

**MINUTES
OF THE MEETING OF THE
CITY OF BENBROOK
PLANNING & ZONING COMMISSION
THURSDAY, JUNE 9, 2005**

The regular monthly meeting of the Planning & Zoning Commission of the City of Benbrook was held on Thursday, June 9, 2005 at 7:30 p.m. in the Council Chambers at 911 Winscott Road with the following members present:

Bryan Welborn
George Bolton
Symantha Spence
Bret Early
Larry Marshall
Sanjiv Shah
John Dawson

Also Present:

Ed Gallagher, City Planner
Sue Clark, Recording Secretary
Doug Black, City Attorney
Larry Stowe, Council Member
Rhonda Pool
Dan McInnis
Crystal Ramsey
David Hudgins
Maxine Kruse
Frank Kruse
Lisa Savage
Edwin Drath
And approximately 15 others

I. CALL TO ORDER

Chairman Early called the meeting to order at 6:36 p.m.

II. EXECUTIVE SESSION

Pursuant to Section 551.071 of the Texas Government Code, Chairman Early called the Planning and Zoning Commission to order in executive session at 6:37 p.m., to seek the advice of its attorney. The following matter discussed, in which the duty of the attorney to the Planning and Zoning Commission under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, clearly conflicts with Chapter 551 of the Texas Government Code:

Legal issues related to consideration of proposed Preliminary Plat of Terre Sol, Lot 1, Block 1, an Addition to the City of Benbrook (P-05-02).

III. CONSIDERATION OF MINUTES

Regular Meeting – May 12, 2005

Motion by Mr. Shah to approve the minutes of the May 12, 2005 Planning and Zoning Commission meeting as presented. Second by Ms. Spence. The Chair called the question.

Vote on the Motion:

Ayes: Ms. Spence, Mr. Welborn, Mr. Bolton, Mr. Early, Mr. Dawson, and Mr. Shah

Noes: None

Abstain: Dr. Marshall

Motion carried 6 – 0 – 1

IV. REPORTS OF CITY STAFF

A. ZONING

None

B. SUBDIVISION PLATS

P – 05 – 02 Consider Preliminary Plat of Terre Sol, Lot 1, Block 1, an addition to the City of Benbrook, being 8.5 acres in the J.W. Smith Survey Abstract Number 1406 (Northwest of the north end of Shady Valley Drive, north of Block 2 of The Meadows, and east of Block 1 of Glen Avon Addition)

Chairman Early introduced the item and asked for a presentation from the applicant. Rhonda Pool, 2004 Ranch House Road, Willow Park, Texas said she is a member of the Willow Park Planning and Zoning Commission, has done a lot of business in Benbrook, and has been a member of the Benbrook Chamber of Commerce for 10 years, and she and her husband wish to reside in Benbrook. Ms. Pool said their intent is to build one house and a barn on the 8.5-acre tract and they own three horses. She said they have no intention of stabling or boarding outside horses.

Dan McInnis, with Gordon Swift Consulting Engineers, 900 Monroe Street, Fort Worth, said they are representing Ms. Pool. Mr. McInnis said the platting of the land would be a win-win for the City of Benbrook; it would be legally platted, use of the property that would put a tax base on the tax role for the City of Benbrook, they are not changing the property boundary, and there will be a beautiful home built on the property.

Mr. McInnis said the City Staff and City Attorney suggested the variance requests, as they understand it, through meetings with his client, and that the variances would satisfy the City's interpretation that this is to follow a typical subdivision plat rules and regulations. They feel like Ms. Pool has done everything the City has required and asked of her, to make this plat work.

Mr. McInnis said they have reviewed Staff and City Engineer comments and have no problem with them. He said they would work all concerns out, prior to final platting.

The Chair asked for a report from Staff.

Ed Gallagher said the P-05-02 preliminary plat of proposed Terre Sol Addition involves an 8.5-acre site north of Block 2 of The Meadows Addition. The site is zoned "A" One Family District, the same zoning classification as the surrounding property. The single-family residential zoning in the area has existed since the early 1950s. The current owner of the property is Robert Michael, who acquired the site in November of 2003 and the plat applicant, Rhonda Pool, has a contract to obtain the property, subject to plat approval.

