



City of Keller

Planning & Zoning Commission

Meeting Minutes

Keller Town Hall
1100 Bear Creek Parkway
Keller, TX 76248
817-743-4000
www.cityofkeller.com

Monday, September 9, 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:

Vernon Stansell

Carey Page

Ralph Osgood

Bob Stevens

Leslie Sager

Bob Apke, Alternate (voting)

Paul Alvarado, Alternate (non-voting)

Staff present included Katasha Smithers, Planner I; Jerald Ducay, Planner I; Julie Smith, Community Development Director; Tracy Talkington, Police Captain.

B. ADMINISTRATIVE COMMENTS

1. [Briefing regarding City Council action on Tuesday, August 20, 2019 and Tuesday, September 3, 2019.](#)

Planner Smithers informed the Planning and Zoning Commission that at the City Council meeting on September 3, 2019, the Maguire rezone application was withdrawn before the meeting. The adjacent property owner opposed the request and triggered the requirement for a supermajority. The Specific Use Permit for Smoking Axes was approved unanimously along with the Specific Use Permit for Cozy Day Spa.

Commissioner Page asked staff if the name change or the ownership change triggered the Specific Use Permit process.

Planner Smithers responded that the name change had triggered the SUP.

Planner Smithers continued the briefing and stated that the Medical Text Amendment was denied six to one.

2. [Briefing regarding current DRC projects and Long-Term Projects.](#)

Planner Smithers asked if anyone on the Commission had any questions regarding the DRC project list.

Commissioner Osgood asked about the status of Legends Car Wash.

Planner Smithers answered that the applicant had to submit amended paving and grading plans, because the manhole cover was two feet deeper than what was indicated on the Civil Plans.

CDD Smith stated that they would also have to add a lift station.

3. [Briefing regarding the new adoption of the IBC.](#)

CDD Smith gave a brief presentation regarding the update of the IBC. In this presentation CDD Smith noted that it is important not to be two cycles out of the IBC, IFC, and IRC or it can impact insurance ratings for the City.

Commissioner Sagar asked when this will go to City Council.

CDD Smith answered that may or may not be presented next week at City Council, but would go in the next couple of weeks.

Commissioner Page asked if these proposed changes were online and asked where he could locate the 2018 IBC.

CDD Smith stated that these changes were not online and that Commissioner Page is welcome at any time to view the copies that are in her office.

Commissioner Page stated that he is interested in the dilapidated building section of the IBC because of the amount of dilapidated buildings in Keller.

CDD Smith replied that it is difficult to demolish any occupied structure due to the complexity of the law regarding this subject. CDD Smith also mentioned looking into constructing a Building Standards Commission.

C. DISCUSS AND REVIEW AGENDA ITEMS

Item D (1). Approval of the Minutes

There were no comments or corrections.

Item D (2). Elect a Vice-Chairperson

Chairperson Ponder stated that this election of the Vice-Chairperson will be through the next term and urged the Commission to have a discussion.

Commissioner Page moved to elect Commissioner Osgood.

Commissioner Sagar seconded the motion.

Item D (3). Palafox Roofing SUP (Cozy Day Spa)

Planner Ducay explained that the applicant had been operating in Keller for approximately six years and never attained a SUP or a Certificate of Occupancy. The applicant had moved recently, which brought this oversight to staff's attention.

Commissioner Page clarified that what brought this to staff's attention was the business moving to a new location within the same building.

Planner Ducay answered that this is correct.

Item D (4). 501 Elaine Street Variances

Planner Ducay explained that the applicant is converting their original garage to a master bedroom and will extend from the new master bedroom out to create a

garage. The applicant is seeking two variances: one for a front-facing garage and one for the garage door exceeding seventy-two square-feet.

Chairperson Ponder clarified that this will be for two variances, not one.

Commissioner Apke asked if there were any setback violations.

Planner Ducay answered there were none.

Item D (5). Gold Star Monument Site Plan Amendment

Planner Smithers explained that this Site Plan Amendment is for an uncovered monument, east of town hall in front of the pond. The applicant did not request any variances, and will include landscaping with the monument.

Item D (6). Tree Right-of-Way

Planner Smithers explained that this item was presented at the last Planning and Zoning meeting, but due to staff oversight of related language in another part of the code, staff brought it back again to address the overlooked language.

