

**MINUTES**  
**AUSTIN CITY PLANNING COMMISSION**  
**TUESDAY, NOVEMBER 10, 2009**  
**5:30 P.M.**  
**AUSTIN CITY COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Lonnie Skalicky, Suzanne McCarthy, Jodi Krueger, Jim Mino, Lynn Spainhower, Tony Bennett, Jeff Bednar, Kathy Stutzman, and Shawn Martin

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Craig Hoium, Council Member Jeff Austin (left at 7:00 P.M.), Council Member Marion Clendon (left at 6:35 P.M.), Council Member Dick Pacholl, media and public.

Commission Member Mino made a motion to approve the October 13, 2009 Planning Commission Minutes as written, seconded by Commission Member Bennett. Motion passed unanimously.

**OPEN PUBLIC HEARING:** To consider a request from Paul and Deb Leif, 2310 16<sup>th</sup> Ave SW for a conditional use permit to operate a home occupation (income tax office) out of their residence. Said action for this property located in an "R-1" Single-Family Residence District is pursuant to Austin City Code Section 11.30, Subd.3 and 11.56

Craig Hoium reviewed the request reading the eight requirements for a home occupation in Code Section 11.30 Subd.3:

**With consideration of the petitioned action and are not optional, the following must be provided:**

1. **Such occupation shall only occur on the principal residential structure on the site**
2. **Such occupation shall be located on one floor only, and shall not occupy more than one-third of that floor area**
3. **Only articles made or originating on the premises shall be sold on the premises, unless such articles are incidental to a permitted commercial service**
4. **No articles for sale shall be displayed so as to be visible from any street**
5. **No person is employed other than a member of the household residing in the premises**
6. **No mechanical or electrical equipment is used if the operation of such equipment interferes unreasonably with the desired quiet residential**

7. **environment of the neighborhood or if the health and safety of the residence is endangered**
8. **Parking shall be limited to two or less off-street customer parking spaces at any given time**
9. **All signing shall be in compliance with Section 4.50 Subd. 4(C), Schedule No. 11 1(B) of the Austin Sign Code**

Mr. Hoium said in reference to number eight the sign code states that any signage in a residential area can be a maximum of two square feet and must be a flat wall sign. He then read the eight considerations in 11.56 Subd.1 which are as follows:

Section 11.56, Subd. 1 of the Code states that “before granting a conditional use permit, the Planning Commission shall consider the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding land, including land values, as well as the preservation of natural features. Among other things the Planning Commission shall make the following finds where applicable:

- A. **The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area**
- B. **The use will be sufficiently compatible or separated by distances or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land**
- C. **The use, in the opinion of the Planning Commission, is reasonably related to the overall needs of the City and to the existing land-use.**
- D. **The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties**
- E. **The use is consistent with the purposes of the Zoning Chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use**
- F. **The use will not cause traffic hazard or congestion**
- G. **Existing businesses nearby will not be adversely affected because of curtailment of customer trade brought about by intrusion of noise, glare, or general unsightliness**
- H. **The use will not result in unnecessary destruction of natural features such as tree, unusual rock formations, water courses, or sites with historical or aesthetic significance**

When a decision is made for or against this request, please refer your findings to the considerations in Section 11.56 Subd. 5 which reads as follows: Other considerations, states the Planning Commission and staff shall consider possible adverse effects of the proposed conditional use and what additional requirements may be necessary to reduce such adverse effects. Its judgment shall be based upon, but not limited to, the following factors:

- **Geographical are involved**
- **Whether such use will depreciate the surrounding area**
- **Character of surrounding area**
- **Demonstrated need for such use**
- **Whether proposed use will cause odors, dust, flies, vermin, smoke, gas, noise, vibrations or would impose hazards to life or property in the neighborhood.**

Mr. Hoium read through the seven staff recommendations which read as follows:

- 1) There is no outside advertising, signage, or other item or device to call attention to the home occupation, either on the property, or in an off-premise site
- 2) Customer parking shall be in an off-street location
- 3) Only one customer shall be allowed on the premises
- 4) Specific times of business hours could be specified prior to approval of the C.U.P.
- 5) Only the resident of this house is permitted to be employed in this operation
- 6) The business is restricted to the principal residential structure, and not to occupy more than one-third the floor area of that floor
- 7) Any necessary building code issues must be reviewed and approved by the City Building Official. Walk-through of premises should be conducted by Building Codes Division staff.

He then showed a graphic of the site location. Mailings went out to adjacent properties with no calls for or against this request.

Commission Member Stutzman asked why the staff recommends no signage when the city sign code allows it. She also wanted a definition of an off-premise sign.

Mr. Hoium said not allowing signage is something that could be considered by the Planning Commission. An off premise sign is a billboard or signage that is not located on the property on under review.

Commission Member Stutzman said why only one customer when there are two offices.

Commission Member Spainhower said staff recommendation number five states only the resident may be employed, that seems a little restrictive.

