

**MINUTES  
CITY OF GAINESVILLE  
PLANNING AND ZONING COMMISSION  
Special Meeting**

**2:00 p.m.  
Tuesday, December 21, 1993**

**Members Present:** Marge Clement, Debra Beavers, Joyce Rigler, Jan Russell, Robyn Byars and Bill Williams.

**Members Absent:** Roy Brewer

**Staff Present:** Lyle Dresher, Mike Land and Pat Payne

**Visitors Present:** City Attorney Mack Barnhart, Mayor Jim J. Hatcher, James Ray Polk and John Pipes, Cooke County Environmental Health Officer

The **first item of business** was calling the public hearing to order at 2:07 p.m. by Chairman Bill Williams.

The **second item on the agenda** was continuation of public hearing of December 7, 1993, considering a request by James Ray Polk and Ronnie Ortowski for voluntary annexation of a 74 acre tract of land out of the A.C.C. Bailey Survey, which tract is bounded on the south by Harris Road and on the east by F.M. 3092.

Mr. Williams asked if there were comments or discussion regarding the voluntary annexation request. Mr. Land began by explaining that the development of a Service Plan was the reason to continue the public hearing until the present date. The Service Plan is now ready for consideration with two issues that staff has been meeting with Mr. Polk on. The first is the potential agreement between the City and the developer to participate in the paving of the streets, and how the City would be able to participate through the final platting process and a Letter of Credit being issued. This language will be added into the Service Plan (agreement) prior to the first public hearing with the City Council. The second issue deals with the sanitary sewer and annexation requirements for municipalities. After review, it appears that there is not a good possibility that there is a way out of the requirement (service to be provided to the area). In the discussions with Mr. Polk this date, it was discussed how the Service Plan would reflect the Ridge Subdivision proceeding on using the individual septic systems, but should the property owners within the subdivision itself want to have public sanitary sewer, then the City will add into the language of the Service Plan establishing that they (residents of the Ridge Subdivision) would be responsible for paying for the internal lines being constructed (within the subdivision proper).

The balance of the Service Plan basically says that police and fire service, garbage, parks and recreation, are typical services that are provided throughout the City and will be provided for the proposed development.

The goal for this special meeting is for the Board to recommend the annexation and Service Plan with the understanding that those two issues will be added prior to the City Council meeting this same date. The resolution setting public hearing dates for the annexation will be introduced and voted on at the City Council meeting.

Mayor Jim Hatcher said there is no way that the City can extend the sewer line to that proposed development at this time. Staff has been working very hard to determine a way that the subdivision can be developed without the full City services being in place, i.e. the sewer system. Mr. Polk does not want the public sanitary sewer system for the proposed development; he has submitted a plat with septic systems, which was the original intent for the subdivision with minimum one acre lots.

Bill Williams said he had spent some time with Mr. Barnhart the past week to discuss this matter. He said he received information from the Local Government Code, re: Vernons Texas Statutes and Codes Annotated. He quoted from Sec. 43.056 (k), which states: **This section does not require that a uniform level of full municipal services be provided to each area of the municipality if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.**

Mr. Williams then asked Mr. Pipes, County Environmental Health Officer, what is the minimum requirement of the County for a septic system. Mr. Pipes replied that one-half acre is the minimum lot size. Therefore, Mr. Williams continued, the proposed development will have twice the amount of minimum land space for a septic system for a Single Family Lot, according to County code. Mr. Pipes concurred. Mr. Williams said his opinion is that the size of the lots are a basis for providing different levels of service for the citizens of the City of Gainesville, specifically in the proposed Ridge Subdivision. Mr. Hatcher said he read the same section and he and the City Attorney have reviewed and discussed it many times and both agree that that issue is something the City might "hang its hat on".

Mr. Barnhart reiterated that the proposed subdivision will be zoned SF-E, which is a recognizable district within the community. Therefore the City has planned on that zoning density in the Zoning Ordinance, because it involves setbacks, minimum residential structure size, etc. These issues have all been addressed. The other issue is that the City is running water service to the proposed subdivision location. The cost of bringing water and sewer to the location is approximately the same. Therefore, the justification, according to Mr. Barnhart, under this contractual matter, is expense. The topography, again, according to Mr.

Barnhart, is nothing unusual out there (in that area).

Mr. Williams said this is a gray area, not black and white. Again, "...it is my opinion, I think it is something that 'we can interpret'. I don't think it is something that's nailed by code....black and white definition. If it were, I think that's what you would tell us."

Mr. Barnhart said he thinks it would be hard to defend the denial of sewer services based on that provision [sec. (k)]. He said that after talking with Mr. Polk, there will be Deed Restrictions [Covenants] including language addressing assessments for construction of infrastructure within the proposed subdivision. The City would have to start the sewer line extension within two years to the annexed area. Mr. Barnhart further stated that nothing may ever happen, i.e. litigation, if the sanitary sewer service is not extended to this property unless someone (a resident of the subdivision) challenges this issue, which may never occur. He said the only purpose in raising the issue is to make the City aware that there is a potential liability in this matter.

Mr. Hatcher said that because the area is undeveloped and the topography makes it very expensive to run the sanitary sewer line to the property, that is the reason that it is unfeasible at this time to do this. However, when the lots are all sold and developed, then it will be practical, financially, to extend the line for sewer service.

