

THE CITY OF OLMOS PARK
PLANNING AND ZONING COMMISSION
MINUTES OF MEETING HELD
FEBRUARY 27, 2019

The Planning and Zoning Commission for the City of Olmos Park, Texas held a meeting at 5:00 p.m. on Wednesday, February 27, 2019 at City Hall. Members present were Shannon Collins, Brian Hamilton, Dr. John Hogg and Dr. Alison Wiesenthal. Members that were not present were William Brooks and Merribell Parsons. Administrative staff present was City Manager, Celia DeLeon; City Secretary, Diane Gonzales; Building Official, Rick Cavazos and City Attorney's, Richard Lindner & Austin Beck and David Givler with Givler Engineering.

Dr. Alison Wiesenthal called the meeting to order and announced a quorum was present at 5:00 p.m.

Approve minutes from January 30, 2019.

Dr. Hogg moved to approve the meeting minutes held on January 30, 2019.

Shannon Collins seconded the motion.

The vote in favor of the motion was unanimous.

Public Hearing regarding: An Ordinance amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning; single-family residence districts, section 40-40 Building and Land Use restrictions; for the purpose of regulating windows on accessory buildings; declaring a public purpose; incorporating recitals; providing a repealer and savings clause; providing for a penalty; providing for severability and setting an effective date.

Vice Chair Wiesenthal opened the public hearing at 5:01 p.m.

There were no citizens to be heard.

Vice Chair Wiesenthal closed the public hearing at 5:02 p.m.

Review and discuss the Ordinance referenced in Item 3 above; take possible action.

Richard Lindner stated at the last meeting the Board was seeking an ordinance that would make rear windows on accessory structures non-operable. The correct restrictions are they can't be see through or clear but the City was having some problems with some builders asking if they make the rear windows not see through can they still be able to open and the Board has asked for an ordinance to make it clear that the rear windows can't be clear and can't be operable.

Brian Hamilton asked is this ordinance for clarity of the builders?

Richard Linder stated Ric Cavazos has some builders that were challenging that the rear windows can't be see through and want to make it operable so they can open them and we thought the intent was clear on the ordinance that we don't want someone to be able to look in someone's backyard so easily.

Ric Cavazos stated a resident came to him and was uncomfortable in the ordinance that there was no specific clause that prohibited anybody from opening the windows to see in their back bedroom.

City Manager DeLeon stated this only pertains to accessory structures.

Rick Cavazos stated that will not affect the side windows, it is only the rear wall windows.

Shannon Collins asked was the issue with a fire code?

Ric Cavazos stated due to the fire code the side windows need to open in emergency situations. This only deals with the back windows not to be operable to see into somebody else's backyard or bedroom.

Brian Hamilton asked when did the original ordinance require the windows to be opaque?

Richard Lindner stated the ordinance would have the "whereas purpose" language in it but he does not see any other reason for having opaque windows other than for privacy purposes.

Ric Cavazos stated the accessory buildings tend to be further back in the yard where the main structure is within a certain setback and closer to the side and back property line.

Richard Lindner stated in Section 40-40 accessory structures has had a lot of changes from originally back in 1985, and then changed in 1997, 2000, 2008, 2010, 2013, 2014 and 2016.

Vice Chair Wiesenthal asked how is the accessory structure defined in the ordinance?

Richard Lindner stated accessory building means a subordinate building attached to or detached from the main structure and used for a purpose customarily incidental to the main structure, such as a garage, carport, or porte cochere for automobile storage, and a tool house, lathe or greenhouse, home workshop, quarters for servants employed on the premises, children's playhouse, bath house, pen, coop, kennel or storage house or garden shelter, but not involving the conduct of business or the use of such accessory structure as a separate domicile. He stated in Olmos Park most of the accessory buildings are maid's quarters.

Dr. Hogg moved to approve amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning; single-family residence districts, section 40-40 Building and Land Use restrictions; for the purpose of regulating windows on accessory buildings.

Brian Hamilton seconded the motion.

The vote in favor of the motion was unanimous.

