



Board of Adjustments Meeting
December 4, 2013, 6:00 PM
City Hall - 665 Country Club Road
Minutes

Call to Order

The meeting was called to order at 6:00 p.m.

Present:

Member Stuart Fink

Member Chris Bierman

City Attorney Joe Gorfida

Development Services Director Joe Hilbourn

Member Randy Barnes

Alternate Member Janean McLaughlin

City Secretary Kathy Wingo

Member Craig Williams was absent, Alternate Member Janean McLaughlin will be a voting member for this meeting.

It was determined that a Quorum was present.

Everyone was reminded to turn off or silence their cell phones.

Routine Business

- 1) City Secretary will administer the Oath of Office to newly appointed members.

City Secretary Kathy Wingo administered the Oath of Office to Member Chris Bierman.

- 2) Discuss and Consider the appointment of a Chairman to serve for a period of one year, term ending October 31, 2014.

The Chairman is the presiding officer. The Chairman ensures rules of procedure are followed; maintains the dignity of the meetings; calls meeting to order; confines the discussion; recognizes members for motions, statements; allows audience participation at appropriate times.

MOTION: Member Chris Bierman made a Motion to appoint Stuart Fink as Chairman to serve for a period of one year, term ending October 31, 2014. Member Randy Barnes seconded the Motion. Motion carried.
Vote: 4-0.

- 3) Discuss and Consider the appointment of a Vice-Chairman to serve for a period of one year, term ending October 31, 2014.

The Vice-Chairman serves in the absence of the Chairman.

MOTION: Alternate Janean McLaughlin made a Motion to appoint Randy Barnes as Vice-Chairman to serve for a period of one year, term ending October 31, 2014. Member Chris Bierman seconded the Motion. Motion carried. Vote: 4-0.

- 4) Discuss the roles and responsibilities of the members of the Board of Adjustments.

The role of the Board of Adjustments is:

- To authorize, upon appeal in special cases, variances from the zoning ordinance
- To authorize special variance exceptions to the City's Sign Ordinance (Article 3.16 of the Code)
- To hear and decide appeals where it is alleged that an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance
- To hear and decide special exceptions.

- 5) Board training by City Attorney.

The Board of Adjustments is given authority through Chapter 211 of the Texas Local Government Code and the City of Lucas' Code of Ordinances (Zoning) Article 14.02, Division 2.

The Board of Adjustments consists of five members and four alternates. All cases must be heard by a minimum of four members (75% of members). The concurring vote of at least four members (75% of members) is required to reverse administrative decisions, authorize variances, and take any other action.

A variance is a waiver of the strict requirements of the zoning ordinance. Variances give a property owner permission to depart from the literal requirements of the zoning ordinance in special circumstances regarding a person's property due to a unique, unnecessary hardship. Unusual circumstances, strict application of zoning regulations will produce unnecessary hardship. Variances can relate to technical zoning matters such as setbacks, area, and height regulations.

The board should keep the following in mind:

- Hardship is not self-imposed.
- Hardship is unique to the property (size, shape, topography of lot or tract).
- Hardship is not financial in nature.
- Hardship does not include property that cannot be used for its highest and best use, or frustrated development objectives.

Variances are permissible only if strict application of the zoning ordinance would cause unnecessary hardship. The Board should require evidence of the hardship. A variance is not authorized merely to accommodate the highest and

best use of the property, but when the zoning ordinance does not permit any reasonable use of the lot. A variance gives no power to relax or change zoning use.

Section 3.16.12 of the City of Lucas' Code of Ordinance contains the city's sign regulations. The Board has authority to grant special variance exceptions to requirements of the sign ordinance upon application of the sign owner. The variance may be granted when circumstances permit AND when exception doesn't violate the spirit or intent of the sign ordinance.

Applicant or person aggrieved by the decision of a City official must file written notice of appeal with the Board of Adjustments and the official within 20 days of the decision.

Appeals stay on all proceedings unless the City official whose decision has been appealed certifies after notice of appeal that a stay would in his opinion cause imminent peril to life or property.

The Board must make a decision on the appeal within a reasonable time. Notice of the hearing is mailed to applicant and the owners of property within 200 feet of the property in question. The Board may reverse or affirm, in whole or in part, or modify the City official's order, requirement, decision or determination make the correct order, requirement, decision, or determination.

Any aggrieved person may appeal the Board's action by filing a petition for writ of certiorari in the district court within ten (10) days. The Board files certified copies of the original papers. The Court then reviews the decision based on the above of discretion standard.

The purpose of the Public Hearings:

- Allows parties to present evidence on both sides of an issue
- Begin promptly as posted on the agenda
- Conduct in an orderly manner in conformance with established rules of procedure
- Numbers don't always count

Every meeting of the Board of Adjustments is open to the public, unless a closed meeting is authorized by the Open Meeting Act. The governing body includes quasi-judicial boards and commissions, but not advisory board. The Open Meetings Act requires notice of meeting (agenda) to be posted no later than 72 hours before the meeting.

