

# PLANNING AND ZONING COMMISSION

## MINUTES OF THE MEETING OF NOVEMBER 25, 2013

**MEMBERS PRESENT:** Ron Close, Chairperson  
Francis DeMott  
Tim Kundiger  
Connie McGeorge  
Wes Streeter  
Michael Swartz

**MEMBERS ABSENT:** Dave Holloman  
Patty Horgan  
Brian Sullivan, Vice Chairperson

**OTHERS PRESENT:** Chad and Mandy Commons, 1909 S Stilwell, Pittsburg  
Stella Drenik, 1904 S Rouse, Pittsburg  
David Fish, 110 W 6th, Pittsburg  
Tim & Sharon Gamble, 703 Deill, Pittsburg  
Brian Gustefsan, 1904 S Rouse, Pittsburg  
Becky Harryman, 110 W 6<sup>th</sup>, Pittsburg  
Larry Hill, 704 Normal, Pittsburg  
Chuck Hosman, 915 N Broadway, Pittsburg  
James Huebner, 1135 E 540<sup>th</sup>, Pittsburg  
Mac Jones, 5946 Cape Coral, Austin, TX  
Carrie Krebs, 703 Normal, Pittsburg  
Brian Morrell, 2031 Pin Oak Circle, Pittsburg  
Gerald & Cecilia Waggoner, 709 Normal, Pittsburg  
Troy Graham, Assistant Director of Public Works  
Andrea Holtzman, Public Works Administrative Assistant

The Pittsburg Planning and Zoning Commission met on Monday, November 25, 2013, at 7:00 p.m., in the Municipal Court Room of the Law Enforcement Center. Chairperson Ron Close called the meeting to order at 7:00 p.m. with six (6) members present. Mike Swartz led the flag salute.

**The first order of business was the approval of the minutes of the meeting of October 28, 2013.** In this regard, it was noted no action was recorded in the minutes for the second order of business. Francis DeMott also pointed out that motion made in the first order of business was in fact him and not Tim Kundiger. Francis DeMott moved, seconded by Mike Swartz, that the minutes be approved with the noted changes. Motion carried unanimously.

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The first order of business under Presentation of Requests and Petitions was a PUBLIC HEARING to consider Case No. 13P-12, a request submitted by Mandy Commons, for a Conditional Use under the provisions of Article 30 of the Pittsburg Zoning Ordinance to allow chickens to be housed at her residence located at 1909 S Stilwell. Troy Graham explained the request is being made due to the Commons family having less than one (1) acre of land in a residentially zoned area to house chickens on their property. Mr. Graham stated that the Commons family has a little less than 1/3 of an acre. Chad and Mandy Commons were present to speak in favor of this request. Mr. Commons stated that in searching the City's website, he did not find anywhere that indicated chickens were not allowed in the City limits nor did they know they needed to apply for a Conditional Use Permit. He noted City Code 10.1 indicates gaming birds were prohibited but cited his chickens were not fighting birds and can't be running at large. He continued to state that the information he found all stated they need to be kept on at least one (1) acre and kept clean. He added that this family has had these chickens for almost three (3) years and have shared eggs with the neighborhood. He stated that the coop is a 5 foot by 8 foot, sided structure that has nesting boxes, a heat lamp and electricity and shingled roof. It sets on a platform a little off the ground. He continued on to report that the reason he began with the chickens in the first place was in order to assist his son's special diet needs. He noted that his son has been diagnosed with autism. A symptom of his condition is his digestive system has special needs. He needs more Omega 3 vitamins than a regular person. Omega 3 have been shown and proven to help with his digestive problems. The necessary Omega 3 vitamins can be found in the chicken's eggs. A normal egg is said have around 60 milligrams of Omega 3's and the eggs his chickens lay can produce over 200 milligrams of Omega 3's due to the special food Mr. Commons gives the chickens.

Ron Close asked Troy Graham why it has taken so long for the City to inform the Commons family of the required Conditional Use. Troy indicated that the City can only abate a nuisance if we know the chickens are present. If the inspectors don't see the chickens or if there is not a neighbor that complains sometimes the chickens go unnoticed. In this case, it was a neighborhood complaint.

Ron Close asked how many chickens were currently on the property. Mr. Commons stated that there were 16 currently but has had as many as 24 at one time.

Mr. Close asked if the eggs have ever been tested to ensure the proper amount of Omega 3 is actually in the egg. Mr. Commons indicated he has not had the eggs tested however the literature from the food he feeds the chickens states the Omega 3's are there and that since he has been eating the eggs, his son's health issues have improved. Mrs. Commons added that before they got the chickens her son missed a lot of school and once they switched and started using their own eggs his health and behavior, speech and eye contact have all improved.

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Connie McGeorge asked if chickens were the only animals at this residence. Mrs. Commons indicated they had tried ducks but it didn't work and they do have a dog and cat and a ferret. Mrs. Commons notes that they tried several different animals to try to help their son connect with his surrounding environment but he didn't want anything to do with any of the animals except the chickens. She added that they also buy a slab of beef every year as well to assist with her son's diet. They are very careful about what her son eats.