Review and discuss: An Ordinance amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning; single-family residence districts, subsection 40-45 Impervious Cover; for the purpose of regulating impervious cover in front and rear yards; declaring a public purpose; incorporating recitals; providing a repealer and savings clause; providing for a penalty; providing for severability and setting an effective date; and take possible action.

Richard Lindner stated at the last meeting the Board asked him to create an ordinance that would regulate the impervious backyard cover. We already have an ordinance that regulates the impervious cover for front yards but there were concerns that regulations would be needed for the backyards. He looked at some other Cities indicating swimming pools and how that might affect it and we tried to incorporate that with the ordinance we proposed. He stated at the last meeting this impervious cover was discussed along with a requirement of a topography survey and we split the topographic survey so we can discuss them separately but the goal for both is to regulate potential damage from drainage.

Brian Hamilton stated he does not personally agree with this as a whole and we should not regulate what someone does in their backyard that is controlled by actions among neighbors. If

for some reason someone exceeding 30% impervious cover in their backyard and affects their neighbors it is not our place as a City to get involved.

David Givler stated he supports the Building Official in enforcement. If you were doing a project that is large enough to require a replat or a subdivision then there are regulations which apply to requiring a drainage study to ensure that the run off that comes from the site will not be increased or diverted in such a way it would cause damage to downstream or adjoining properties. The problem that Mr. Cavazos has been encountering is that there are projects smaller that qualify for a building permit but they don't trigger a plat so the ordinances are helpful for drainage purposes in regulating projects that don't apply. People come to the City looking for solution to have some protection from a project that may increase the run off or involves installing some structure that diverts water to their property in a detrimental way. The wording of the languages in the ordinances that are requiring giving Mr. Cavazos the tools that he needs to prevent a capacity are not there. When he reads this ordinance he sees the intent to try to give him the tools he needs help referee property owners. We can make suggestions as a City and people may or may not follow those suggestions and then those things will end up in court. He sees this as an intent to apply the Texas Water Code through the City instead of through the courts. We already have other regulations that apply of other circumstances and if we can find a way to bring this building permit process into an alignment into those other codes then that might give us the ability to protect people from these run off problems. He stated we can take the old things that we are already measuring and apply it to more circumstances.

Richard Lindner stated there is a size area that is currently triggered over a quarter of an acre. Currently anything over quarter acre disturbance triggers a quality run off and replats. He stated maybe the scope or size of the property is it going down the backyard of a normal lot or larger than a quarter of an acre.

Vice Chair Wiesenthal asked can we review the replat subdivision coding to see if we can add something there as opposed to creating an entire new ordinance?

Richard Lindner stated the Planning & Zoning does not have authority to talk about your subdivision section of code of ordinances, that would be another branch of the government of the City and not all projects will trigger your subdivision code unless someone is combining lots or cutting up lots the subdivision code is not going to trigger. If someone were to buy one of your larger estates and bulldoze everything on it and completely change the grading and put hardscaping in that run off could send quite a bit of water and if it was directed onto one point that could be a substantial amount of water that did not ever go to a neighbor's house. Right now we have no ability to regulate it. He stated at the last meeting he mentioned the two private citizens can go to court and have their issues addressed in court but if the City would like to provide some kind of regulation.

Ric Cavazos stated he does have pictures of the amount of rain water that went onto the adjacent property if anybody would like to see them.

Vice Chair Wiesenthal stated one of the things we were seeking from our last meeting was if there was a standard from the impact the person was going to make and asked if there was a specific adjustment that someone would make on their house that would affect run off?

David Givler stated the standards for affecting run off and typically there is a standard form of an engineering report where an engineer will analyze the run off to a certain location for the existing predevelopment condition, then analyze the design then show what the difference is then issues a report, seals it and it becomes an important document for the Project Manager to

certify what the intent of the drainage is supposed to be. He said you are talking about smaller pieces of property which are significant to a neighbor but not significant to planners. For storm water controls we have a threshold of quarter of an acre of disturbance and other things you need to consider would be a threshold of how big of a new impervious surface or how much of an addition to a house.