Any decision or deliberation between a quorum (majority) or between a quorum and another person regarding public business or policy which the Board controls or supervises or during which formal action is taken is subject to the Open Meetings Act. Deliberation is defined as a verbal exchange during a meeting

between a quorum or between a quorum and another person regarding public business or policy.

The notice of the meeting (agenda) must be written notice of the date, hour, place and subject of each meeting, including authorized closed meetings. The notice must be sufficient to inform the public of the subject matter that will be considered in an open or closed meeting. The more critical the topic, the more specific the notice must be, general descriptions are insufficient.

The City is required to post notice of its meetings on the City's web site. As an alternative to posting notice on a physical bulletin board, the notice may be posted on an electronic bulletin board at a place convenient to the public in City Hall; or, a perpetually illuminated screen on which the City can post viewable notices or messages that cannot be manipulated by the public.

The Open Meetings Act does not apply to:

- Conventions, seminars or workshops, if no formal action is taken and any discussion of public business is incidental
- Social meetings unrelated to public business
- Testimony before legislature and agencies

There can be no secret deliberations. Members may not contact other members by telephone for the purpose of arriving at a decision or consensus concerning public business. Members may not use email/voicemail/text messages to arrive at a decision. Members may not meet in numbers less than a quorum for the purpose of secret deliberations. A "walking quorum" is known as an overlapping series of meetings or telephone conferences with less than a quorum.

The Board may consult with the City's attorney by telephone or video conference call or internet communication in open or closed meeting, if the attorney is not an employee of the City. If the situation arises during the course of a meeting that requires the Board to seek legal advice, the Board may convene a closed meeting to preserve the attorney/client privilege.

An Executive Session should be limited to specific purposes. Notice must be posted that sets forth the specific section of the Government Code with a brief description. Requesting attorney's advice on an issue is a common example of a closed meeting.

The procedure for closed, Executive Session, is that a quorum first convenes in an open meeting for which proper notice has been given. The Chair announces that a closed meeting will be held and states the applicable sections of the Government Code and subject matter. It is not necessary to make a motion to go into the closed session or return to open session. A certified agenda or tape recording must be kept and must include: announcement at beginning and end of meeting stating the date and time, subject matter and any action taken.

Attendance should be limited to person necessary for the purpose of an Executive Session and whose interest is not adverse to the City's.

All decisions must be made in public. No voting in closed session or by secret ballot is allowed. The Board may disclose the matter(s) discussed in closed session, but not disclose certified agenda or tape from the closed meeting.

The public has a right, subject to reasonable access, to tape or videotape open meetings.

Effective September 1, 2013, communication between Board members about public business or public policy over which the council has supervision or control *does not* constitute a meeting if the communication is:

- In writing;
- Posted to an online message board that is viewable and searchable by the public; and
- Displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted.

Action taken in violation of the Act is voidable. Action may be set aside by a court but can be cured by a subsequent meeting. Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations are in violation of the Act and have committed a misdemeanor. Members who knowingly call or aid in calling or organizing an illegal closed meeting or participate in an illegal closed meeting or close or aid in closing the meeting to the public have committed a misdemeanor.

Disclosure of the certified agenda or tape recording of a closed meeting is a misdemeanor. An offense occurs if a member participates in a closed meeting knowing that a certified agenda or tape recording is not being made. Members are liable for damages for personal injury, lost wages, defamation, mental or emotional distress, reasonable attorney's fees and court costs if an individual is slandered during a closed meeting.

The Public Information Act is similar to the Freedom of Information Act. This applies to information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of City business. It includes information that the City owns or has a right of access – every form of information. It now includes texts and emails kept on Board members private email and phone accounts if they relate to City business!

Public Information is information in existence. The City is not required to conduct research, collect data or create new records. A citizen may request copies of information or to inspect information on-site. The City may not inquire into the requestor's motives, but may require that the request be in writing.

Public Information must be made available to the requestor during normal business hours within ten (10) business days after the request is made. If the City is unable to prove the information within ten (10) business days, it must notify the requestor and establish a reasonable date for production.

The requestor and City must comply with copyright laws. Certain information is protected by statute or other law and may not be disclosed to the public. Other information may be withheld from disclosure; however, the City must request an opinion from the Texas Attorney General within 10 business days from receipt of the request as to whether the requested information may be withheld.

Email communications of City Staff and City officials; and, personal notes of City Staff and City officials are subject to the Public Information Act. Home emails on personal computers and text messages on private cell phones are public records if City employee or official transacts City business in such manner. Disclosure of a home email address is excepted from the public disclosure if the City employee or official elected to keep information confidential.

Information that may be withheld include: confidential information identifying information; information relating to litigation in which the City is, or may be, a party, or to which a public official or employee of the City is or may be a party; trade secrets and certain commercial or financial information; social security numbers, driver's license numbers, license plates, certain motor vehicle information, credit card, debit card, charge card and access numbers. Also information relating to economic development negotiations between the City and business prospects; home addresses, email addresses, cell and home telephone numbers of elected City official and City employees; email addresses of members of the public unless consent to disclose; audit work papers; and certain law enforcement records may be withheld.

