



# City of Keller

## Planning & Zoning Commission

### Meeting Minutes

Keller Town Hall  
1100 Bear Creek Parkway  
Keller, TX 76248  
817-743-4000  
[www.cityofkeller.com](http://www.cityofkeller.com)

---

**Monday, November 25, 2019**

---

PRE-MEETING BRIEFING 6:30 P.M.

#### **A. CALL TO ORDER – Chairperson Gary Ponder**

Chairperson Gary Ponder called the Pre-Meeting Briefing to order at 6:30 P.M.

The following Commissioners were present:

Ralph Osgood, Vice Chairperson

Leslie Sagar

Vernon Stansell

Paul Alvarado, Alternate (voting)

Staff present included Katasha Smithers, Planner I; Jerald Ducay, Planner I; Matthew Cyr, Planner I; Julie Smith, Community Development Director; and Chad Allen, Police Captain.

#### **B. ADMINISTRATIVE COMMENTS**

##### [1. Briefing regarding City Council Action on Tuesday, November 5, 2019](#)

Planner Ducay informed the Planning and Zoning Commission that at the City Council meeting on November 5, 2019, the Holmes accessory building was approved 5-1. The Future Land Use Plan was denied 5-2 at the same meeting. The Greenway Site Plan and SUP was approved unanimously at the November 15, 2019, City Council meeting with the condition that the applicant work with staff to increase the amount of foliage displayed.

Commissioner Alvarado asked if all the variances were approved.

Planner Ducay responded yes.

Commissioner Alvarado asked if there was any discussion relating to the variances.

---

Planner Ducay responded that there was some discussion regarding the rear façade. They added more articulation and also added lights, but no major additions.

Commissioner Alvarado asked if they discussed the future use of the adjacent property.

CDD Smith responded yes.

Commissioner Alvarado also asked if Council had any input.

CDD Smith responded that Council would have liked to see more on the rear facade, but still voted in favor of this.

Commissioner Alvarado stated that the applicant/developer could do whatever they want to do with the back, because we've allowed them to do what they want with the front side.

Commissioner Stansell asked what the rationale was for turning down the Future Land Use Plan after two years of work.

CDD Smith responded that the majority felt that it did not represent what the community wanted and voted to deny rather than amend.

Commissioner Alvarado stated that he was at the meeting where the Future Land Use Plan was discussed, and there were some loud voices at the podium that displayed their thoughts. He also stated that he believed that the loud minority prevailed instead of moving forward with an amendment or plan to move forward.

Commissioner Stansell stated that the former Mayor asked why the Future Land Use Plan should be update based on 7% of undeveloped land. He continued that he was disappointed to hear that because 7% represented hundreds of acres of developable property.

CDD Smith stated that she felt the Mayor was uncomfortable with it because he said it was dividing the community. She also stated that an amendment could have addressed the majority of the comments that were heard or directed towards apartments.

---

## [2. Briefing regarding current DRC projects and long-term projects](#)

Planner Ducay asked the Commission if they had any questions regarding this item.

Commissioner Osgood asked about the status of Legends Car Wash.

Planner Smithers responded that they just recently received approval on the civil plans and are progressing.

## [3. Accessory structure standards discussion](#)

CDD Smith stated that there were three requests made by the Commission. The first request, was to be updated about the Future Land Use Plan. The second request was to discuss the accessory structure standards. The last request was to discuss the variance decision trees. CDD Smith continued that with new Commissioners coming in it would make more sense to hold the variance discussion on December 10<sup>th</sup>, or the first meeting in January.

CDD Smith stated there were two documents. The first being the UDC Article 8 section 8.10 accessory structure regulations and the second being the UDC article 8 Single-Family 36,000 square-feet (SF-36) regulations. She continued that the language is roughly the same in each zoning district except for the size of the structures.

CDD Smith stated that staff had discussed these sections and thought it would be beneficial for the Commission to hear suggestions and ponder those suggestions. She stated that at the next meeting this information can be relayed to the new commissioners and a discussion could take place by offering suggestions. This would allow the Commission to submit written suggestions or comments on the January 14<sup>th</sup> meeting.

Commissioner Alvarado stated that he would like to send this to Council first to get their take on this. He stated that they would be creating guidelines, and Council looks at the application rather than what the Commission voted.