Mr. Hoium said that it is a requirement in Code 11.30 that only a resident of the house may be employed in the business. As far as a customer, a couple having their taxes done would be one customer.

Commission Member Martin asked for a definition of employed.

Mr. Hoium said anyone working there, whether it is one hour or 40 hours per week.

Commission Member Stutzman said if that condition is already listed in the statute, what is the reason to have it as an additional recommendation.

Mr. Hoium stated that is just the way the staff report was written up.

Commission Member Spainhower said it states only a resident may be employed, should that be residents since both Paul and Deb are employed there.

Mr. Hoium said they are both residents and therefore may be employed there.

Paul Leif, 2310 16<sup>th</sup> Ave SW, said they do not advertise anymore except for the windmill in the front yard which says, "Leif Tax Service". All customers are strictly by appointment and about 70% of our customers complete their returns in one appointment so they do not have to return to pick them up. Most of our business is from January 15 – April 15 with only occasional appointments after April 15. We do a lot of mail in returns for snow birds and retirees.

Commission Member Stutzman asked what kind of hours the petitioner usually works.

Mr. Leif said the hours they work are Monday through Friday from 9:00 A.M. to 7:00 P.M., Saturdays from 9:00 A.M. to 4:00 P.M. and no Sundays.

Commission Member Mino asked if the hours of 8:00 A.M. to 8:00 P.M. would work as a condition for the petitioner.

Mr. Leif said that would not be a problem.

Commission Member McCarthy asked if a ramp would be required.

Mr. Hoium said that would be covered under the staff recommendation to have a walk through of the property done by the Building Codes Division.

Commission Member Spainhower asked about the lettering on the windmill.

Mr. Leif said they do not need any signage and the lettering can be removed, all of their business is repeat business or word of mouth. He then asked if the hours of operation could be from 9:00 A.M. to 9:00 P.M.

Commission Member McCarthy asked how much leeway is given between appointments.

Mr. Leif said most appointments are on the hour but there is an occasional appointment overlap.

Betty Johnson, 2402 16<sup>th</sup> Ave SW said they live next door to the Leif's and have a problem with people parking in front of their mailbox and turning around in our driveway.

Commission Member Spainhower said one of the restrictions is only two cars at a time with off street parking.

Mrs. Johnson said they park on both sides of the street.

Commission Member Spainhower said with only two off street parking allowed Mr. Leif would need to talk to his customers about parking.

Mr. Leif said he can talk to customers about not parking in front of the mailbox.

Mr. Johnson said she does not believe they should have a business in their home at all.

Commission Member McCarthy said there should be not parking on the street at all, there should only be two customers at a time and they should be off street.

Commission Member Martin asked what the enforcement mechanism for this.

Mr. Hoium said typically the neighbors would police the parking and report to Craig's department if needed.

Commission Member Stutzman reaffirmed that if a business is in violation of the conditional use permit the neighbors can call the planning department.

Mr. Hoium said yes, it is not their responsibility but as with any other complaint we will take the call and go to the property to check for violations.

Commission Member Stutzman said if this conditional use permit is granted and the Johnson's had a concern they could call you, but the cars parked in the street would have to be related to the business.

Commission Member Skalicky asked if this opens up a can of worms for other home businesses.

Mr. Hoium said city ordinance is very specific on what type of home occupations can be conditionally permitted in a residential area. A single chair beauty salon is one of the businesses that are permitted.

Commission Member Spainhower said there have been others like a photography studio. If the motion was approved or denied it is specific to that type of business.

Mr. Hoium pointed out the first paragraph under applicable ordinance provisions in the staff where all the different types of home occupations are listed.

Commission Member McCarthy asked if it is true that the conditional use permit stays with the home.

Mr. Hoium said that is true but all the same restrictions apply and it would have to remain a tax service.

Commission Member McCarthy it almost seems that you have a business house in a residential area.

Commission Member Spainhower said we do not want to thwart small business. They are a necessary part of the community. We do not want to be overly restrictive but yet we do not want them to be a nuisance.

Commission Member Stutzman said in Section 11.56, Subd. 1 this is an allowable occupation and items A-H are the guidelines we have to follow.

Dick Pacholl, 815 10<sup>th</sup> Ave SW, said the CUP would stay with the property.

Mr. Hoium said yes that is correct.

Commission Member Spainhower said that with the CUP all the restrictions would remain exactly the same.

Mr. Hoium said it would have to be the same business or the CUP would require an amendment to what was previously approved.

Commission Member Stutzman said the attorney is not here so maybe Craig can answer this. Can we deny this request because of what may happen in the future?

Mr. Hoium said either action that is taken this evening the petitioner or any other citizen can appeal that decision and then another public hearing would be set up and then it would go to city council for final action.

Mr. Pacholl said he would like to see the state legislature make a change so that once a property is sold the conditional use permit is null and void.

Eugene Johnson, 2402 16<sup>th</sup> Ave SW said there is a lot of wildlife in our area and this is a very busy road. We had a note from our mailman in our mailbox saying he would not deliver our mail because of the cars parked in front of it.

