

STATE OF TEXAS

§

August 27, 2007

COUNTY OF GRAYSON

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BE IT REMEMBERED THAT A Called Meeting of the Sherman City Council was begun and held in the City Council Chambers on August 27, 2007.

COUNCIL MEMBERS PRESENT: Mayor Bill Magers; Deputy Mayor Chip Adami.
Council Members Hughes, Smith, T. Steele, W. Steele,
Wacker.

COUNCIL MEMBERS ABSENT: None.

CITY STAFF PRESENT: George Olson, City Manager; Robby Hefton, Assistant City
Manager/CFO; Doreen McGookey, City Attorney; Scott
Shadden, Director of Developmental Services; Rita Gaither,
Development Coordinator; Patsy Reeves, Administrative
Secretary; Pam Cloer, Assistant to the City Manager; Linda
Ashby, City Clerk.

PURPOSE: Call to Order, Quorum Determined, Meeting Declared
Open

Other Business

**Appeal of the Planning and Zoning Commission's Denial of
a Request for Site Plan and Building Design Approval for a
Duplex at 514-516 East Brockett Street (Rakesh Demla,
Owner; and Rick Lavin, Agent) under Chapter 14, Exhibit A,
Section 6.8.3 (9)(d)**

Other Business

**Appeal of the Planning and Zoning Commission's Denial of
a Request for Site Plan and Building Design Approval for
Two Duplexes at 611-613 and 615-617 North Cleveland
Street (Benny R. Risner, Owner; and David Kight, Agent)
under Chapter 14, Exhibit A, Section 6.8.3 (9)(d)**

Adjournment

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

Mayor Magers called the meeting to order at 12:05 p.m., declared a quorum present, and opened the City Council Meeting. He added that because of the number of citizens that wanted to speak, a two-minute time limit would be enforced.

OTHER BUSINESS

**APPEAL OF THE PLANNING AND ZONING COMMISSION'S DENIAL OF A REQUEST FOR SITE
PLAN AND BUILDING DESIGN APPROVAL FOR A DUPLEX AT 514-516 EAST BROCKETT
STREET (RAKESH DEMLA, OWNER; AND RICK LAVIN, AGENT) UNDER CHAPTER 14, EXHIBIT
A, SECTION 6.8.3 (9)(D)**

Rick Lavin, 301 S. F.M. 1417, #717

Mr. Lavin is the builder for the duplex at 514-516 E. Brockett Street. He compared the requirements of the College Park Overlay District with the proposed duplexes at 514 and 516 E. Brockett Street. The duplexes will exceed the required masonry, the square footage of the living area, and the number of garages. Mr. Lavin said he also talked with neighbors in the area and no one opposed the construction of the duplexes.

A site plan was submitted to the Planning and Zoning Department and they suggested, but did not require, that some of the parking be moved to the back. The developer did move half of the parking to the back at their own expense. Mr. Lavin also presented a photograph of a similar duplex that was constructed on McGee Street.

Mayor Magers asked if anyone in the audience lived within one, two, or three blocks of the proposed duplexes. No one did.

Martha Baxley, 22 Circle Dr., Denison

Mayor Magers asked Ms. Baxley if she was a resident of Sherman or had a business interest in the duplexes. She did not and he asked her to defer her comments until after Sherman residents had spoken.

Dr. Jerry Lincecum, 608 N. Cleveland

Dr. Lincecum read from the College Park Overlay District ordinance stating that design standards for buildings shall ensure that the design, color, materials, and basis for proportion of structures within the Overlay District are harmonious with the "intent of the ordinance."

Dr. Lincecum spoke for several of his neighbors that could not attend the meeting. Mrs. Winnie Jones, who will be next door to one of the duplexes, is quite upset because her house is her "nest egg." She is planning to take a second mortgage on the home to pay for health care and is afraid the value of her home will be adversely affected by the duplexes.

Another neighboring family bought a home to remodel and has a lot of time and money invested in the home. They say they can't afford to move and will have to stay and suffer with the 16 college students and 24 parking spaces.

Mr. Jimmy Counts lives down the street and has said he "feels betrayed" because the overlay ordinance was "sold" to him as something that would build up and improve the neighborhood and he now feels that the neighborhood is "going down the drain."

A 97 year old neighbor on Harrison Street said the duplexes are an "abomination" and destroys her property value.

Judy Murray, 1800 W. Moore

Ms. Murray appeared representing Dan Murray. She read a letter from Mr. Murray concerning the move to limit the number of bedrooms in duplexes to two per unit. Mr. Murray will be proposing duplexes in the Sherman Hills Project to provide affordable housing. Their primary market will be retirees which require three bedroom homes. The letter urged the Council to never cross the threshold of telling a builder what to build inside a home and felt that there was a better way to resolve their concerns. The letter stated that the ordinance would be a deterrent to their project.