Mr. Hatcher said even though the City is required to begin running the sanitary sewer line within two and one half years, it is not bound to complete it within four and one half years because of the voluntary annexation. He said there are lots of variables in this situation. Again, he said if the Service Plan goes to City Council requiring the public sanitary sewer system, it won't pass. He said the agreement with Mr. Polk from the very beginning was not to provide the sewer system now.

Mr. Williams said he sees no reason not to proceed and recommend approval of the annexation and its service plan without the sewer system. He asked Ms. Clement what her opinion was. She asked when the actual building will begin. Mr. Polk said it will start when the Final Plat is approved. Mr. Hatcher reiterated that the annexation will have to be approved first. Mr. Land explained that even though the P & Z may recommend approval at this time, the Council only will approve a Resolution this same date establishing public hearings.

Mr. Hatcher said because the first public hearing will not be held until January 21, this will give staff more time to work out the problems with the Service Plan.

Mr. Williams asked Mr. Drescher about the future prospects of the sales tax revenue from the Factory Shops and if there was a possibility of that source relieving the utilities and infrastructure burden. Mr. Drescher explained that these type of

projects have to stand on their own merit and revenue.

Mr. Williams asked Ms. Rigler what she thought about the matter. She replied that "...the longer we meet the more confused I get." Debra Beavers said the legalities have confused her more and more also. It's not [for the good of] basically the support or what actually is needed for the City and the people that will come into our City. "It's all legalities." Jan Russell said she agrees also. In other parts of the country, builders and cities finance streets and sewers and is it not legal in Texas. Then the homeowners pay a share in taxes each year until those infrastructures are paid for. Mr. Barnhart said Texas does not have that. That provision has been built into the Subdivision Regulations of the City of Gainesville since the 1970's.

Debra Beavers asked Mr. Williams "....if we (the City) are trying to help Mr. Polk or hinder him....I'm confused....Are we trying to get this thing started or push it back?"

Mr. Williams said he felt that the City is trying to get it started. He asked Mayor Hatcher what the City is going to do. Mayor Hatcher said he wants the project to get going as bad as anyone does.

Mr. Barnhart said the Service Plan Statute leaves little discretion as to the providing of full municipal services with the exception of Sec. (k), as discussed earlier. The City's responsibility is to bring the services to the property.

Mr. Williams asked Marge Clement what direction she would like to take. She replied that she is all for going forward with the plan as originally planned.

Mr. Byars asked for confirmation that in two years the City will be responsible for beginning the sanitary sewer to the property. Mr. Barnhart said that was true. However, he also cited from the L.G.C. that: The requirement that construction of capital improvements must be substantially completed with 4 and one half years does not apply to a development project or proposed development project within an annexed area if the annexation of the area was initiated by petition or request of the owners of land in the annexed area and the municipality and the landowners have agreed in writing that the development project within that area, because of its size or projected manner of development by the developer, is not reasonably expected to be completed within that period [4 1/2 years].

Jan Russell said she had just realized something. The fact that the cost of the proposed public sanitary sewer system has been stated as being approximately \$78,000 does not seem like a consequential problem to her. She thought that due to all the hype that the proposed sewer line would mount into the hundreds of thousands of dollars. That does seem very important when you look at the fact that there will be 31 new homes in the first phase. At that point she said she would like to go ahead and make

the motion to approve the request.

Mr. Hatcher said he wanted to look at it from the point that there might only be six houses.

Bill Williams said he knows that you cannot base reality on the basis that if you build it, they will come. But, he continued, he feels very strongly that these lots will sell out quickly and nice big homes will be built within four and one half to five years. He said he has people to come to him constantly asking for places to build new homes, quality homes. There is a need for this type of home in Gainesville-this will work!

Jan Russell said this City needs to follow its vision and be positive and know this town will grow if people work together and improve the incentives that make people want to come here. If we don't have the means for these people (prospects) to move to our City, they're not going to move here.

After no further discussion, Mr. Williams recognized the motion made by Jan Russell to recommend approval of the voluntary annexation request of the 74 acre tract of land, as requested by James Ray Polk and Ronnie Ortowski. The motion was seconded by Marge Clement. Motion carried by the following votes: Ayes: Clement, Rigler, Williams, Beavers, Russell, and Byars. Nays: None. Absent: Brewer. Abstentions: None.

Mr. Hatcher suggested that the Planning and Zoning Commission members be present at the City Council meeting this date at 7:30 p.m.

The third item on the agenda was continuation of the public hearing of December 7, 1993, on a request by James Ray Polk and Ronnie Ortowski to rezone a 44 acre tract of land out of A.C.C. Bailey Survey, also being a part of a 74 acre tract being annexed into the City of Gainesville, From Agriculture (A) to Single Family Estates (SF-E).

Per advise of City Attorney, a motion was made by Debra Beavers and seconded by Jan Russell to table this item. Motion carried by the following votes: Ayes: Clement, Rigler, Williams, Beavers, Russell, and Byars. Nays: None. Absent: Brewer. Abstentions: None.

After no further business, the meeting was adjourned at 2:58 p.m.