

# PLANNING AND ZONING COMMISSION

## MINUTES OF THE MEETING OF JUNE 28, 2010

**MEMBERS PRESENT:** Joel VanBecelaere, Chairperson  
Connie McGeorge, Vice Chairperson  
Mike Creel  
Roland Dalrymple  
Francis DeMott  
Gary Falcetto  
Laura Klusener  
Frank Slapar  
Brian Sullivan

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Robert Wallace, 111 W. Hudson, Pittsburg  
Terry Ketcham, 201 W. Hudson, Pittsburg  
Linda Ketcham, 201 W. Hudson, Pittsburg  
David Fish, 110 W. 6<sup>th</sup> Street, Pittsburg  
Michael Simmons, (unknown)  
Kevin Bales, Red Giant Oil Co., Pittsburg  
Ruth Lemon, 110 E. Carlton, Pittsburg  
Ralph McGeorge, 2301 N. Rouse, Pittsburg  
Todd Kennemer, Assistant Director of Public Works

The Pittsburg Planning and Zoning Commission met on Monday, June 28, 2010, at 7:00 p.m., in the Municipal Courtroom of the Law Enforcement Center, 201 North Pine. Chairperson Joel VanBecelaere led the flag salute and then called the meeting to order at 7:00 p.m. all nine (9) members present.

**The first order of business was approval of the minutes of the meeting of May 24, 2010.** One minor correction was noted. Terri Mynatt's name was omitted from the list of attendees. Gary Falcetto moved, seconded by Connie McGeorge, that the minutes be approved with the noted correction. Motion carried unanimously.

**The second order of business under Presentation of Requests and Petitions was the reconsideration of a request submitted by Terri Mynatt for a Conditional Use under the provisions of Article 30 of the Pittsburg Zoning Ordinance to allow a child care center to care for 13 or more children from 2 weeks to 16 years of age at 115 West Hudson.** This item was tabled at last month's meeting. Chairperson Joel VanBecelaere opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of her request.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE TWO**

Ms. Mynatt stated that she was from Pittsburg and has taught kindergarten for 23 years and would now like to operate a daycare center. She explained some of the activities the children would be doing on the property to the south, the learning curriculum and arts and craft projects which would also include parental involvement.

Francis DeMott asked Ms. Mynatt if she wanted to stay with the original request of 13 children or if that had changed. Ms. Mynatt stated she would like to stay with the original request of 13 or more to allow for growth of the daycare.

Chairperson Joel VanBecelaere asked Ms. Mynatt if she was approved for a daycare by the State. Ms. Mynatt stated her approval with the State was pending approval of the zoning by the City. He then asked Ms. Mynatt about the number of employees. Ms. Mynatt replied that it would depend on the needs of the community. She stated the house was being worked on to comply with building codes (electrical, hot water, etc.); however, the tradesmen have stopped working on the house until the Conditional use was approved. Ms. Mynatt stated the State inspectors have checked out the house and did not express any concerns about the street or other items on their approval checklist. She further stated that she has plans to fence in the property.

Laura Klusener asked about the 7 parking spaces required. Ms. Mynatt stated the parking could occur on the property to the south. The street (that has been blocked off) provides access to the property adjoining the daycare to the south (same owner) and parking can be handled there. Ms. Mynatt stated that access to the property to the south has been blocked off and needs to know if the public street has been closed and, if so, make other arrangements for accessing the rear of the property.

Francis DeMott asked if the driveway on the east side of the home could be used to access parking. Ms. Mynatt stated that it could but that she would prefer not to drive where the children would be.