Dr. Tom Nuckols, 2341 Canyon Creek

Dr. Nuckols said he was interested in low-cost housing and has purchased and remodeled many houses in east Sherman over the years. He has a house on Ross Street and on Cleveland Street. Across the street from the Cleveland Street house they built a nice house but the entire front yard is parking. That alone changed that entire street. A duplex was also built next door with its total front yard dedicated to parking. This has dramatically changed the architecture and historic character of

the area and made a negative impact on the neighborhood. Dr. Nuckols said the changes have also reduced the value of his property and are an inconsistent usage of the overlay requirements.

Gil Randall, 622 N. Cleveland

Mr. Randall said this type of construction with the intent that they would be leased to college students doesn't fit the image of family. He felt the duplexes would decrease property values in the neighborhood. He purchased an older home with plans to remodel, but he added if any more duplexes are added to the neighborhood, he would have to move. Mr. Randall said he would like to help the neighborhood but he could afford to live somewhere else.

Dr. Peggy Redshaw, 608 N. Cleveland

Dr. Redshaw felt the issue was about more than a building permit for three, eight bedroom duplexes, with eight to twelve parking spaces per duplex. The College Park Overlay District should provide the template for considering these requests, however if these guidelines are ignored then the Overlay District is "dead." Residents of the Overlay District thought the designation would help protect and improve their neighborhood, but they've been "cheated."

The ordinance passed was to protect the private property values and public investments in and near the College Park neighborhood, to reduce conflicts between new construction and existing development, and to preserve the area's special historical and architectural character. It also said the district would create superior planning, design, and mixing of land use to foster a livable community of residential, commercial, and cultural uses. The district was also supposed to respect the socio-economic diversity by encouraging a variety of home styles and sizes that are sympathetic to the neighborhood's historical diversity of design.

Dr. Redshaw added that the three mega-duplexes that were denied did not meet the guidelines or the intent of the Overlay District ordinance.

Ed Rieser, 1015 N. Grand

Mr. Rieser said the Council has a responsibility to enforce ordinances that were approved. He urged the Council to "reconnect" and to deny these appeals. He also urged that they consider a moratorium and look at the original reasoning of the Overlay District, urban density, and infrastructure. He urged the Council to enforce the ordinances so residents of the College Park neighborhood don't have to live in student slums. He asked the Council not to disregard the Overlay District.

Phyllis Rieser, 1015 N. Grand

Mrs. Rieser said she served on the planning committee for the College Park Overlay District and they never considered mega-duplexes rented by the bedroom rather than by the unit. The purpose of the Overlay District was to strength the community and to bring new growth to the neighborhood. She did not feel that these duplexes meet the guidelines of the Overlay District. The intent and purpose of the Overlay District must be considered to ensure that the design, color, materials, and the basis for proportion of structure are harmonious with the intent of the ordinance.

Mrs. Rieser and her husband have invested heavily in that neighborhood because they believe in preservation and strong community. She urged the City Council to deny the appeals. She quoted Planning and Zoning Commission Member John Nix when he said "isn't it our job to enforce ordinances." She agreed it was both the Planning and Zoning Commission's and the City Council's job to enforce ordinances.

George Rowland, 614 N. McKown

Mr. Rowland also served on the committee that designed the Overlay District. A lot of forethought went into planning the requirements, and consideration of the aesthetics of the neighborhood was a top priority. They wanted to have a neighborhood that would encourage people to populate it as homeowners. That could also include duplexes that would blend in with the neighborhood. He

addressed duplexes that were adjacent to single family homes along Archer Drive. These duplexes tastefully blend with the single family homes.

Mr. Rowland added that there is nothing wrong with a huge duplex, but it shouldn't be located on a 50 foot lot to tower above neighbors and takes up all the land space for parking instead of landscaping. He felt the committee anticipated that the Overlay District would allow smaller duplexes that would blend in and have a similar type of architecture and that would look good for the neighborhood.

He said the Council has worked very hard on the design of parks in Sherman and urged them to bring the same mentality to residential neighborhoods. Maybe larger duplexes would be allowed, but on a larger land area. He asked the Council to deny the appeals.

Jonathan Castro, 1402 N. Harrison

Mr. Castro said he has lived in the College Park area for a long time and seen the property values increase. He felt there was a double standard and he asked what standards would the Council use to make decisions. He asked how Council Members would feel if someone tried to located a mega-duplex next door to their home. The residents in that area have a lifestyle investment and a love for community. He asked the Council to enforce the standards of the College Park Overlay District.