Chairperson Ponder preferred to send a recommendation to Council with no conversation and preferred to keep the process from the Commission to Council, rather than continue to go back and forth.

---

Commissioner Stansell stated that he would prefer a joint session between Council and the Commission.

CDD Smith stated that this could be looked at after the next work session.

CDD Smith stated that where it stated that all accessory buildings that exceed 50% of the main structure shall require a SUP. She continued that 1.5 acres or more is what seems consistent in the UDC for agricultural purposes. She asked if this should be limited to lots of 1.5 acres or something along those lines and is something to think about.

Commissioner Osgood asked what the goal was here for accessory structures, specifically what are the reasons for these regulations.

CDD Smith responded that this is a policy question that gets driven by Council, and presumably by the community as they communicate their desires to Council. She continued that staff's struggle right now is that these rules in place are getting variances out. This shows that the rules no longer meet what the community wants. She continued that we should strive to get the ordinances close to what the community wants so that the number of variances are limited.

Commissioner Sagar stated that this has been happening since 2008, where applicants come forward for an SUP based on size and also height.

CDD Smith stated that neither one of those should be an SUP. An SUP is for use not a specific size and comes into play for an accessory dwelling unit because of the use. CDD Smith continued that these should be variances instead.

Commissioner Stansell asked if these became variances would they go to ZBA.

CDD Smith responded yes and that ZBA looks at certain criteria in granting variances.

Commissioner Alvarado asked if Keller's UDC is too constricting in comparison to other cities, or if the UDC looks about the same as other cities.

CDD Smith stated that she has not seen the UDC used to this extent in other municipalities. She continued that it is common for other cities to adopt a UDC then tailor it to the communities needs.

---

CDD Smith stated that when people obtain an SUP, it runs with the applicant. This means that if the applicant sells the house then, the person who buys it must seek an SUP to keep their already constructed accessory structure. CDD Smith stated that this is one of the challenges that staff faces, and that the regulations need to be very clear.

CDD Smith recommended deleting A (2) because there are rarely any cases of people living onsite in a commercial property in Keller anymore.

CDD Smith stated that A (3) should be left in even if it cannot be enforced and believed that there is enough support to reverse the materials bill once state legislature takes place again. She continued that staff encourages applicants to meet the guidelines and expectations of the community.

CDD Smith stated that this is something to consider because of the last accessory structure that was 2160 square-feet and was metal. CDD Smith stated that A(4) should stay because it helps differentiate accessory structures from accessory dwelling units.

Commissioner Sagar asked if the word “full” in “full kitchen facilities” should be left in.

CDD Smith stated some structures have a sink or small fridge. In the International Resident Code the stove is what considers it a dwelling unit and the full kitchen is in reference to the stove.

CDD Smith moved onto A (5) and stated that since materials cannot be regulated, that potentially metal carports could be allowed. CDD Smith stated that this should be something the Commission thinks about.

CDD Smith stated that if an applicant is requesting a carport to be built in the front, that it should be a variance not an SUP.

CDD Smith stated that A (6) should include “and/or plat” because plats usurp zoning ordinances.

CDD Smith stated that A (7) should delete the last sentence where it states, “Accessory buildings one hundred twenty (120) square feet or less on residential properties zoned for patio homes shall meet the minimum side setback requirements of its respective zoning district”. She stated that this sentence is confusing.

---

CDD Smith stated that A (8) should move the third sentence in front of the second sentence.

Commissioner Sagar stated that in this section the threshold is 2 acres instead of 1.5 acres.

CDD Smith responded that they would suggest changing the 2 acres to 1.5 acres or another number that is consistent throughout the UDC.

CDD Smith stated that A (9) should remove the reference to ZBA.

Commissioner Alvarado asked if this section refers to not exceeding the peak of 15 feet or the average height of 15 feet.

Planner Ducay responded that it is an average of 15 feet.

CDD Smith stated that this is defined in Article 3.

Commissioner Alvarado asked if they should reflect this in this A (9).

CDD Smith agreed with Commissioner Alvarado.

CDD Smith suggested that A (10) should be given more structures if over 1.5 acres or should be discussed.

Chairperson Ponder stated that this was a problem that is consistent, because these regulations are geared towards smaller lots. He continued and referenced Commissioner Sagar, that larger lots should consider more leniency.