Todd Kennemer stated that there were some photos of the properties in question included in the file. He stated the application was for the property at 115 W. Hudson Street and the large property attached to it on the south. The one block of Pine Street located south of Hudson (2000 Block of South Pine) is unimproved public right-of-way. Both properties of the CUP, the 2000 Block of South Pine and the property owned by Mr. Ketcham, are all located inside the 100-year flood zone. State regulations are that access from a public right-of-way is to be provided to all properties. The western half of the 2000 Block of South Pine is a large drainage ditch while the eastern half provides access to the property at its' south end. The access gate and poles at the north end of the right-of-way and a portion of the fence at the south end need to be removed from the right-of-way.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE THREE**

Mr. Kennemer stated the property (115 W. Hudson) began as part of Lot 3 of the Westerlin Subdivision. In the early/mid 1920's, Lots 2, 3 and 9 were re-platted into the Crowder-Webb Addition. The unimproved 2000 Block of South Pine is platted and it provides access to the lot at its' south end. Referring to minutes from September 16, 1985 and October 8, 1985, Mr. Ketcham and Mr. Joseph F. Bolt applied to vacate the 2000 Block right-of-way of South Pine but the Planning and Zoning Commission and the City Commission recommended disapproval on the respective dates. The minutes from 1985 are assumed to be correct because the right-of-way is still on the maps and the legal descriptions of both property owners is on record at the County Courthouse in Girard.

Chairperson Joel VanBecelaere then asked if there was anybody present to speak in favor of the application.

Mr. Michael Simmons, *aka* the *Reed Group*, spoke in favor of the daycare. He stated he has owned the properties, 115 Hudson and the vacant lot to the south, for about seven years and has always used the lane (2000 Block of South Pine) to access the vacant property for mowing.

Roland Dalrymple inquired if a right-of-way being used by an individual would become an easement if the right-of-way has not been improved and has been used for a certain amount of time by a property owner. Mr. Kennemer stated that the rule applies only to private property not to a dedicated public right-of-way.

Chairperson Joel VanBecelaere then asked if there was anybody present opposed to the application.

Mr. Terry Ketcham, 201 W. Hudson, spoke in opposition to the request. He stated that he has lived at this address since 1982; that he owns 14 to 15 feet of the right-of-way where the fence posts are now located; and that 90 years ago when it was platted the City could have built a street but did not, therefore, according to his attorney only the City, himself and Westar Energy are the only ones who are allowed to use it. Mr. Ketcham stated that he has maintained the right-of-way for 28 years and that he would not be removing the gate because the City never made a street and never placed the drainage ditch underground. He stated the gate was not going to be removed per instructions of his attorney. Mr. Ketcham also stated that he was opposed to the daycare because there was no exit from the upstairs; no exit from the basement; its close proximity to the drainage ditch; the inside was very messy and unhealthy due to previous tenants having dogs inside; insurance purposes regarding a child falling into ditch; and because "the City has no legal claim to it as a public right-of-way." He claims that since the City never built a road, it could not be used as right-of-way.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE FOUR**

Mike Creel asked what was there before. Mr. Ketcham stated it was a residence where college students lived and "trashed" the place and that several dogs were allowed inside the building and have ruined it.

Mrs. Ketcham also spoke in opposition to the daycare. She stated traffic safety concerns, noting that sometimes when school is in session, traffic is pretty thick along the road and it has taken her 5 to 10 minutes to get out of their driveway. Mrs. Ketcham was concerned that if a daycare was allowed it would only make the traffic worse.

Gary Falcetto stated that it may be best to have the City Attorney look at and comment on this case. Mr. Kennemer stated his information was from the County records. Mr. Ketcham owns Lots 9 and 10 only, he does not own the right-of-way. He agrees it would be best to have a legal opinion from the City Attorney.

Francis DeMott stated the Planning and Zoning Commission should not make a decision on the property until legal advice from the City Attorney was provided. Mr. Kennemer stated this item was on last month's (May 2010) agenda where it was tabled until this month's meeting. He stated a decision on this item must be made tonight because it has already been tabled once and that whatever decision was made tonight would be brought to the City Commission. The City Commission could then approve it, deny it, or send it back to the Planning and Zoning Commission for further consideration. Mr. DeMott then advised Mr. Ketcham that the Planning and Zoning Commission was a recommending Board that must act tonight because the item has already been tabled once. Whatever the Planning and Zoning Commission recommends will be taken to the City Commission for a final decision. The City Commission meetings are open to the public and they are welcome to attend.

Joel VanBecelaere stated to him the big issue was pulling in and out of the driveway with the existing traffic on the narrow street.

Mike Creel stated that Ms. Mynatt could open the daycare with six (6) or less kids without any approval or disapproval from this Board as it would be classified as a "babysitter".