The 8.5-acre site is part of a 17.5-acre unplatted property purchased in 1951 by Douglas Mitchell with the 17.5 acres having frontage on Williams Road. That conveyance occurred prior to the 1955 approval of the first Subdivision Ordinance. Mr. Gallagher said the City's subdivision regulations require platting to subdivide property into two or more parts, and for the issuance of building permits. Platting of The Meadows occurred in 1985 along the south line of the 17.5-acre Mitchell property and included the extension of all standard infrastructures through The Meadows plat area to the adjoining Mitchell property. In 1991, the 17.5-acre Mitchell property was illegally subdivided when the west 8.5 acres, proposed Terre Sol Addition, was sold without platting.

Mr. Gallagher said the Terre Sol Addition preliminary plat proposes a single lot with access from Shady Valley Drive at the southeast corner of the 8.5-acre site. The Shady Valley Drive right-of-way contains a standard concrete street section, a 54-inch stormdrain pipe, a 6-inch sanitary sewer main, and a 6-inch water main, which were all required with The Meadows platting to serve the 17.5-acre Mitchell property and beyond.

The Subdivision Ordinance was established to provide for the orderly development of the City. The policy of the ordinance is that land not be platted without proper provisions for drainage, water, sewer, street, and other infrastructure improvements.

Mr. Gallagher said the purpose of the Subdivision Ordinance is to promote and protect the health, safety, morals, and general welfare of the community by requiring that adequate streets, drainage facilities and other public improvements be provided in all subdivisions. It is to guide public and private policy and action in order to provide adequate and efficient transportation, water, sewer, drainage, and other requirements and facilities and it is styled to be in the interest of the overall community.

The extension of Shady Valley Drive from The Meadows plat area through the Terre Sol Addition plat area for future extension with subsequent platting is called for in the Subdivision Ordinance. Mr. Gallagher noted that the Ordinance also provides that street alignments consider topography and other features and be conducive to future extensions into unplatted areas. The submitted plat drawing does not graphically show the extension of Shady Valley Drive from The Meadows Addition onto and across the Terre Sol Addition to neighboring property. However, in a variance request letter from the applicant, a proposed alignment of the extension of the Shady Valley Drive right-of-way is generally described to be in a pattern that meets Ordinance objectives. The variance letter also proposes that the right-of-way be established by a separate instrument from the final plat. He said, although it is not a typical procedure, the staff has no objection to the variance request to establish the extension of the Shady Valley Drive right-of-way across the 8.5-acre site by separate instrument, provided that the right-of-way instrument is recorded on the same occasion as the plat recording.

Mr. Gallagher said the next element of the variance request involves addressing the installation of the required infrastructure with a deed covenant between the landowner and the City that could be exercised by the City at a future date. He said future platting of the 8-acre site north of Terre Sol Addition or the property to the east could include a request that the City exercise the provisions of the deed covenant. A proposed deed covenant was not presented with the plat submittal. The Staff does not object to the variance, provided the document be reviewed by and recommended for approval by the City Attorney.

The variance request also proposes that the street obligation, proposed to be deferred by a deed covenant, be limited to the construction cost of 100 linear feet of standard concrete street. The 3,000 square feet of 30-foot wide by 100-foot long concrete street appears to be proposed, based on a rough proportionality standard established by the U.S. Supreme Court for the proposed single lot of Terre Sol Addition. Mr. Gallagher said Staff calculated the weighted average of required street pavement attributed to a typical lot meeting "A" One Family District lot area standards to be 1,547 square feet, or 94 square feet (three linear feet) more than the proposed 100 linear feet street that will, because of the overall alignment, actually create two lots. The variance for 100 linear feet of street proposes that that quantity is the proportional responsibility of the owner/developer for design and construction of the street within the one lot, 8.5-acre, Terre Sol Addition plat area.