Commission Member Martin asked Mr. Johnson if he had ever spoken to Mr. Leif regarding this issue.

Mr. Johnson said no, but everyone knows you should not park in front of a mailbox!

Commission Member Spainhower said you cannot work on a solution if you are unaware that the problem exists. Have you ever tried to talk to the Leif's to see if they would be amenable to helping you out.

Mr. Johnson said no, if you are in a business like that there should be ample parking.

Commission Member Mino made a motion to approve the conditional use permit based as it will not cause excessive burden on parks, schools and streets, it is a demonstrated need, will not cause problems with odors, dust, vermin, etc. and include conditions 1-7 in the staff report with the omission of number 3 and 5 because they are already in the original conditions and with the business hours of 9:00 A.M. to 9:00 P.M Monday through Saturday. Commission Member Spainhower said you want to scratch number three but that is not in the ordinance. Commission Member Mino said we should keep number three with it to read only two customers allowed on the premises at a time. Commission Member Martin seconded the motion. Motion passed unanimously. There is a 15 days appeals period.

**OPEN PUBLIC HEARING:** To review and make recommendations for the adoption of ordinance which would provide regulations for the installation of outdoor solid fuel burning appliances.

Mr. Hoium reviewed the proposed ordinance. In summary any future solid fuel burning appliances would be prohibited, the sections relating to the nuisances relates to the emissions from these types of appliances and those currently in place would have to abide by the provisions. With some of the complaints regarding these appliances we have gone to extreme measures by having the MPCA investigate and test the emissions. In these instances the appliances were in compliance to MPCA regulations. There have been civil cases in other communities where the property owner was found negligent and had to pay a penalty fee for the damages.

The planning commission members discussed the ordinance verifying that it relates only to outdoor solid fuel burning appliances and does not include wood stoves inside a home or recreational fires. They also discussed that there are currently three outdoor solid fuel burning appliances in the city limits that would be grandfathered in, however, public nuisance complaints pursuant to Austin City Code Section 10.14, Subd.4(B),9, shall be enforceable.

Commission Member McCarthy made a motion to recommend to the council to adopt this ordinance as written which pertains to the outdoor solid fuel burning appliances, seconded by Commission Member Skalicky. Motion passed with 8 ayes and 1 nay, the nay being Commission Member Stutzman.

**OPEN PUBLIC HEARING:** To review and make recommendations for the adoption of ordinance which would provide regulations for the installation of wind energy conversion systems.

Mr. Hoium reviewed the proposed ordinance. The information in the proposed ordinance has come from researching informational materials, ordinances from other communities and informational meetings with both the planning commission and city council. The need for this type of ordinance was brought to our attention when this past summer a citizen of Austin that wanted to install a wind turbine on his property in a residential district. The proposed ordinance is very similar to an ordinance that was adopted that regulates telecommunication towers. When something new like wind turbines becomes desired by a citizen it is important that we have regulations so we do not create any adverse conditions for adjacent property owners. In July the city council approved a moratorium on the installation of wind turbines in the community, which is permitted by state statutes, and we have been working on this ordinance since that time. In a recent work session with the city council, the council requested that consideration be given to be able to install this type of wind turbine in residential areas. A permit application would be required and included with the permit the following information would be the required: location, structural components, decibel level information and electrical apparatus. An example of a turbine in our area is at Wally Bustad's property north of the city limits. His wind turbine is approximately 120'-130' high and the blades are 35' in diameter. Mr. Hoium pointed out the many of the codes and design requirements that turbines would have to comply with.

The planning commission members discussed the proposed ordinance with questions regarding setbacks to neighboring properties, roof top units, Wi-Fi interference, noise levels and distance between turbines. They also stated that this is only to approve the ordinance, each turbine would still require a conditional use permit.

The following citizens from the Cottage Home Development and Oak Park Village spoke regarding the proposed ordinance: Bob Clark, 2003 C Burr Oak Drive; Ken Davis, 2003 B Burr Oak Drive; Brian Beckstrand, 1901 Burr Oak Drive and Don Wagner, 2106 B Oak Tree Lane. They stated there concerns regarding young trees that have yet to grow to full height, proximity of turbines to property lines, noise levels and that turbines could ruin aesthetics and deplete property values in their condominium development.

Mr. Stiles, 2101 4<sup>th</sup> St NW spoke as a citizen who would like to install a wind turbine. He stated this is a green economy and the turbine is more about conservation than savings. He respects his neighbors and would not want to do anything to upset them. He does not believe a wind turbine would disrupt their daily life.

Commission Member Martin made a motion to recommend to the council to adopt this ordinance with the inclusion of I under Subd. 7, Siting which shall state a wind turbine must not be within 350 feet of a residential area, seconded by Commission Member McCarthy. Motion passed with 6 ayes and 3 nays, the nays being Commission Members Bennett, Bednar and Stutzman.

Commission Member Skalicky made a motion to adjourn the Planning Commission meeting at 7:50 P.M., seconded by Commission Member Krueger. Motion passed unanimously.