Commissioner Stansell asked staff how many lots are over 1.5 acres.

CDD Smith responded that GIS might be able to do that, but it could be a challenge. It might be easier to approach Tag Green and see if he has those numbers already when he was gathering data for the Future Land Use Plan.

Commissioner Stansell asked why CDD Smith was making the point about impervious lot coverages. He continued that he believed that impervious lot coverage had been done away with.

---

CDD Smith responded that they had done away with pools, drives, and parking lots.

Commissioner Stansell stated that he understood.

CDD Smith stated that she was pretty sure that in regards to A (11) wood shingles are not permitted anyways and would need to be deleted, but would need to double check with staff.

Commissioner Stansell asked if A (13) would be a variance or SUP.

CDD Smith responded that she would argue it was an SUP because seasonal sales, especially storage containers, are driven off of use.

Commissioner Stansell stated that allowing this use to be up a specific time period and then requesting a variance to that time period.

CDD Smith responded that this would go to ZBA and they only look at things that run with the land, not the use.

Commissioner Sagar questioned the definition of storage containers and mentioned that it sounded like residents could apply for this.

CDD Smith responded the only way you could get a cargo container would be for a temporary use such as moving.

Commissioner Sagar stated that her concern was the extended use part of A (13) because she did not want to see a proliferation for these containers.

CDD Smith responded that the misconception was that extended use meant years, rather than months or weeks.

Commissioner Sagar responded that her concern was these containers being out longer than six months.

CDD Smith stated that staff would not recommend anything over six months.

---

Commissioner Alvarado responded that there is a conflict where in A (13) where it stated “ limited time” in the previous sentence and “extended use” in the next sentence.

Commissioner Sagar brought up the fact that there was someone not long ago by Venture Church that had cargo containers by their side yard.

CDD Smith responded that the City had a case on that particular instance and the cargo container has been removed.

Commissioner Alvarado asked if A (12) can be combined with A (5)

CDD Smith agreed with Commissioner Alvarado.

CDD Smith suggested adding “not to exceed six months” after the word “SUP” on A (13).

Commissioner Stansell asked if this was consistent with other municipalities.

CDD Smith responded yes.

Commissioner Sagar stated that this made her feel better about this.

CDD Smith stated the definition of “Storage Container” from Article 3 of the UDC.

CDD Smith stated that the Commission should mull over the accessory dwelling unit section. The original intent of this section was good, but it is hard to enforce who uses the accessory dwelling unit.

CDD Smith continued that this could be a potential problem down the line. If someone were to construct an accessory dwelling unit then subdivide, it would meet the zoning but most likely not the minimum square-footage requirements and could pose setback challenges.

CDD Smith stated that there are already a good amount of flag lots that exist with these types of problems and also pose a huge challenge for our first responders. On top of that, it could also pose traffic flow problems and increases the density from what was there originally.



---

CDD Smith stated that staff had seen a proliferation of requests of what the policy was regarding these types of uses in Keller. CDD Smith continued that currently there are no regulations right now, and mentioned that there are a lot of homes in Keller that are renting out on Air Bnb or another short-term rental website.

CDD Smith stated that these accessory dwelling units have the potential to turn into Air BnB's if not regulated accordingly. She continued that herself and Trina, Director of Public Services / Economic Development, were thinking of ways to accommodate a true mother-in-law suite while also anticipating potential subdividing. CDD Smith stated that this posed the biggest challenge and that the Commission should think about the sizes of these structures.

CDD Smith stated that the message that staff is receiving is that these structures should be bigger based off of past applications and the way they were voted on. CDD Smith continued that staff had to act as the bad guys because of what the UDC dictates, then the applicant would apply for variances and would be granted approval.

Commissioner Stansell stated that this is a risk versus reward dilemma. If you increase the square footage of the structure on the property then you increase the property tax. Commissioner Stansell then asked how CDD Smith would quantify the risk.

CDD Smith the risk would be the disturbances to neighbors which is an adjacency concern. There are also zoning concerns as well.

Commissioner Stansell stated that there is nothing preventing a property owner from doing that.

CDD Smith stated that this was true and staff is relaying that there are no regulations to people that inquire about Air BnB's. CDD Smith also stated that there are also people that construct accessory dwelling units just for the use of renting them out.