Regarding normal infrastructure other than a standard street section, Mr. Gallagher said the variance proposes that the applicant not be required to extend and other infrastructure from where it is provided at the north end of existing Shady Valley Drive, across the Terre Sol plat area to the adjacent property to the north. In addition to the street pavement specifically addressed in the variance request letter, infrastructure also includes sidewalks, streetlights, storm drains and inlet structures, water mains and fire hydrants, and sanitary sewer mains. The existing 54-inch stormdrain pipe at the north end of Shady Valley Drive accommodates a 24.9-acre drainage area, of which approximately 8.02 acres is runoff from proposed Terre Sol Addition. Runoff generated only from the Terre Sol Addition is estimated to require a 27-inch stormdrain pipe.

Mr Gallagher said it is Staff's opinion that normal infrastructure addressed in the Subdivision Ordinance includes standard sidewalks, street lights, stormdrain, water mains and fire hydrants, and sanitary sewer mains. It is Staff's opinion that sidewalks, streetlights, and drainage should be included in the deferred obligation addressed in the proposed deed covenant. Staff recognizes that the drainage from the Terre Sol Addition site only generates a need for a 27-inch stormdrain and recommends that the Commission recommend that the City Council consider assuming the cost difference between a 27-inch stormdrain and 54-inch stormdrain.

It is specifically noted that any variance to any Benbrook Water and Sewer Authority infrastructure requirements is beyond the scope of Planning and Zoning Commission consideration and must be considered by the BWSA Staff and/or Board of Directors.

It is Staff's opinion that the rough proportionality standard, established by the Supreme Court, involves a proportional quantity of the various infrastructure elements attributed to the specific development and not the various elements themselves. A proportional quantity reduction of each of the various infrastructure elements appears to fall within the Court's rough proportionality standards.

Mr. Gallagher said parkland dedication requirements of the Subdivision Ordinance should be addressed with cash in lieu of land and the final plat must meet all requirements for final plats in accordance with the Subdivision Ordinance except as specifically altered by any variance approval by the Commission.

The City Engineer has reviewed the submittal material and noted a number of design considerations that must be addressed with a final plat and engineering submittal and are not a topic of variance consideration. Mr. Gallagher said the City Engineer does however suggest that any variance for a required and/or deferred infrastructure construction obligation include a 15-percent line item for associated surveying and engineering costs. The City Engineer also notes that with a deferred construction, and possible alignment adjustments, there is no reason to pursue surveying and design services until construction is ready to occur.

The Public Works Department notes that the absence of normal infrastructure places a potential burden on other citizens and adjacent landowners. Public Works also notes that many of the proposed initial drainage facilities should only be considered as interim and will require replacement when standard improvements are installed.

The Inspection Department notes that the submittal includes very limited drainage improvements and no street improvements and no comments are offered.

The submittal has been reviewed by the Police and Fire Departments with the Police Dept offering no comment. The Fire Dept notes several applicable Fire Code requirements that must be addressed and are not subject to variance consideration.

The Benbrook Water and Sewer Authority notes that all BWSA Standard Specifications for water and sewer facilities must be met, including the extension of both water and sewer through the property, and the requirement of a two-year maintenance bond and contractor approval. BWSA further notes that any deviation from normal policies and procedures must be approved by the BWSA Board of Directors.

Other utility reviews have either not been received or indicate the plat is satisfactory. The applicant must address all utility requirements with final platting.

The Staff does not oppose the dedication of right-of-way and easements by separate instrument to be recorded concurrent with the plat, the deferral of infrastructure responsibility by a deed covenant approved by the City Attorney, and a reduced quantity of the various required infrastructure elements to a rough proportionality standard, including a reduced stormdrain pipe diameter.

The Staff does oppose the portion of the variance request to delete sidewalks, streetlights, storm drains and other associated infrastructure elements from standard requirements.

It is recommended that the Planning and Zoning Commission address each of the elements of the variance requests and include findings and determinations regarding each, and approve the preliminary plat of Terre Sol Addition subject to each variance approved, and subject to conformance with all Subdivision Ordinance requirements as conditions of preliminary plat approval except as may be altered by any variance approvals, and conformance with all Engineering, Public Works and Inspection, Public Safety, BWSA, and Utility comments and requirements.

