

Minutes
Zoning Board of Adjustment
October 28, 2019

After determining that a quorum was present, the Zoning Board of Adjustment of the City of Denton, Texas convened in a Regular Meeting on Monday, October 28, 2019 at 4:30 p.m. in the City Hall Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items were considered.

Present: Board Members: Amber Briggie, Jennifer Lane, David Higgins, Eric Horton, and Emily Meisner

Alternate Board Members: Susan Seaborn

Staff: Ron Menguita, Jerry Drake, Cynthia Kirchhoff, Scott McDonald, Richard Cannone, Selena Dillard

Absent: Board Member William House, Alternate Princewill Njoku Jr.

Chair Briggie called the meeting to order at 4:48 p.m.

Chair Briggie announced William House and Princewill Njoku as being absent.

1. PLEDGE OF ALLEGIANCE

A. U.S. Flag B. Texas Flag

2. ITEMS FOR COSIDERATION

A. ZBA19-037 Consider approval of the minutes of September 30, 2019

Board Member Higgins moved to approve the minutes, Vice-Chair Lane seconded. Motion to approve the September 30, 2019 minutes passes. (6-0-0-2).

AYES (6): Chair Briggie, Vice-Chair Lane, Board Members: Horton, Higgins, and Meisner, Alternate Seaborn

NAYS (0): None

RECUSED (0):

ABSENT (2): Board Members House, Alternate Njoku Jr.

B. ZBA19-038 Receive the 2019 Zoning Board of Adjustment Calendar.

Ron Menguita, Principle Planner, presented the 2020 ZBA calendar to the Board. Board Member Higgins suggested moving the ZBA meeting scheduled for Monday, December 28, 2020 to Monday, December 14, 2020. Alternate Seaborn motioned to approve the calendar with the correction, Vice-Chair Lane seconded the motion. All in favor (6-0-0-2).

1 **AYES (6): Chair Briggie, Vice-Chair Lane, Board Members: Horton, Higgins, and Meisner,**
2 **Alternate Seaborn**
3 **NAYS (0): None**
4 **RECUSED (0):**
5 **ABSENT (2): Board Members House, Alternate Njoku Jr.**
6

7 C. ZBA19-042 Receive a briefing and discuss the limitations and authority of the Board of
8 Adjustment in hearing and ruling upon variance requests and appeals of administrative decisions.
9

10 Jerry Drake, First Assistant City Attorney, presented the Legal Orientation Guide to the Board that
11 discusses the authority and the limitations of the Zoning Board of Adjustment. Board Member
12 Higgins asked if legally there is a level or harm that has to be reached to oppose a staff decision,
13 or if it can simply be because one does not agree with the decision. Drake will research and get
14 back with the Board. Due to computer error in the transition of documents, a portion of the reading
15 material that included references did not transfer correctly. A complete and correct document will
16 be sent to the Board. Vice-Chair Lane stated that she believed it is a duty of the Board to visit a
17 site that is in question, if possible. Drake replied that per the law the board must only make a
18 decision based on information presented on the record.
19

20 3. Closed Meeting 21

22 A. Consultation with Attorneys - Under Texas Government Code Section 551.071 Consult with
23 and provide direction to City's attorneys regarding legal issues relating to an appeal of a vested
24 rights determination for the applicability of gas well reverse setback and separation distance
25 requirements to a manufactured home park. The subject property is approximately 13.69 acres
26 located on the west side of Fort Worth Drive across from the intersection of Country Club Road;
27 where a discussion of these legal matters in an open meeting would conflict with the duty of the
28 City's attorneys to the City of Denton, the Denton Zoning Board of Adjustments under the Texas
29 Disciplinary Rules of Professional Conduct of the State Bar of Texas.
30

31 Drake recommend the Board not enter the closed meeting as the caption on the posted agenda was
32 not correct. He asked that the board ask any questions they had in the open meeting. Chair Briggie
33 asked for clarification of why the public hearing case had to be split between two meetings.
34 Richard Cannone, Deputy Director/ Director of Planning of Development Services, stated that due
35 to new legislation a decision on a case such as this cannot be heard and voted on during the same
36 day. The board must come back no earlier than 24 hours, and no later than 60 days to vote.
37 Testimony would be heard during this meeting, and a decision would be rendered the following
38 day. This process only applies to appeal cases.
39

40 4. Public Hearing 41

42 Chair Briggie called the Public Meeting to order at 5:47 p.m.
43

44 A. ZBA19-0009 Hold a public hearing and consider an appeal of an administrative decision
45 regarding vested rights related to the applicability of gas well reverse setback and separation

1 distance requirements to a mobile home park. The subject property is approximately 13.69 acres
2 located on the west side of Fort Worth Drive across from the intersection of Country Club Road
3 in the City of Denton, Denton County, Texas. (ZBA19-0009, Country View Mobile Home Park)

4
5 Richard Cannone and Jonathan Vincent were sworn in.