Mayor Magers said the Council would discuss the first item concerning duplexes at 514 and 516 E. Brockett Street. He understood that the Planning and Zoning Commission was to review only the elevation plans and the schedule of materials.

He asked Scott Shadden, Director of Developmental Services, to list the requirements for the College Park Overlay District. The Overlay District requires a minimum of 1,200 square foot living area per unit; a one car garage minimum; 60% masonry, hardy board or concrete fiber board; and one off-street parking space per bedroom. Mayor Magers verified that the duplexes at 514 and 516 E. Brockett follow the zoning rules in Sherman and in the College Park Overlay District. He asked Mr. Shadden if there was any reason, from a zoning standpoint, that these plans should not be approved. Mr. Shadden said there was no reason these plans should not be approved.

Mayor Magers asked the City Attorney what was required of these plans for the College Park Overlay District. Doreen McGookey, City Attorney, said the review by the Planning and Zoning Commission and by the City Council was limited to the elevation plans and the schedule of materials for the freestanding buildings for the exterior walls. This review does not ask for consideration of items such as parking or traffic. However, this request does also meet the parking requirements.

Mayor Magers asked if the plans conform to the intended purpose of the ordinance. Ms. McGookey said according to the ordinance, they are only to review the plans to ensure they comply with the exterior wall requirements. The intent of the ordinance is contained in the standards of the ordinance, which are met in this circumstance. Mayor Magers verified that there are no legal reasons for the City Council to deny the request and that there would be a legal risk if the request was denied.

Mike Wynn, 707 W. Washington

Mr. Wynn appeared as legal representation for Dr. Lincecum and other concerned citizens that live in the College Park Overlay District, who are concerned about the maintenance, integrity, and standards of the ordinance. Mr. Wynn said he disagreed with the City Attorney saying that there are two requirements that an applicant must meet. One is a technical requirement concerning the elevation plan and the materials list.

He added that the ordinance needs to be revised because it states that the applicant needs to supply the Planning and Zoning Commission with information on the technical requirements, but it doesn't say what the Commission needs to do with them. It's implied that the Commission would have to approve the plans, but it is also implied that the Commission must deal with the issue of intent. Mr. Wynn felt that the ordinance listed several items that were the intent of the ordinance.

Mr. Wynn added that unless the City's legal counsel was saying that the ordinance and standards are unconstitutional, he could see no legal risk in affirming the decision of the Planning and Zoning Commission. He felt the Council should decide whether to make their decision based on whether the recommendation from the Planning and Zoning Commission is consistent with the intent of the ordinance and regulations, or whether the decision would be based on some perceived threat of a lawsuit.

Mrs. Rieser said the agenda for the Planning and Zoning Commission stated that their task was to review the site plan and building design approval for the duplex. She felt the Commissioners did their job.

Mayor Magers noted that on the issue of duplexes at 514 and 516 E. Brockett, there were no comments from immediate neighbors.

Council Member Terrence Steele said he lives in the College Park Overlay District, represents citizens living in the District, and chaired the committee that designed the Overlay District. One of the first questions asked of the committee was whether or not they wanted to allow duplexes in the District, and the answer was yes.

Several years ago the Council brought a representative from the Texas Historical Commission to look at various neighborhoods, including the College Park area, to determine if it should be included in a historical district. The City began to get telephone calls from neighbors saying they didn't want the City telling them what type of material must be used or what the houses must look like. Council Member Terrence Steele said he was torn between the emotions of the citizens and the ordinances that must be followed. He added that he has followed the City's ordinances in every decision he has made.

ACTION TAKEN.

Motion by Council Member Terrence Steele to approve the appeal of the Planning and Zoning Commission's denial of the request for site plan and building design and to allow construction of a duplex at 514-516 E. Brockett Street. Second by Council Member Willie Steele.

Deputy Mayor Adami asked to hear additional information from the City Attorney. Ms. McGookey explained that she must be careful about making public comment because legal advice is attorney-client privilege. She did not want to expose her client to potential legal action. She said she would go into further detail about the legal risks in Executive Session.

Dr. Lowry asked how many bedrooms it took before a duplex is not a duplex. Mr. Shadden explained that the Sherman Code of Ordinances defines duplex as a building designed for and used exclusively for residential purposes by two families or two housekeeping units.

Mayor Magers announced that the City Council would enter into a brief Executive Session.

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

SECTION 551.071 -- CONSULTATION WITH THE CITY ATTORNEY CONCERNING LEGAL MATTERS

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 12:40 p.m.