The Chair asked for any comments or questions from the Commission. Mr. Welborn asked

Staff if the future capability of the City to require the infrastructure for the new street at some future point is valid. Mr. Gallagher said if the Terre Sol Addition were replatted into multiple lots, the developer would be required to install all infrastructure.

Mr. Shah asked how many property owners are involved in the 17.5-acre, illegally sub-divided property. Mr. Gallagher said there are nine owners. Mr. Shah said the City's Subdivision Ordinance clearly states, "every owner of every tract of land located within the corporate limits.... shall cause a plat to be made by a registered public surveyor which shall accurately describe all the tracts by previously platted lot and block number, or by metes and bounds if necessary, and locate same as required by this Ordinance". Mr. Shah asked why the Commission is considering a partial plat.

Mr. Gallagher said when the 8.5 acres were separated from the total 17.5 acres, and the seven 50-foot pieces were sold, that was an illegal subdivision of land that conflicted with the Subdivision Ordinance. He said he is not sure the Ordinance precludes the submittal of a plat because a property is configured by an illegal subdivision.

Doug Black, City Attorney, said the illegality stems from the failure to record with the City the subdivision of the 17.5 acres at the time it happened. Mr. Shah said he agrees it is not fair to the current owner of the 8.5 acres that it acquired from an illegal subdivision in 1991, but if you put the burden of the infrastructure on all nine property owners, you would probably not be talking about variances. Mr. Shah said the Commission is considering a piece of property that was illegally carved out from a larger property that was subdivided illegally.

Mr. Early asked, since the fire codes are not being considered for a variance, what it would take to come into compliance with the fire codes. Mr. Gallagher said, even if the applicant built a road across the entire property, the fire codes would still be applicable. Mr. Early asked if the infrastructure that is proposed meets the fire codes. Mr. Gallagher said the applicant is not proposing any infrastructure and in order to comply with the fire code, they may need to provide some infrastructure beyond the proposed variance, such as extension of the six-inch water main and fire hydrants. Mr. Early asked if those items would be required before a building permit will be issued. Mr. Gallagher said yes.

The Chair asked for any comments or questions from the Commission. There being none the Chair opened the public hearing at 8:05 p.m. and asked if anyone wished to speak for or against the item.

David Hudgins, 8123 Saddlebrook Drive, said he is in favor of the development of the property, with the consideration that the street and infrastructure be put in at the same time. Unless infrastructure and drainage is constructed at the same time, it will only compound the current drainage problems. Mr. Hudgins said this is the second time in the last four years that people have tried to build one home and provide no drainage or infrastructure. The Planning and Zoning Commission declined to approve the first applicant and the ordinances have not changed.

Maxine Kruse, 4600 Williams Road, said she lives on the eight acres adjoining the property to the north and she is absolutely in favor of the proposition.

Lisa Savage, 8100 Saddlebrook Drive, said her parents, James and Collette Burgan have owned the property to the east of the proposed plat area since 1996. Ms. Savage said she

would like to see the proposed area developed but would also like to make sure they do not lose access to Shady Valley Drive should they decide to develop on their property.

Mr. Gallagher said the Subdivision Ordinance precludes reserve strips and any street on the proposed plat area would be required to abut Ms. Savage's property.

Larry Stowe, 8217 Meadowside Drive, asked Staff if the variance request says the City will require Ms. Pool to construct 100 linear feet of street. Mr. Gallagher said the proposal is to dedicate the right-of-way across the entire property in compliance with the Subdivision Ordinance. He said the proposal is for Ms. Pool to be responsible for the construction of 100 linear feet, based on rough proportionality standards established by the Supreme Court, but be deferred by deed covenant to be done at a latter date. Mr. Gallagher said another element of the variance request is that the applicant's infrastructure requirement would only involve the pavement of the street, not the sidewalks, storm drain, streetlights, sanitary sewer, and other infrastructure elements as required by the Subdivision Ordinance.