Commissioner Sagar stated that she owns rental property in Roanoke. She stated that she is required to register her rental property every year and pay \$50. Commissioner Sagar continued that she is required to give information if the tenant has change or if the same tenant is still living renting out her property. If there is a turnover in the tenant they have the right to inspect the rental property to see if it was up to code.

---

CDD Smith responded that there are quite a few cities that do implement this.

Commissioner Sagar stated that to her knowledge Keller does not have this.

Commissioner Alvarado stated that Air BnB properties are going to face different issues in different municipalities depending on density, proximity to venues, and proximity to vacation destinations. Another issue that might pop up would be law enforcement calls. Commissioner Alvarado then asked Captain Allen if there were any issues regarding Air BnB's.

Captain Allen stated that they have had several calls about Air BnBs.

Commissioner Alvarado stated that this was more than he expected.

CDD Smith asked if these were noise related.

Captain Allen responded that they have had narcotics, party houses, and other issues.

Commissioner Alvarado asked about the number of calls they receive.

Captain Allen responded that they receive a call about Air BnB or VRBO's every other week.

Commissioner Stansell asked how many calls they receive about home owner occupied dwelling units. He stated that he called law enforcement on someone who owned an accessory dwelling unit because they had a DJ at 11pm, making excessive noise.

Captain Allen stated that they have had calls about narcotics, assault, kids throwing parties by renting it out through other people's information, and other issues that he could not talk about. He stated that they are not depleting resources of law enforcement.

Commissioner Sagar asked how renting out a property that generated income was different from a property that also generated an income by renting out as a short term rental.

CDD Smith stated that those things get treated differently. If you were a property owner renting out a home, these leases are usually six months or longer. If it was decided to rent out a property on a

---

short-term basis, then you have different people there every weekend. Some neighborhoods may not like this and react to this situation.

Commissioner Sagar stated that it was more like a commercial business with an Air-BnB, unlike the other where it was a residential use.

CDD Smith stated that ordinances usually look at how long you are renting, for example sometimes short-term rentals are limited to 180 days a year or else they are classified as a hotel. She continued that there are different approaches and also many different lawsuits like the one Grapevine is going through.

CDD Smith stated that there was a property owner who had four Air BnB units that were very well constructed. The occupancy rate was 80% and half of the occupants were from Keller. She continued that if they had an ordinance then they could collect the hotel occupancy tax on these, but there are upsides and downsides on this.

CDD Smith stated that she would be shocked if the courts ruled that homegrown municipalities had the ability to refuse Airbnbs.

Commissioner Alvarado stated that even if they did rule that way, would Keller want to say no them.

CDD Smith responded that this is exactly right and that Airbnbs also have the potential to be beneficial to the community by exposing people to Town Center and Old Town Keller.

CDD Smith stated that the first one that came in Gainesville got into the Texas Wildlife and Parks magazine, which made them realize they needed a short-term rental ordinance. They limited it and tailored it to specific parts and issues.

Commissioner Stansell stated that he had rented an Airbnb in Italy and Airbnb had messaged him to consider renting out his property while he was away.

Chairperson Ponder stated that this was a great discussion.

**C. DISCUSS AND REVIEW AGENDA ITEMS**

---

Chairperson Ponder stated that due to the lack of time, he was going to simply ask if there was any questions that the Commission had on the items that were being presented.

Commissioner Alvarado asked if D (3) was staff driven.

CDD Smith stated that this was driven by people that have businesses in that specific area.

Commissioner Sagar asked about the other medical offices in the Town center district and if those would be included in the future.

CDD Smith stated that Staff could take that direction if Council asked for that. CDD Smith also stated that the Commission had asked staff to look into removing the properties north of Keller Parkway from Town Center.

**D. ADJOURN**

Chairperson Gary Ponder adjourned the Pre-Meeting at 7:05 P.M.

**REGULAR MEETING 7:00 P.M.****A. CALL TO ORDER – Chairperson Gary Ponder**

Chairperson Gary Ponder called the meeting to order at 7:13 P.M.

**B. PLEDGE OF ALLEGIANCE**

Chairperson Ponder led the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag.

**C. PERSONS TO BE HEARD**

No one came forward.