Item D (7). Medical Text Amendment

Planner Smithers explained that this item is based off of the Planning and Zoning request to remove all types of medical, including minor medical emergency clinics in Town Center.

Commissioner Page asked if a medical tenant changed the name of their practice, would they lose their grandfather status and thus eliminate that option.

CDD Smith and Planner Smithers answered that it would not, and that the SUP is tied to the use and not the name.

Planner Smithers stated that there are approximately 143 businesses in Town Center and around twenty-five of them are medical. To compare there are also twenty-five dining options in Town Center.

Commissioner Page asked for the amount of retail in Town Center.

Planner Smithers stated that she would have to research retail specifically.

Commissioner Page stated that he is happy that a medical tenant will have the ability to obtain a SUP as a grandfathered use.

Chairperson Gary Ponder asked for confirmation what is there now is grandfathered. If this is approved then it only impacts future businesses.

CDD Smith answered that Chairperson Ponder was correct.

Commissioner Sagar mentioned the City of Keller Code of Ethics and noted the importance of this document. Commissioner Sagar continued by stating that Public Officials are required to “act impartially and not give preferential treatment to any private organization,” and it would be improper to meet with developers that already have projects that are going through the City review process.

Commissioner Stansell stated that the City Attorney had a different opinion.

Commissioner Sagar responded that what is in this document is black and white.

Chairperson Ponder asked for clarification on this.

Commissioner Sagar elaborated that if you meet with one developer, then you would have to meet with all developers that request a meeting.

Commissioner Alvarado stated that meeting with developers does not cause impartiality. He clarified that meeting with certain developers and declining meetings with others would cause impartiality.

CDD Smith stated that meeting with applicants before the applicant comes to the Planning and Zoning Commission could be problematic if they already submitted

a proposal. CDD Smith also observed that perception plays a vital part in the public realm when talking about ethics, too.

In all of their training that they have received Commissioner Page stated that they had been advised against doing just that. He added that if a developer goes to each individual Commissioner, then it could create an existing quorum.

Commissioner Stansell stated that other municipalities do meet with developers with good intentions before actual submittals to staff.

Commissioner Sagar stated that meeting with developers this becomes problematic if a developer has submitted an application.

Commissioner Alvarado asked if the procurement process is a tool that could be used.

CDD Smith replied that she did not know the answer to that question for a municipal entity.

Commissioner Alvarado explained the procurement process restricted the applicant to communicating only with designated personnel.

Chairperson Ponder stated that this could be a conversation that we have for next meeting.

CDD Smith replied that it might be a good idea to invite Stan, the City Attorney, to address the Commission.

Chairperson Ponder replied that he thought this would be a great idea.

CDD Smith stated that the FLUP was being scheduled for two back on for a public hearings and considerations.

Commissioner Page replied that what is on the website is that there will be two

public hearings followed by a vote and thought it would be a good idea to notice for the FLUP again.

D. ADJOURN

Chairperson Gary Ponder adjourned the Pre-Meeting at 7:06 P.M.

REGULAR MEETING 7:07 P.M.

A. CALL TO ORDER – Chairperson Gary Ponder

Chairperson Gary Ponder called the meeting to order at 7:15 P.M.

B. PLEDGE OF ALLEGIANCE

Commissioner Page 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 August 12, 2019.](#)

Commissioner Sagar made a motion to approve the minutes, seconded by Commissioner Osgood. The motion carried unanimously.

2. [Elect a Vice-Chairperson.](#)

Commissioner Sagar made a motion to elect Commissioner Osgood as Vice-Chairperson, seconded by Commissioner Page. The motion carried unanimously.

3. [PUBLIC HEARING: Consider a Specific Use Permit \(SUP\) for Palafox Roofing Systems, an existing "Contractor Shop," located on an approximately 1.402-acre tract of land, on the south side of Golden Triangle Boulevard and approximately 300 feet southwest of the intersection of Golden Triangle Boulevard and Sports Parkway, being Billingsley Jesse Survey, Abstract 70, Tract 7 & 7F2, at 133 Sports Parkway, Suite E, Account \(#: 05686490\), and zoned Commercial \(C\). David Palafox, Applicant. Tamara Thomas, Property Owner.](#)

Planner JP Ducay gave a brief presentation regarding item D (3) and explained that the City mailed out four letter of notifications to surrounding properties and had not received any letters from the public.

Chairperson Gary Ponder opened the public hearing.

No one offered any comment.