Mr. Stowe asked if the applicant is going to install the street or not. Mr. Gallagher said the applicant has never proposed to construct a street. Mr. Stowe asked how the applicant would gain access to the property if a street were not constructed. Mr. Gallagher said nothing has been submitted to show how access would be gained to the property. A plan would appear to remove the barricade when the drainage pipe is extended so there is not a drop off, remove the existing drop inlet, run the pipe up approximately 25 feet with a headwall to capture the water, and then the existing concrete pavement could transition into a driveway.

Mr. Stowe asked if someone, in some certain point and time, would be required to install approximately 100 feet of pavement. Mr. Gallagher said, for instance, if the Kruse's want to develop their property in the future, they could ask the City to exercise the deed covenant with Ms. Pool so the street could be constructed. At that time, depending on what conclusion the Commission has on the rough proportionality, Ms. Pool would be required to pay for 100-foot of the construction. The Kruse's could pay the difference or request the City pay the difference. Mr. Stowe asked if the other deferred items such as sidewalks, streetlights, etc. would also be installed at a latter date. Mr. Gallagher said the variance request is that those items not even be an obligation and the Staff's recommendation is that those items be part of the obligation just like the street pavement, based on the rough proportionality.

Mr. Stowe asked what the fire codes are that pertain to the subject property. Mr. Gallagher read the following codes submitted to Staff:

1. Fire Department Access Roads: (IFC Section 503.1.1) Approved fire apparatus roads shall be provided for every facility, building, or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus road shall comply with the requirements of this section and shall extend to within one hundred fifty (150) feet of all portions of the facility or any portion of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building or facility.
 - A. Dimensions: (IFC Section 503.2.1) Fire Department access roads shall have an unobstructed width of not less than 20 feet, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet, 6 inches.
 - B. Surface: (IFC Section 503.2.3) Fire Department access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

2. Fire Hydrants: (IFC Section 508.5.1) Where a portion of the facility or building hereafter constructed or moved or within the jurisdiction is more than 400 feet from a hydrant on a fire access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the code official.
EXCEPTION: For Group R-3 and Group U occupancies, the distance shall be 600 feet.
3. Comments 1 and 2 above are based on the assumption that a single-family dwelling is less than 6,000 square feet. Additional requirements will apply for a structure exceeding 6,000 square feet.

Mr. Stowe asked about the Conditional Use Approval to allow horses on the property. Mr. Gallagher said the Zoning Ordinance requires Commission approval for livestock on less than 10 acres in "A" District.

Edwin Drath, 8236 Saddlebrook Drive, said he is concerned with drainage and the location of the house and barn Ms. Pool plans on building.

There being no further comments or questions from the audience, the Chair closed the public hearing at 8:25 p.m. and asked for any further comments or questions from the Commission or applicant.

Mr. McInnis said, in reference to drainage, they are proposing the extension of the existing pipe, install a headwall, and do some grading to prevent flooding onto some of the lots in The Meadows. He said as far as the location of the house and barn, the use is not as intensive as the building of 30 homes and Ms. Pool does not intend to direct any more water to the adjacent properties.

Mr. McInnis said concerning the access from Shady Valley Drive to the property to the east, there is no access at this time. Mr. Gallagher said, when Shady Valley Drive right-of-way is established, which would need to be done and filed concurrent with the plat, that it provide access to Ms. Savage's parents property.

Mr. McInnis said in reference to concerns by Mr. Shah, this application is a partial plat and illegally subdivided; he would be glad to plat the entire area but cannot do so without the approval of all the owners. He said the applicant realizes a building permit will not be issued unless the development complies with all fire codes.

In reference to the rough proportionality, Mr. McInnis said although Ms. Pool would be building on only one lot, and the street right-of-way may produce two lots, they have agreed to pay for 100 feet of 30-foot wide paving. Ms. Pool said this meeting is the first time she has heard any discussion of streetlights, sidewalks, etc. She said in earlier meetings with her attorney and City Staff, those items were never mentioned or discussed. Mr. Gallagher said when Staff met with Ms. Pool and her attorney James Schell, they discussed the rough proportionality and that is when the 100 feet was discussed as a reasonable proportional amount. They also discussed the reference to "Streets" and that "Streets" includes the other associated infrastructure addressed in the Subdivision Ordinance, which are paving, water, sewer, storm drains, sidewalks, streetlights, and street signs.