Todd Kennemer stated that since this is a Conditional Use Permit, this Board could place conditions on the daycare, such as making the driveway a circle drive around the house so there are no cars backing out onto Hudson Street. He also pointed out that the application is for a Child Care Center for 13 or more kids. If this Board feels that is too many kids for the area, it could recommend approval for something less, such as a Group Daycare Home (which limits the number of children to twelve). When approving a CUP, the Board can always approve less than what is applied for, but it cannot approve more than what is applied for on the application.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE FIVE**

Laura Klusener inquired how many parking spaces would be required if this Board approved for less children. Mr. Kennemer stated that if you have employees, you must provide parking. The City Codes stipulates one space per employee plus two additional spaces for guests.

Joel VanBecelaere inquired about an anticipated open date for the child care center. Ms. Mynatt responded that she was looking to open in the summer but would most likely have to postpone opening until the fall.

Francis DeMott inquired about the floodplain. Mr. Kennemer stated the low point of the property where the house is located is 888'. Flood zone map indicates the flood level is 890'. The property to the south shows a low point of 886'. According to this information, it is estimated that flooding would be about 2 to 4 feet above the ground.

Gary Falcetto inquired about the difference between what the County indicates and the property Mr. Ketcham owns. Mr. Kennemer stated that Mr. Ketcham was looking at an abstract, while the City was looking at the deed. He stated that abstracts are really not used anymore, but the deed from the County indicates Mr. Ketcham owns Lots 9 & 10. There is a platted public right-of-way between Mr. Ketcham's property and the property owned by *The Reed Group (leased by Terri Mynatt)*.

After general discussion, Francis DeMott moved, seconded by Mike Creek, that the Planning and Zoning Commission forward a recommendation to the Governing Body **denial** of the request based on flood zone issues and parking issues. Motion carried by a vote of 7-1.

**The third order of business under Presentation of Requests and Petitions was the review of a site plan submitted by David C. Fish on behalf of Red Giant Oil for the development of the site located at 305 S. Joplin to include construction of 40' x 125' warehouse and the installation of six (6) new storage tanks.** David Fish, the architect hired by the Red Giant Oil Company of Council Bluffs, Iowa, spoke on behalf of the applicant. He referred to the land survey shown on the map and stated there was not much of a difference in grade, which works to their advantage. Mr. Fish stated he has redeveloped the grading plan to coincide with City data and that the company wants to expand their tank farm by adding six (6) 30,000 gallon tanks and a new 5000 square foot warehouse. The property is the old site of the Kansas City Southern & Frisco Railroad which has been monitored by KDHE for years. Mr. Fish stated trucks would enter on the south side of the site and would have enough area to turn around and back into the docks. He stated drainage would be addressed with a detention area on the east side of the property for stormwater runoff. The existing building is to remain as is, with the exception of possibly a new roof.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE SIX**

Mr. Fish stated the driveway on the south is to be a one-way entrance due to its close proximity to the business to the south. He stated crushed rock would be placed in the back and that security lighting and opaque fencing would be placed in the front with chainlink fencing surrounding the tank farm area. Screening to shield the tank farm from the roofing company to the south of it. Mr. Fish stated this area is also in the EPA smelter plume area and that the company plans on reusing all the soil on the site as a berm to create the storm detention area [if allowed by EPA]. He stated the company is requesting that the City extend a sewer line to the property, indicating that there is currently no sewer to the site. Mr. Fish stated there is presently a porta-potty but a bathroom would be constructed on the site. He stated if sewer is not extended the applicant plans on using a small septic tank that will need to be pumped about every year-and-a-half instead of using septic field. Mr. Fish stated there are several options available for sewer or septic.

Gary Falchetto inquired if they would be storing different products in the warehouse. Mr. Fish stated they would be storing the same products as before. He then introduced Mr. Kevin Bales of Red Giant Oil Company. Mr. Bales stated the majority of the product stored on site was used oil. He further stated they would also be storing some bulk oil for use by locomotives. Mr. Bales stated the new warehouse would also be used to store oil but would also house packaged goods, oil, and greases used on trains. He stated only new product would be stored in the new warehouse, no used oil.