On Motion duly made and carried, the Executive Session recessed at 1:04 p.m. and reconvened in Open Meeting.

OPEN MEETING

Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

Mayor Magers reiterated that there was a motion on the floor prior to the Executive Session. Council Member Smith said "based on the advice of my attorney, I'm going to support the motion."

Deputy Mayor Adami said he understood the concerns of the neighbors and would have a deep concern if the duplex was going to be located in his neighborhood, which as it stands now, could happen. He asked the builder to be a good community partner and hear the concerns of the citizens and urged him to take the comments under advisement and work with the neighbors to the extent possible.

RESTATEMENT OF MOTION.

Motion by Council Member Terrence Steele to approve the appeal of the Planning and Zoning Commission's denial of the request for site plan and building design and to allow construction of a duplex at 514-516 E. Brockett Street. Second by Council Member Willie Steele.

VOTING AYE: Adami, Hughes, Smith, T. Steele, W. Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

APPEAL OF THE PLANNING AND ZONING COMMISSION'S DENIAL OF A REQUEST FOR SITE PLAN AND BUILDING DESIGN APPROVAL FOR TWO DUPLEXES AT 611-613 AND 615-617 NORTH CLEVELAND STREET (BENNY R. RISNER, OWNER; AND DAVID KIGHT, AGENT) UNDER CHAPTER 14, EXHIBIT A, SECTION 6.8.3 (9)(D)

Mayor Magers said most of the citizens attending the meeting live close to the North Cleveland Street area where the duplexes will be built. He said there is no doubt that the issue needs to be addressed. He said to address the issue of concrete, the Council would need to look at the amount of greenspace per lot. Mayor Magers added that density probably needs to be reviewed on a Citywide basis and not just in the College Park area. The current ordinances are the ones the City Council must follow.

Dr. Janet Lowry, 1008 N. Harrison

Dr. Lowry said when she moved to the area she was able to buy an older home for a 12 year mortgage. Most new faculty from Austin College would like the option of living in this neighborhood and there aren't homes that banks will finance for 30 year mortgages in the neighborhood. She urged the developer to take the two lots and divide them into two really nice single family homes and sell to people who want to live in the neighborhood. She urged development for single families, even if they were duplexes. She added that four, six, or eight college students as a living unit isn't keeping with the definition of a duplex or the intent of the Overlay District ordinance.

Dr. Tom Nuckols, 2341 Canyon Creek

Dr. Nuckols said the Council says they want to enforce the ordinance, but the ordinance includes language such as preserve the area's special historic and architectural character, create superior planning, sizes that are sympathetic to the neighborhood, and historical diversity of design. The Planning and Zoning Commission was enforcing the language of the ordinance. He said if the Council approves the appeals they will be throwing out the Overlay District ordinance and going to the code that is a checklist of specific things and doesn't talk about proportionality or character. He did not feel this was the intent of the ordinance.

Dr. Jerry Lincecum, 608 N. Cleveland

Dr. Lincecum addressed a letter from Dr. Oscar Page, President of Austin College, which talks of the purpose and intent of the ordinance. The letter states that the duplexes mentioned in the ordinance were to reflect the type of structure that is in existence. The neighbors are not against all duplexes and encouraged those that are appropriately sized. The concept was to protect the neighborhood as it was and to provide specific guidelines for new construction that would protect the value and enhance the beauty of the small homes. He asked the Council how the mega-duplexes would accomplish this.

Mike Wynn, 707 W. Washington

Mr. Wynn said there are two types of requirements than an applicant must meet to comply with the Overlay District ordinance. One is the technical requirements, which include the building lists, elevation plan and the square footage. The ordinance has several pages of standards that must be met, and in order to follow the ordinance, the Council cannot ignore the general intent of the ordinance. Even if the applicant has met the technical requirements, the Council must still consider the general intent requirements. Mr. Wynn felt that to ignore those requirements, would not be following the ordinance.

The Planning and Zoning Commission was asked to address that issue and they have done so. To not affirm their decision is inconsistent with their work and with the wording of the ordinance concerning general intent. The applicant had the ordinance prior to "turning dirt" and that's all that has been done. The development was stopped during the application process. Mr. Wynn asked the Council to consider the general intent requirements.

Mayor Magers asked Mr. Shadden about the technical requirements that were required on the duplexes at 611 and 613 North Cleveland and 615 and 617 North Cleveland. Mr. Shadden outlined the minimum square footage required, the garage requirements, parking requirements, and the minimum size of the bedrooms. Mayor Magers confirmed that the builder had met the minimum requirements in all technical areas of the Overlay District ordinance.

