates.

Mr. Braden asked if the highway department maintains the road now.

Mr. Devries stated it really hasn't had to be any maintenance yet.

Mr. Devries replied that the Trust maintains it.

Mr. Lee stated that he has driven along the area and it looks as if it has been maintained.

Dr. Maher stated again that he would just like it to be recognized as a roadway. He doesn't find a legal document that states the Barkley's own the property.

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Mr. Devries stated that the 1924 document that Dr. Maher possess is from the county and not from K-DOT

There were no further public comments.

Mr. Lee closed the public hearing.

Mr. Brown asked if the plat is approved this evening and it is later discovered that Tract A and what appears to be a roadway easement were determined to be incorrect on the documentation. What the future action is.

Ms. Murray replied that before the plat is recorded the surveyor at the county will review it and make sure that everything is in order. The Commission then can choose to table the case if necessary. The city is not interested in acquiring additional right-of-way.

Mr. Braden asked if the cross access is written into the plat, will the owner be allowed to rescind it.

Mr. Devries replied if it is a recorded document then no they could not.

Mr. Brown moved and Mr. Braden seconded a motion to approve Case#09-13 Preliminary & Final Plat for the subdivision of land known as Tex L. New Addition With the following conditions:

1. That the variance to side yard setbacks shall have been approved by the Board of Zoning Appeals so that all proposed lots shall have conforming dimensions.
2. The utility and access easements read into our record this evening are added to and considered a bound addition to this plat.

The vote was taken (9-0-0). **The motion carried.**

Mr. Lee asked about the conclusion of the sign ordinance.

Ms. Murray stated that there were two volunteers and if anyone else would like to volunteer the meetings will be held soon.

ADJOURNMENT

With no other agenda items, **Mr. Hannon moved and Ms. Mills seconded to adjourn.** The vote was unanimous. The **motion carried.** The meeting adjourned at 8:03 PM.

ATTEST:

Mike Lee, Chair

Nakeisha Webster
Planning Commission Secretary