Dr. Hogg asked do we know what other cities similar in size in terrain have used for their codes?

Austin Beck stated the impervious cover varied but similar to what you have in the front yard those apply to front yard like we have. There weren't too many in the backyard and because the impervious in the front yard is for aesthetic purposes. The percentages varied and he did not come across anything that was separate from the backyard.

Dr. Hogg stated the problem here is anything that might protect the neighbors so they don't have the expense of going through a legal battle versus the water itself because we don't have an underground gutter system.

David Gilver stated we have some storm sewers that come down Shook and tie into the basin.

Richard Lindner asked if there was a very large lot and they had all the run off at one point, do you see that having any danger affects of running into the streets or street drainage?

David Gilver stated he does not think so but this is something that is normally what we request in a drainage study is you are not just looking at the neighbor but you are also looking at the receiving infrastructure and determining whether or not it can handle the flow. One of the things that concerns him is setting a threshold for somebody with impervious cover, what if they build some kind of detention system and it compensates for extra run off. Are you trying to tell them how much the homeowner can pave their property or what the limit is on discharge run off?

Vice Chair Wiesenthal stated discharge run off.

David Gilver stated you can set a maximum percentage of impervious cover you can have on the property then you have limited their use and taken away some options

Vice Chair Wiesenthal asked how big was the disturbance that triggered this discussion?

Ric Cavazos stated it was new construction where the slope of the property was about eight feet then that property became a twenty foot mound in the back side and he had to get engineering involved as the elevations were not there from the beginning as they submitted their plans to us.

Shannon Collins stated her opinion is this is a drainage issue not an impervious cover issue.

Ric Cavazos stated you have to look at the facts because on the property there were at least thirteen dump trucks that unloaded dirt to give them more backyard from the original backyard.

Vice Chair Wiesenthal stated section 40-45 would not address it because it is not impervious cover.

Rick Cavazos stated correct. The homeowner bought the lot and there was no replatting.

Vice Chair Wiesenthal asked was that a quarter acre worth of dirt and is a quarter of an acre a responsible size that you are saying would affect runoff?

Ric Cavazos stated yes it was over a quarter of an acre.

David Givler stated we are trying to find out how far does the City want to get involved and when the City wants to be involved when the project is big enough to cause drainage problems to a neighbor. He thinks a quarter of an acre is precise, and you need to think about structures if you are making a bigger building then that will have an impact as well.

Dr. Hogg asked would you estimate that about seventy-five to eighty percent of Olmos Park is about a quarter of an acre or larger?

Ric Cavazos stated yes.

Shannon Collins stated even if a small lot has some additions made to it and they put gutters on that will make a big impact on the direction the water will flow, so she does not think that the size is the answer and what is going on with the property determines a lot of the drainage.

Vice Chair Wiesenthal stated at this present time she does not see a clear way forward on this ordinance and impervious cover is not something that we will add based on the Boards comments and we are interested in discussing an ordinance regarding movement of water flow.

Richard Lindner stated one option you have is you can table the impervious cover just in case the Board does want to continue to pursue this drainage study and if it wants to be part of how you want to regulate a drainage study for later and give us direction on what you want to see next.

Vice Chair Wiesenthal stated the Board is clear we are not going to regulate people's impervious cover in their backyard and only want to regulate runoff because the issue that has come up is specifically related to runoff and nothing to do with impervious cover so she is not clear on tabling the impervious cover.

Richard Lindner stated in case further discussion about regulating drainage or the Building Official and the City Engineer says that impervious cover might be a small portion of that regulation.

Dr. Hogg moved to table the discussion on impervious cover.

Shannon Collins seconded the motion.

The vote in favor of the motion was unanimous.

Review and discuss regulating surface water drainage in all districts through the use of topographical surveys for landscaping changes; take possible action.

Richard Lindner stated at the last meeting the Board gave us direction to bring back something for review and we have listed several options to consider on how you want to regulate the options and they were made before he consulted with the City Engineer.