Gil Randall, 622 N. Cleveland

Mr. Randall said he was a builder for 17 years and he would love Sherman because the City Council "caves in to" everything. Mayor Magers verified that there were no variances on either of these sites.

Keith Kisselle, 1302 N. Cleveland

Mr. Kisselle expressed concern that surface water issues weren't being addressed. He felt the problem was that the ordinance was not "clear" and asked the Council when it would be clear. He asked what the Council will do from here. He felt that a consultant outside of Sherman should collect data to determine where problems lie with surface water run-off and what needs to be done to address these issues. He felt the City Council should safeguard this and asked how they would handle this issue.

Jonathan Castro, 1402 N. Harrison

Mr. Castro felt there was a short-sightedness and the Council should decide on a long-term plan that could define what a duplex really is, and is more infrastructure needed to support these mega-duplexes.

Mayor Magers said the City will schedule a Comprehensive Master Plan update in the upcoming fiscal year that will include a hydrological study. Deputy Mayor Adami added that the Comprehensive Master Plan will include all the details that are being discussed today.

Benny Risner, 12651 Briar Forest Dr., #190, Houston

Mr. Risner said he has been portrayed as an outsider that is trying to "wreck" values in Sherman. Instead he grew up in Sherman and is now trying to bring development back to the community. He is not asking for variances from the City's ordinances. In everything they have done, they have followed the ordinances. He said there maybe some changes that are needed but he urged the Council not to

change the rules in the middle of everything. He is trying to develop a quality product and make the neighbors proud. He added that there are some homes in that area that, if they were in other areas, they would have already been condemned. The neighbors might consider removing some of these houses to help increase the value of surrounding property.

Council Member Terrence Steele added that the Committee that designed the Overlay District voted unanimously to allow duplexes in the District. Those types of items will be addressed in the Comprehensive Master Plan. Currently a duplex could be located in any R-1 Residential District in Sherman. He felt that was wrong, but that is what the ordinance currently allows. The City Council is concerned and wants to address those issues.

Council Member Smith felt the Overlay District has done some good things for the College Park neighborhood. It's very powerful when the citizens speak on this issue and he sympathized with them and said the City Council is listening. He has a different opinion and wished he could do something different as a Council Member. He felt there must have been a valid reason for the Planning and Zoning Commission to deny the requests, however he understood that it cannot be done. Therefore, Council Member Smith said he would support the motion.

Council Member Willie Steele said he was also on the committee that designed the Overlay District and everyone on the committee unanimously recommended the ordinance that allowed duplexes. He wished they had looked closer at the duplex issue. However, these developers have met all the requirements for duplexes and they have his support for their project. He added that the intent of the ordinance is interrupted by whoever reads it. Two people may have a different opinion on intent. He also told citizens that he heard their concerns and the Council needed to look again at the issues.

ACTION TAKEN.

Motion by Council Member Terrence Steele to approve the appeal of the Planning and Zoning Commission's denial of the request for site plan and building design and to allow construction of duplexes at 611-613 N. Cleveland Street and 615-617 N. Cleveland Street. Second by Council Member Willie Steele.

Council Member Wacker said she sat on the first committee starting the process, which was completed by others, and felt that the intent was subjective language. There is already a variety of home styles and sizes in the neighborhood and neighborhoods change over time. She has been a strong advocate of the Comprehensive Master Plan process and felt it was very important to move forward with that plan. She said that will also be a time for community stakeholders to identify what is valuable to them and how they want to address future growth in Sherman. She urged all citizens to become involved in the process through the public meetings that will be held.

Mayor Magers reiterated that the City Council understands their concerns. Currently, in any R-1 Residential District in the City, duplexes would be allowed on the lots. This is a citywide problem. He added that development is taking place in the College Park District and higher values and redevelopment are being brought to that area. He agreed that the Council needs to address the R-1 zoning, however he said rules cannot be changed retroactively.

Deputy Mayor Adami asked Mr. Risner to be a good community partner and work with the concerned neighbors in that area.

RESTATEMENT OF MOTION.

Motion by Council Member Terrence Steele to approve the appeal of the Planning and Zoning Commission's denial of the request for site plan and building design and to allow construction of duplexes at 611-613 N. Cleveland Street and 615-617 N. Cleveland Street. Second by Council Member Willie Steele.

VOTING AYE: Adami, Hughes, Smith, T. Steele, W. Steele, Wacker.

VOTING NAY: None.
MOTION CARRIED.

ADJOURNMENT

There being no further business to come before the City Council, motion was duly made and approved to adjourn the Called Meeting at 1:32 p.m.

MAYOR

ATTEST

CITY CLERK