6
7 Cannone presented the staff analysis to the board. The location of the property is at 2800 Fort
8 Worth Drive, Denton. TX 76205. It is approximately 13.5 acres, and holds a mobile home park. A
9 vested rights determination was submitted in conjunction with the denial of building permit (1809-
10 0356), due to not complying with gas well setbacks. The applicant asserted that the gas wells came
11 after their site was established. The Specific Use Permit was approved in 1981 and the plat was
12 approved in 1985. The gas well was platted in 2002. Staff believed the applicant's project was
13 complete and did not vest with Texas Local Government Code. Chair Briggie questioned how the
14 current homes in the setbacks were built, Cannone answered that due to the homes being
15 constructed prior to the gas wells they were considered legal non-conforming. Board Member
16 Higgins pointed out that the map appeared to show the setbacks were not measured from the gas
17 well, but from the pad sites. Cannone responded that there are two measurements, the setback and
18 the reverse setback. Board Member Horton asked for a definition of "complete" as pertaining to
19 the City's view of the applicant's project. Cannone answered that if all improvements required
20 within the plat are completed then the project is considered complete. The site was platted as one
21 lot. Chair Briggie asked why the project is complete if there are only 77 mobile home units built
22 out of the intended 100. Drake stated that mobile home units are considered personal property, and
23 not a fixture to the land but can be stored on the land. A pad is not a protected use unless someone
24 is living on it. Board Member Higgins asked for a definition of protected use. Drake defined
25 protected use as a Dwelling, Church, Public Park, Public Library, Hospital, Public School, Public
26 Pool, Public Transit Center, Recreation Center, Senior Center, Hotel, or Motel. Cannone added
27 that the term protected use does not include a recreation vehicle. Staff did not believe that the
28 applicant met the criteria for vested rights.

29
30 Jonathan Vincent spoke on behalf of the applicant, Wayne Allen, to appeal the City's vested rights
31 determination. He presented to the Board. The City Manager issued the determination on
32 September 27, 2019 stating that vested rights do not apply to this case. Vincent stated that a
33 Specific Use Permit was approved in 1981 in condition with the site plan. The concept plan
34 consisted of 100 pads. The final plat was adopted in 1985 depicted a cul-de-sac showing intent to
35 build. There were multiple new homes continuing to be permitted up until August 2018. Board
36 Member Horton asked if any of the new homes were built within the setback. That information
37 was not readily available and would have to be provided later. Alternate Seaborn also asked for a
38 layout map of all of the mobile home units. The map would be provided later. Vincent believed
39 the applicant met the criteria for vested rights, and asked the City's determination be reversed.

40 Board Member Higgins noted that setbacks were created for safety and asked Vincent how he
41 would address this. Vincent responded that they had taken the fire code into consideration, and
42 that gas well setbacks are considered zoning. Board Member Higgins was concerned with the
43 safety of those dwelling inside the setback of the gas well. Board Member Meisner would like to

1 a clearer timeline of gas well setbacks and reverse setbacks in the current code in relation to the
2 mobile home park. Alternate Seaborn asked about the Specific Use Permit in regards to a zoning
3 change and Drake stated the Specific Use Permit would be attached to the prior zoning of the
4 property. Vice-Chair Lane had concerns about children, elderly, and those with disabilities living
5 within the gas well setbacks. Higgins asked if there could possibly be a sort of blockade that would
6 assist in the instance of a gas well explosion. Vincent would need to discuss with the applicant.
7 Drake stated that unknown information should not be considered.

8
9 Board Member Horton asked when the City decided the project was complete. Cannone stated that
10 completeness was determined when a formal application was received. He went on to say the one
11 of the conditions of the Specific Use Permit was the park be developed in accordance with the
12 standards of the Denton Code of Ordinances. A plot plan is required and must show the number,
13 location, and size of all mobile homes and recreational vehicles stands. The code requires at least
14 8% of the gross area, which may not allow for all of the 100 pads. He then entered Exhibits 1-6 in
15 the backup packet, the staff presentation (Exhibit 7), definitions read (Exhibit 8), and Chapter 32
16 of the Code of Ordinances (Exhibit 9) into the record.

17
18 Chair Briggie closed the Public Hearing at 7:07 p.m.

19
20 Drake stated that additional evidence could not be received tomorrow. If the Board decided more
21 information is needed, the meeting would have to be scheduled at a later date, with a second
22 meeting scheduled to vote.

23
24 Cannone noted that there was additional information presented during the meeting that was not
25 known to staff in the initial determination.

26
27 Chair Briggie opened the Public Hearing at 7:35 p.m.

28
29 Board Member Meisner asked if the applicant was aware of the new Denton Development Code
30 in regard to gas well setbacks. Vincent answered that he was not aware, and could not answer for
31 the owner.

32
33 Chair Briggie closed the Public Hearing at 7:36 p.m.

34
35 Deliberation and voting would take place Tuesday, October 29, 2019. No new evidence could be
36 accepted, and the vote would be based on what was presented in this meeting.

37
38 Board Member Meisner asked that copies of the DDC be provided to the Board Members.

39 Board Member Horton asked that a new start time be discussed for the meetings, Ron will reach
40 out to the Board Members regarding a new start time.

41
42 Meeting adjourned at 7:37 p.m.

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X

Jennifer K. Lane

Jennifer Lane
Vice-Chair

Date: 11/18/19

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