Commissioner Stansell made a motion to close the public hearing, seconded by Commissioner Page. The motion carried unanimously.

There were no questions or comments offered by the Commission.

Commissioner Stansell made a motion to approve Item D-3, seconded by Commissioner Stevens. The motion carried unanimously.

4. [Consider a request for a variance to the Unified Development Code, Section 8.07 \(C\), Garage Requirements in Residential Zoning Districts, to allow two variances, one for a front facing garage and for the garage door to exceed seventy-two square-feet, this property is located on 0.913-acre lot, on the south side of Bear Creek Parkway, being Lot 34A, Block 3, Bear Creek Estates, at 501 Elaine Street \(Account # 04541243\), and zoned Single Family Residential - 36,000 square-foot lot size minimum \(SF-36\). David Rich, applicant. David and Delia Rich, owners. \(UDC-19-0018\)](#)

Planner Ducay gave a brief presentation regarding item D (4).

Commissioner Osgood noted that he has driven by this property several times and believes this will be a nice improvement.

Commissioner Stevens concurred with Commissioner Osgood's comments.

Commissioner Sagar concurred with Commissioner Osgood's comments as well.

Commissioner Sagar made a motion to approve Item D-4, seconded by Commissioner Stevens. The motion carried unanimously.

5. [Consider a request for a Site Plan Amendment for the Gold Star Families Memorial Monument, an approximately 1,400 square-feet uncovered monument plaza on an approximately 4.425-acre tract of land, located on the southeast side of Bear Creek Parkway and Town Center Lane, being Lot 1R, Block D, Keller Town Center, at 1100 Bear Creek Parkway, and zoned Town Center \(TC\). City of Keller, owner. VLK Architects, LLC, applicant. \(SP-19-0008\)](#)

Planner Smithers gave a brief presentation regarding item D (5).

Commissioner Stevens asked who is on record for maintaining this monument.

The applicant, Randy Sallinger, stepped forward and answered that the City of Keller

would be responsible for maintaining this monument.

CDD Smith mentioned that the Parks and Recreation Department would be responsible for the general maintenance.

Chairperson Ponder stated how proud Keller was of Randy's daughter for heading this project.

Randy replied that he is confident that this will make a great addition for Keller, especially for the Keller Gold Star families.

Commissioner Osgood praised the project and the families involved.

Commissioner Alvarado also praised the project and the families.

Planner Smithers stated that this will be brought forward on October 15th instead of September 17th.

Commissioner Apke made a motion to approve Item D-5 seconded by Commissioner Page. The motion carried unanimously.

6. [PUBLIC HEARING: Consider a recommendation to amend the City of Keller Unified Development Code, adopted by Ordinance No. 1746 dated July 7, 2015, by modifying, Article 8 – Zoning-Districts, Development Standards, Tree Preservation to amend utility easement requirements related to trees in rights-of-way; authorizing publication; provide for penalties; and establishing an effective date. City of Keller, applicant. \(UDC-19-0012\)](#)

Planner Smithers gave a brief presentation regarding Item D (6).

Chairperson Gary Ponder opened the public hearing.

No one offered any comment.

Commissioner Page made a motion to close the public hearing, seconded by Commissioner Apke. The motion carried unanimously.

There were no questions or comments offered by the Commission.

Commissioner Stevens made a motion to approve D (6) as presented, seconded by Commissioner Stansell. The motion was approved unanimously.

7. [PUBLIC HEARING: Consider a recommendation to amend the City of Keller Unified Development Code, adopted by Ordinance No. 1746 dated July 7, 2015, by removing 'minor medical emergency clinic' use in the Town Center \(TC\) Zoning District and modifying, Article 8 – Zoning-Districts, Development Standards, Tree Preservation; authorizing publication; provide for penalties; and establishing an effective date. City of Keller, applicant. \(UDC-19-0016\)](#)

Planner Smithers gave a brief presentation regarding item D (7).

Chairperson Gary Ponder opened the public hearing.

The Owner's broker at 1220 Keller Parkway and Keller resident, Matt Flory, stated that the best use for this property would be minor medical emergency. He stated that the owner would lose half the value of the building if this was just allowed for office use and Keller would lose tax revenue because of this. He elaborated that he understands the vision for Town Center, but believes this amendment would be a detriment to the community. Matt Flory ended his time by requesting the Planning and Zoning Commission to either deny the amendment or allow this business to be grandfathered.