Francis DeMott inquired if only new product was to be in the new barrel warehouse. Mr. Bales answered yes. Mr. DeMott then inquired how used products would be handled. Mr. Bales stated it would go into the storage tanks and would be bulk transported in and out by truck. Mr. DeMott inquired if there were six (6) 30,000 gallon tanks. Mr. Bales replied yes. Mr. DeMott then inquired about the size of the tanks. Mr. Bales responded the tanks would be 12' x 28' and constructed of steel.

Mike Creel inquired about the City's position on the sewer. Mr. Kennemer stated it was to be reviewed by the City Engineer.

Mr. Kennemer inquired if the site was going to be paved due to ground contamination similar to the properties between this one and the recycle center. He also stated it would probably be required to be paved. Mr. Bales stated the plans show gravel but pavement would be preferred. There would also be landscaping/non-pavement on about ½ of the site. Francis DeMott said that sometimes asphalt and large trucks don't work together very well. Mike Creel asked Mr. Kennemer to check with the Engineering Division regarding pavement/gravel.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE SEVEN**

Mr. Bales spoke generally about the company and its plans. Francis DeMott asked if the containment area around the tanks was large enough. Mr. Fish responded yes. The requirements for the containment are 110 percent of one of the tanks and that Red Giant would probably go 200 percent. He stated the current tank and the additional tanks do, and will, meet State requirements for containment. Mr. Bales also stated that the company was going to put fencing around the containment/tanks to keep people out of the area.

Connie McGeorge inquired if safeguards would be in place to meet codes for fire, emergency spills, hazardous waste, etc. Mr. Bales stated they have all the safeguards in place and meet all the requirements of KDHE and EPA. He stated they have never had a fire or spill but proper equipment was on site in case of one [per KDHE regulations]. Francis DeMott stated there was a spill at Arma a few years ago where some train cars were overfilled. He asked if there were any EPA requirements on tank loading areas for train cars or trucks. Mr. Bales answered no, not on the State or Federal level. They do keep vacuum trucks, booms, etc on site to contain spills if necessary and there is to be a containment wall around the perimeter of the site. Mr. Fish stated the retention area for stormwater could also be used as emergency detention for a spill should it become necessary. There is also the oil/water separator and all uses are going to be located above ground.

Mr. Kennemer then went over the Plan Approval Checklist. He stated the septic/sewer issues have been addressed but parking still needs to be shown on the plans. Since it is an industrial area with few employees, the Planning and Zoning Commission have some leeway with the parking but it does have to be shown on the drawings. Lighting is to be one-shielded lighting on each side of the building. At present, there will be no business sign. "Red Giant Oil" may be painted on one of the storage containers. Mr. Kennemer advised the applicant that the sign regulations are pretty liberal and to get with him before starting on a sign.

Mike Creel inquired about a trash dumpster. The applicant stated that the trash dumpster could go in back of the fence and they would get with Todd with some new drawings.

There being no further discussion, Mike Creel moved, seconded by Connie McGeorge, to **approve** the site plan with the condition the items discussed [dumpsters, sewer, pavement, etc.] are resolved before construction is to begin. Motion carried unanimously.

**PLANNING AND ZONING COMMISSION  
MINUTES OF JUNE 28, 2010  
PAGE EIGHT**

**Under New Business,** Pepsi-Cola Bottling Co. submitted a site plan for their new building but since there was nobody present on behalf of Pepsi-Cola Bottling Co., Laura Klusener moved, seconded by Frank Slapar, to table the site plan until the next meeting. Motion carried unanimously.

**Under Other Business,** Mike Creel inquired about the dumpsters being unprotected and in open view at 29<sup>th</sup> and Walnut. Mr. Kennemer stated that a letter has been sent to the property owner regarding screening around the dumpsters, but has received no response to date.

There being no further business to discuss, Laura Klusener moved, seconded by Francis DeMott, to adjourn. Motion carried unanimously and the meeting adjourned at 8:55 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Todd Kennemer". The signature is written in black ink and extends across the width of the page.

Todd Kennemer  
Assistant Director of Public Works