Mrs. McGeorge asked if there were vitamins that their son could take to supplement the extra needed Omega 3's. Mr. Commons stated there are vitamins however his son does not swallow pills and so all meds must be given in liquid or shot form and most meds in liquid form he spits back out.

Tim Kundiger asked if the Commons family had asked any of the local farmers about their eggs. Mr. Commons stated that he has not because he can't control what the farmer feed their chickens so he didn't see that as an option.

Mr. Close asked if Mr. Commons has approached any of the area farmers about the farmer housing his chickens and him providing the food. Mr. Commons stated he has not. Mrs. Commons stated that she spoke with a chicken farmer however the farmers indicated they would house the chickens with their own livestock and wouldn't be able to specifically feed them their special diet. Since there was no control what the chickens ate they didn't feel it was an option.

Ron Close asked if they would house their chickens on someone's property outside the City limits if offered. Mr. Commons stated he didn't want to do that both because his son has an active role in the care of the chickens and traveling to care for them wasn't an option for him.

Mr. Close stated he had property that he would allow the Commons family to use for the chickens if they so desired. Mr. Commons declined this option.

There being no one else to speak in favor of this request, those wishing to speak in opposition to the request were given the opportunity to comment.

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Larry Hill, 704 Normal, stated the last two summers there had been more than 20 chickens on the property. Currently, there were more than 13. He stated that the smell from the chickens prohibits him and his family from being able to enjoy the use of the deck behind their house. He stated he has complained for 2 years about this problem and has not got a response from the City. Mr. Hill showed pictures of the location of the chicken pens and the number of chickens in relationship to his house and deck. He also brought attention to a list of names he petitioned from the neighborhood in regards to not having the chickens in the neighborhood.

Gerald Waggoner, 709 Normal, stated his mother who is over 100 years old lives with him on a temporary basis with the remaining time in assisted living. He said that when his mother is there she likes to set on the porch but is unable to because of the smell from the chickens. Mr. Waggoner stated chickens carry diseases that humans can contract and he is concerned for his mother's health. He further stated that when the time comes for them to sell the house he believes the chickens will reduce the value of the property.

There being no one else to speak in opposition to this request, Chairperson Ron Close closed the Public Hearing for discussion amongst the Commission.

Ron Close expressed disappointment in the amount of time the City has taken to address this issue since Mr. Hill has been complaining for two years. Troy Graham addressed Mr. Close expressing to him that he had only been involved with this complaint since August of 2013. He also stated that he could not find any other complaints for this location when researching this Conditional Use.

Tim Kundiger explained that he recently showed a house in the area and the people looking at the house did have a concern about the chickens and the house is still on the market and has been on the market for a long time considering the price and the location. He stated that it is his belief the chickens are having an effect on the property value.

Connie McGeorge stated she feels that people should work together for a better community and reminded the Commons family of Ron Close's offer to house the chickens on his land.

Francis DeMott stated that he had a portion of land he would be willing to offer as well.

Mike Swartz felt that since the house is located in a residential area and does not contain a whole acre, the Ordinance should be followed.

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Wes Streeter stated that he understood why the Commons family is making the request however the Ordinance should stand. However, he noted the City should do a better job of handling complaints within a timely manner.

There being no further discussion, Tim Kundiger moved, seconded by Mike Swartz, to forward a recommendation to the City Commission for disapproval of the request for a Conditional Use Permit. Motion carried unanimously.

**The second order of business under Presentation of Requests and Petitions was a PUBLIC HEARING to consider Case No. 13P-13, a request submitted by Mac Jones of Hammond Jones Development to rezone the property located at 2010 S. Rouse from CP-2 Planned General Commercial to RP-4 Planned Apartment House District to make the property more conducive for construction of multi-family apartment style dwellings on the property.** Troy Graham stated the property in question was zoned as a CP-2 Planned General Commercial when Dollar General was built in the area. Currently, Prairie Land Holdings owns the property and it is under contract to be purchased by Hammond Jones Development contingent upon approval of the rezoning request. He stated the area to the west is zoned as RP-3 Planned Medium Density Residential. The area to the east is all Pittsburg State University property.

Mac Jones of Hammond Jones Development was present to speak in favor of this request. He stated that his company is interested in developing the area in question as a 72 unit apartment complex. He stated that the complex would have a pool, internet café, all units would be completely furnished, utility bills paid, washer and dryer, stucco and brick siding and more. There will be a 6 foot privacy fence surrounding the back and a metal 8 foot fence in the front. Entrance and exit will be from Rouse Street and have a controlled access gate. Mr. Jones showed pictures of other properties similar to this one that his company has built. He added the units will range from 2 bedrooms to 4 bedrooms with each bedroom having its own bathroom. The units will be rented by room and will share a kitchen and common living room space. He anticipates each bedroom to have a parking space and there will be a live-in on-site manager.

Francis DeMott asked what the anticipated maximum occupancy of the building would be. Mr. Jones stated he thought it should be around 288 bedroom units.