Commissioner Sagar made a motion to close the public hearing, seconded by Commissioner Page. The motion carried unanimously.

Commissioner Apke asked if the owner of this business that spoke would be classified as a grandfathered use.

Planner Smithers replied that it would not be considered a grandfathered use because it stopped operating in 2015.

CDD Smith mentioned that grandfather status could not be granted by the Planning and Zoning Commission and is a land use right driven by the use of the property.

Commissioner Stansell asked how long this business has been vacant.

Planner Smithers responded with approximately four years.

Commissioner Page asked what the property was originally developed for and whether in the future the City should consider adding in a pre-existing use dependent on what the development was intended for. Commissioner Page continued that this business should be allowed to continue operating.

CDD Smith asked if this operated as a clinic, and, if so, what those dates were.

Matt Flory stated that it did operate for a good time, but he did not know the specific dates. He elaborated that the operator had a nearby facility and believed that he was competing with himself and closed down the facility in Keller because of that.

CDD Smith reiterated that a SUP does not grandfather a business. Only continued use can insure grandfather status.

Commissioner Page stated that it is unknown when this SUP was granted.

Planner Smithers replied that she would have to do more research to find that out. She also stated that this does not impact one area, but impacts the whole Town Center district.

Commissioner Page answered that he understood and reiterated that this building was approved for an original purpose.

Planner Smithers stated that the grandfather status is based on continuous use.

Chairman Ponder asked what the history was from an occupancy standpoint.

Matt Flory stated that the business opened fast and was essentially competing with the nearby facility so they had to close it down. He continued that he works directly for the owner and the building was still being paid off.

Chairman Ponder asked staff if this would not be considered grandfathered.

CDD Smith responded that since the use was discontinued, it could not be grandfathered.

Chairman Ponder asked what CDD Smith meant by "grandfather status supercedes everything."

CDD Smith responded that if this building were still operating today that it could be considered a grandfather status even though it did not comply with current zoning.

Commissioner Sagar asked if this building had been under lease for four years.

Matt Flory responded yes, and asked the Commission if they wanted a building that is vacant or a tenant to come in now and operate.

Commissioner Sagar said that we have had a vacant building the last four years.

Chairman Ponder stated that he sympathizes with his situation, but the need to facilitate a much larger discussion regarding the whole area of Town Center is what needs to be discussed.

CDD Smith responded that this business had a SUP in 2012, closed down in 2014, and the UDC update occurred in 2015.

Commissioner Sagar stated that the applicant had answered the question.

Commissioner Stevens asked if it was correct that the building was originally designed to be

a medical urgent facility.

CDD Smith answered that this was correct according to our records and to the applicant.

Commissioner Osgood asked for clarification that if this amendment is passed, this building would not be grandfathered.

Planner Smithers responded that this was correct.

Commissioner Alvarado stated that he was originally in support of this, but with the new information brought forward today he believed this topic warranted more discussion.

CDD Smith asked to make sure that the Commission be clear in what they would want staff to bring back to them.

Commissioner Page stated that he was in favor of removing medical emergency clinics from Town Center but was sympathetic toward the applicant.

Commissioner Stansell asked to call the representative back up and asked for clarification.

Commissioner Stansell asked if the building was leased to eCare and asked if the owner and lease were related.

Matt Flory answered that he was not sure and mentioned that he was employed about four to five months ago.

Commissioner Stansell followed up by asking why it sat empty for that period of time.

Matt Flory responded that the owner was being paid by the tenant even though they were not using the space they were leasing, and the owner was in no hurry to rush another tenant to lease.

Commissioner Stansell asked if the owner understood that he needed to continue the use to maintain grandfather status.

Matt Flory responded that he did not know.

Commissioner Sagar asked if staff knew what the original use was. It was her understanding that the building was for a medical office not a minor medical emergency clinic.

CDD Smith interjected that staff would need to research that before giving a definitive answer.

Commissioner Sagar responded that she did not know if it is relevant, but believed it made a difference in the discussion.

Chairman Ponder reiterated that it was the Commission who asked staff to come back with this, and hoped that the representative had felt that they were heard.

Commissioner Stansell made a motion to approve D (7) as presented, seconded by Commissioner Apke. The motion was approved 6-1. (Commissioner Bob Stevens dissented.)

E. ADJOURN

Chairperson Gary Ponder adjourned the meeting at 7:58 P.M.

Chairperson

Staff Liaison