Discussion followed between Staff, the City Attorney, the Commission, Ms. Pool, and Mr. McInnis on when and how the City could require Ms. Pool or a future owner of the Terre Sol property to meet the obligation of paying for 100 feet of the street. Mr. Black, City Attorney, said

the triggers to “Call the note” by the City are very straightforward when and if something happens that allows them too. Mr. Black said it could be the development of the property to the north or the property to the east, as written in the deed covenant, as agreed upon by the Commission to develop that street infrastructure.

Ms. Spence asked, if the property to the north of Terre Sol was developed, would that developer be responsible for connecting their street to and through the Terre Sol property to the 100 feet for which Ms. Pool would be responsible. Mr. Gallagher said the applicant is proposing to be responsible for 100 feet, which has not been determined by the Commission. Assuming 100 feet, a developer to the north could run the street across their property as well as the balance across the Terre Sol property left from the 100 feet that Ms. Pool would be obligated to underwrite. Alternatively, the developer to the north could approach the City Council and solicit the City to pay the cost of the balance of the street, to and through the Terre Sol property, to connect to the property to the north.

Mr. Black said another scenario could be that the Commission require, as part of approval, that if the Terre Sol property were developed into multiple lots at a later time, Ms. Pool or the developer would be required to provide for the extension of the balance of the street through the Terre Sol property to connect with the property to the north, and Ms. Pool would be obligated for the first 100 feet, if determined by the Commission.

The Chair asked for any further comments, questions, or a motion from the Commission.

Motion by Mr. Bolton that the Planning and Zoning Commission approve P-05-02, preliminary plat of Terre Sol Addition as recommended by Staff, and approve the following variances to provisions 16.28.025 of the Subdivision Ordinance as presented by the applicant;

1. Dedication by final plat of the extension of Shady Valley Drive across the property will not be required so long as the Applicant grants by separate instrument an easement and right-of-way 50 feet in width for streets, roads, access, ingress, egress, regress, drainage, and all public utilities for the extension of Shady Valley Drive from the southeast corner of the subject property to the adjoining 8-acre property identifies as “Tract 1B2 and 1B2A to the north of the subject property. No construction or improvements will be permitted on or within 25 feet of such Street R.O.W. that would interfere with its use as a street or roadway without the city’s prior written consent. Applicant would reserve only the right to utilize the surface of such Street R.O.W. for pasturage or grazing of animals until such time as the Street ROW is paved.
2. Construction and paving of the extension of Shady Valley Drive would not be required so long as applicant agrees by “Deed Covenant” to pay to the City 100 percent of the cost of constructing 100 linear feet of a 30-foot wide concrete street at the time Shady Valley Drive is extended across the property to the adjacent property.
3. Applicant will not be required to extend infrastructure from Shady Valley Drive to the adjacent tract as a condition of approval of this single lot plat.

Second by Mr. Dawson. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Early, Mr. Bolton, and Mr. Dawson

Noes: Mr. Welborn, Mr. Shah, Dr. Marshall, and Ms. Spence

Motion failed 4 – 3

C. PD SITE PLANS

None

D. GENERAL

None

V. CITIZENS PRESENTATIONS

None

VI. ADJOURNMENT

The Chair noted there were no additional matters of business on the regular Commission agenda and declared the Commission regular meeting adjourned at 9:10 p.m.

Following the regular meeting, the Planning and Zoning Commission met in work session to discuss architectural requirements for big box developments, zoning, land use, and development.

The work session convened at 9:25 p.m., attended by Commissioners Spence, Early, Welborn, Dawson, Marshall, Shah, and Bolton and City Staff members Clark and Gallagher. The work session concluded at 10:10 p.m.

APPROVED: _____, 2005

Chair