Dr. Hogg stated if they paved their entire backyard and the water is directed towards the street and not toward the neighbor it is about directing the water away from the neighbors.

Richard Lindner stated your drainage study that you're Engineer mentioned shows that we are not making it any worse than it was before we started working on it. Some of your lots have hills and may be difficult to drain into the street but the neighbors bought the house knowing they

were on the downside of a hill. He stated the drainage study idea would be a way to have some kind of standard apply to it.

Vice Chair Wiesenthal asked how much would a drainage study cost?

David Givler stated about a thousand to twenty-five hundred dollars depending on how complicated the project is and the home owner would be paying for the study.

Richard Lindner stated he would recommend having them sign a document that they present to Ric and he can make the decision.

Austin Beck stated in the proposed ordinance this is listed as an option, the homeowner can come with a signed opinion from a Professional Engineer that they looked at project and their opinion is, it won't affect the neighbor and file it with the City.

Brian Hamilton asked what happens if the Professional Engineer is wrong in their opinion and if you are a neighbor impacted it will be used as a piece of evidence in court?

Vice Chair Wiesenthal the degree changes of the existing grade or the percent of the total surface lot. Do we have any standards on that that is scientifically based?

David Givler stated he has not seen an approach like that, it is more about the intent of the disturbed area, or the extent of the paving that is taking place.

Vice Chair Wiesenthal asked would the intent be of a specific square footage or size?

David Givler stated yes and based on a fracture of the typical lot size or a percentage of the lot size.

Austin Beck stated the lessor of twenty five percent for small lots.

Vice Chair Wiesenthal asked is there a minimum square footage that needs to be adjusted?

David Givler stated he would bring back a recommendation to the Board at their next meeting.

Austin Beck stated how much is too much adverse effect and what size projects.

Brian Hamilton stated even if we agreed to the percentages there could be a small change of the percentage in someone's back yard that could have a big impact on your neighbor correct?

David Givler stated yes it is possible.

Brian Hamilton asked so even if we went into the percentages the escalating scale that was discussed could possibly not cure the issue?

David Givler stated he thinks there is an intuitive sense of a pending problem and you are trying to find a reasonable amount and there is going to be a point where it is too small for the City to get involved with and that is a subjective threshold.

Brian Hamilton stated he thought option #4 which is requiring the owner to pay for topographic map to be filed with City, and provide notice to adjacent owners to afford a review period to consider preemptive injunction was a decent option and he is not for the City acting as a referee

in between neighbor's issues. He stated with the removal of the topographic map that it may potentially go into a file and become a piece of evidence of ligation because we are not setting standards we are just asking them to follow the report.

Dr. Hogg stated he thinks the Board has given the Attorneys some direction for something new to look at the next meeting.

Richard Lindner stated the Board is ok with some regulations but still having trouble with how small to assert those regulations on and you want to have a drainage study that the citizen provides to the City with a check that it has a seal from a Professional Engineer.

Rick Cavazos stated he wanted to say for the record this is coming from City Council due to the complaints from the citizens and not from the Building Department or the Engineer.

Vice Chair Wiesenthal asked for the Attorney's to come up with some proposed options that show: the percent amount disturbed, the area size, all owners to notify neighbors with no topography map, all owners to notify their neighbors with no involvement of the City except to alert the City and owners give notice to City with a requirement to file a surface drainage study.

Dr. Hogg moved to table the ordinance for water drainage until the next meeting.

Brian Hamilton seconded the motion.

The vote in favor of the motion was unanimous.

Discuss future agenda items.

1. Review and discuss regulating surface water drainage in all districts through the use of topographical surveys for landscaping changes and run off and percentage land with more of a specific number.
2. Review and discuss Ordinance amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning for the purpose of regulating impervious cover in front and rear yards.

The next meeting will be Wednesday, March 27th at 5:00 p.m.

There was no other business and the meeting adjourned at 5:58 p.m.

William Brooks
Chair

ATTEST:

Diane Gonzales
City Secretary