---

## D. NEW BUSINESS

### 1. Consider approval of the minutes of the Planning and Zoning Commission Meeting on October 28, 2019.

**Commissioner Sagar made a motion to approve item D (1) as presented, seconded by Commissioner Osgood. The motion carried unanimously.**

### 2. Liquor and Brewery UDC Text Amendment

Planner Smithers gave a presentation on item D (2) and mentioned that the City of Keller had an election on November 5, 2019, allowing the city to sell liquor and alcoholic beverages. The proposed amendments were to add “Distillery- a facility that manufactures, purifies, and refines distilled spirits” and adding these in the Retail, Town Center, and Old Town Keller Zoning District. She continued that a Distillery would be permitted by an SUP, but a tasting room would be permitted by right within the Distillery in the Retail Zoning District. In the Town Center and Old Town Keller Zoning District a Distillery with a 1500 square-foot tasting room or greater would be permitted by an SUP. In the Katy Road Zoning District a Distillery would be permitted by an SUP.

Planner Smithers continued that Liquor stores that are 10,000 square-feet or greater would be permitted in the Retail, Commercial, or Light Industrial Zoning District by an SUP. Planner Smithers also mentioned staff had not received any responses from the public.

**Chairperson Ponder opened the Public Hearing.**

No one came forward.

**Commissioner Stansell made a motion to close the Public Hearing for Item D-2, seconded by Commissioner Osgood. The motion carried unanimously.**

Commissioner Stansell asked if the ordinance was being subject to existing state law regarding the proximity from churches and schools.

---

Planner Smithers responded yes.

Commissioner Sagar asked if 10,000 square-feet was the minimum to apply for an SUP for a liquor store.

CDD Smith responded yes.

Commissioner Alvarado expressed his gratitude for Dr. Page's contribution on this and also his contribution towards the years of service for this City. Commissioner Alvarado also stated that he appreciated Dr. Page's friendship and guidance.

**Commissioner Osgood made a motion to approve Item D (2) as presented, seconded by Commissioner Stansell. The motion carried unanimously (5-0).**

### **3. Town Center Medical Overlay**

Planner Cyr gave a presentation on Item D-3 to create a new overlay district on the north side of Keller Parkway encompassing five properties that were approximately 3.64 acres. The new medical overlay district would reflect the same standards of Town Center but would allow "Medical/Dental Clinic" uses to come in by right.

Planner Cyr stated that staff sent out 35 notification letters 10 days before this Planning and Zoning Commission Meeting and had not received any responses from the public.

#### **Chairperson Ponder opened the Public Hearing.**

Brian Scott stepped forward and was a broker that represented one of the five property owners that would be impacted at 1149 Keller Parkway. He stated that the buildings in this specific area are not walkable from Town Center and the design of the building does not fit the vision for Town Center. Brian Scott expressed his support for the Town center Medical Overlay District.

**Commissioner Sagar made a motion to close the Public Hearing for Item D-3, seconded by Commissioner Alvarado. The motion carried unanimously.**

---

Commissioner Sagar stated that medical offices on the south side of Keller Parkway should be considered at a later date.

Commissioner Osgood asked why this would not be considered spot zoning.

Planner Cyr attempted to answer the question by stating that he believed this was not spot zoning because it was a creation of an overlay rather than rezoning these properties to an existing overlay.

CDD Smith stated that is was partially correct, but it mainly had to with the amount of land that was being rezoned. She explained that this is one of the more difficult subjects and that anything less than five acres is not really considered spot zoning.

**Commissioner Sagar made a motion to approve Item D-3 as presented, seconded by Commissioner Osgood. The motion carried unanimously.**

Chairperson Ponder noted that at the next meeting the Commission will look a little different. He thanked Dr. Page and Commissioner Stansell on their service and contributions to the Commission.

Commissioner Stansell expressed his gratitude towards the citizens and stated that when he was first on the Commission there were some internal struggles but they worked to get over those struggles and ended up working together very collaboratively. Commissioner Stansell thanked the Commissioners and stated that attendance is more important than a paying job.

Chairperson Ponder reminded the public that they will be switching from Mondays to Tuesdays and that their next meeting will be December 10<sup>th</sup>.

## **F. ADJOURN**

**Chairperson Gary Ponder adjourned the meeting at 7:33 P.M.**

---

Chairperson

---

Staff Liaison