Current and former City employees or officials who choose not to allow access to emergency contact information may be withheld. A photocopy or other copy of an identification badge issued to a City employee or official is not public information.

All Board members are required to go through Open Government Training through the Texas Attorney General website. The website for Open Meeting and Public Information videos and for certificate:

https://www.oag.state.tx.us/open/og_training.shtml

Members must watch the complete video, print certificate of training, and prove to City Secretary.

Public Hearings

- 6) Public Hearing/Discuss and Consider a request submitted by Elaine Ford (applicant) on behalf of Hillwood Communities for a special variance exception to the City of Lucas' Code of Ordinance, Chapter 3: Building Regulations Article 3.16 Signs, Section 3.16.008 Prohibited Signs (g) Off-Premises Signs, requesting a special variance exception pursuant to Section 3.16.012 of the City Code of Ordinances to allow for two (2) off-site directional signs to direct traffic to the new Brockdale Community. Said signs to be located at Northeast Corner of W. Lucas and Southview Drive; Southwest corner of E. Lucas Road and Brockdale Park.

The Public Hearing was opened at 7:04 p.m.

Development Services Director Joe Hilbourn provided the application information for the Board's consideration.

This is an application submitted by Elaine Ford on behalf of Hillwood Communities for a special variance exception to the City of Lucas' Code of Ordinance, Chapter 3: Building Regulations Article 3.16 Signs, Section 3.16.008 Prohibited Signs (g) Off-Premises Signs, requesting a special variance exception pursuant to Section 3.16.012 of the City Code of Ordinances to allow for two (2) off-site directional signs to direct traffic to the new Brockdale Community. Said signs to be located at Northeast Corner of W. Lucas and Southview Drive; Southwest corner of E. Lucas Road and Brockdale Park.

Proposed Signs/Location:





This type of adjustment does not require the applicant prove a hardship because it involves Chapter 3 of the City's Code of Ordinances, not Chapter 14 Zoning. The board can either allow both signs, deny both, or allow only one.

Staff would recommend approval of one off-site sign to be located at the intersection of Brockdale Park Road and East Lucas Road.

If approved, the sign would have to meet the standard requirements, no larger than 40 square feet and the sign would have to be maintained.

The applicant, Elaine Ford, 801 Rockhill Road, Prosper, Texas came forward to speak. The development consists of 206 homes and the location of the development is such that an off-site direction sign is being requested for marketing purposes.

City Attorney Joe Gorfida stated that if the board wished to grant the variance a rendition of the sign could be made part of the decision.

The Public Hearing was closed at 7:15 p.m.

MOTION: Member Randy Barnes made a Motion to approve the sign at Brockdale but not approve the sign at Southview. City Attorney Joe Gorfida stated that the members could discuss amongst the members prior to making a Motion. Member Randy Barnes removed the Motion.

Member Chris Bierman wants to make sure that this does not infringe on others property rights.

City Attorney Joe Gorfida stated that the decision should be based on the spirit of the ordinance and is this a violation of the sign ordinance.

Development Service Joe Hilbourn stated that in the spirit of the code, a sign should be allowed so that the development's location is made known to the public.

MOTION: Member Randy Barnes made a Motion to approve the sign variance for the intersection of Brockdale and E. Lucas Road and deny the sign at E. Lucas and Southview; the sign will be in the form as presented by applicant. Chairman Stuart Fink seconded the Motion. Motion carried. Vote: 4-0.

Routine Business

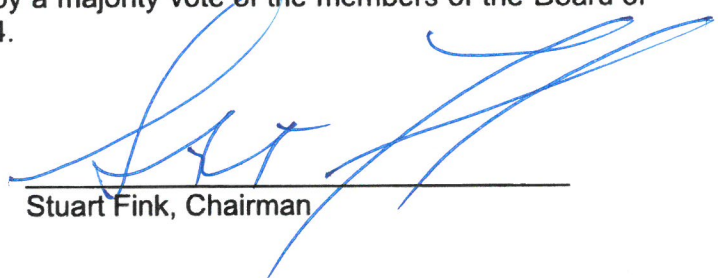
7) Discuss and Consider the approval of the minutes from the September 23, 2013, Board of Adjustments meeting.

MOTION: Chairman Stuart Fink made a Motion to approve the minutes from the September 23, 2013, Board of Adjustments meeting. Alternate Janean McLaughlin seconded the Motion. Motion carried. Vote: 4-0.

8) Adjournment.

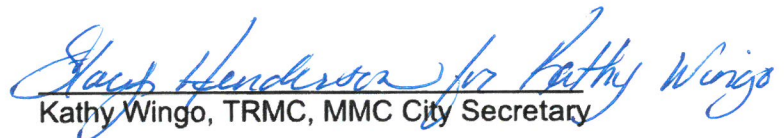
MOTION: Chairman Stuart Fink made a Motion to adjourn the meeting 7:23 p.m. Member Chris Bierman seconded the Motion. Motion carried. Vote: 4-0.

These minutes were approved by a majority vote of the members of the Board of Adjustments on October 7, 2014.



Stuart Fink, Chairman

ATTEST:



Kathy Wingo, TRMC, MMC City Secretary