Chuck Hosman was also present to speak in favor of this request. Mr. Hosman explained the property will be developed sooner or later and if left as a commercially zoned area a large commercial building with less setbacks and more traffic could go into the area.

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There being no one else to speak in favor of the request, those wishing to speak in opposition to the request were given the opportunity to comment.

Brian Morrell, 2031 Pin Oak Circle, stated his experience with the apartment complex already in the area has not been a positive one. He stated there are parties and loud music and the police are called to the area often due to these issues, loud arguments and other noise related complaints. He stated the plan for the apartments look nice and will probably do very well in the area however he feels the construction of the proposed complex will decrease his property values and raise safety concerns for the neighbors. He mentioned having 3-story buildings enable people to look into the windows of his own home and the lights from the proposed property shining on his property would be disturbing to him and his neighbors.

Jim Huebner, 1135 E 540<sup>th</sup> Ave, was also present to speak regarding this request. He stated he has already spoken with Mr. Jones and Mr. Hosman and they were both very helpful. He explained that he also owns properties in the area and that some of his tenants were concerned about noise. He stated that since speaking with Mr. Jones, he feels parking would create a nice buffer between his properties and the proposed complex and has stated that if a privacy fence could be added to the area it would further help.

There being no one else to speak in favor or against this request, Chairperson Ron Close closed the PUBLIC HEARING to allow for discussion amongst the Commission.

Tim Kundiger stated that he felt this could be a positive development in this area and something is going to be developed in this area due to the growth direction.

Connie McGeorge, Wes Streeter and Francis DeMott all agreed and indicated that although it is hard for single family residents in this area it is safer for them long term to rezone the area instead of chancing a business to go in the area.

There being no further discussion, Francis DeMott moved, seconded by Connie McGeorge, to forward a recommendation to the City Commission for approval of the rezoning request. Motion carried unanimously.

Under Old Business, David Fish, 110 W 6<sup>th</sup> Street, addressed the Commission. Mr. Fish asked several questions. He asked if the Downtown Overlay District has been presented to the Commission to include any other changes from the underlying district besides allowing merchandise, furniture and advertising signage on the sidewalk. The Commission advised him these were the only inclusions in the Downtown Overlay District when it was presented.

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He also asked if the Commission was aware of the residential occupancies in the area and the fact that these residences are not only permitted but encouraged by low interest loans for those creating residential units in the district. The Commission advised him they were aware of the amount of residents in the downtown area and the encouragement of the residential opportunities.

Mr. Fish asked if the Commission was aware that the Downtown Overlay district was originally conceived as the Bar District then toned down to the Entertainment Overlay District and then to the Downtown Overlay District. The Commission advised him that when it came before them it was labeled as the Downtown Overlay District.

Mr. Fish asked if the Commission was aware when they approved the Ordinance that one of the proposed changes to specifically affect this district would be to abate the noise ordinance until 1:00 am and allow a doubling of the perceived noise levels from that which is permissible in any other neighborhood in which residential occupancy is permitted. The Commission advised him that the Ordinance they approved was for zoning and they are not the correct body to address the noise ordinance.

Mr. Fish asked if the Commission was aware that until November 14 of this month, none of the meeting agendas or minutes had been published on the City's website since October 2012 or in any newspapers such as the Joplin Globe. Troy Graham advised Mr. Fish that the minutes or agendas are not required to be published in a newspaper and that once Mr. Fish called the office with this oversight the agendas and minutes were all posted and are now current and up to date.

Mr. Fish asked if the agendas or minutes were published in any other public record such as the Morning Sun or Joplin Globe. Troy Graham stated again that the minutes and agendas do not get published in any newspaper but they will be on the website and are available for public record with an open records request submitted to the City Clerk.

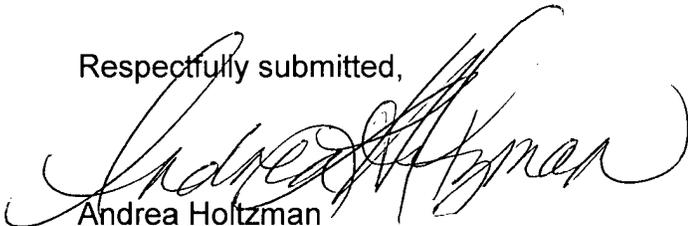
Mr. Fish asked if it was true that the Downtown Overlay District was approved by a vote of only four out of the nine members of the Planning and Zoning Commission. The Commission advised him this was true due to only five members being present that night. Troy Graham stated that the five members present created the necessary quorum to be able to proceed with the meeting.

Mr. Fish asked who had been advocating the creation of this district. The Commission advised him that there were a group of individuals that all own businesses in the area in question or work for business in the area and these people gathered together and worked with City Staff to create this district in hopes of drawing more people to the area.

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There being no further business to be discussed, Wes Streeter moved, seconded by Francis DeMott, that the meeting adjourn. Motion carried unanimously and the meeting adjourned at 9:22 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrea Holtzman". The signature is written in black ink and is positioned above the printed name and title.

Andrea Holtzman  
Administrative Assistant