

## **Cold Spring Planning & Zoning April 9, 2008**

The regular meeting of Cold Spring Planning and Zoning Commission was called to order by Chairman Steve Taylor. Pledge to the flag was recited. The roll call showed the following present – Roger Bay, Joe Feinauer, Alan McCullough, Ken Sharp, Karen Stafford, and Ken Warden. Also present were Rita Seger and Brandon Voelker. New member Alan McCullough was sworn in before this meeting.

Steve Taylor pointed out the exits from the building, per Fire Department regulations.

The February 13<sup>th</sup> regular meeting minutes were reviewed by all. Ken Warden made a motion for approval with one change – Roger Bay had seconded the motion adjournment on the February 13<sup>th</sup> meeting. Roger Bay seconded the motion. All were in favor. Motion carried.

There were no subdivision items, public facilities, or public hearings scheduled. There was no report on the status of annexations in the city.

The next item on the agenda was the study and recommendation of language dealing with the difference between the two zones of HC\* (county) and HC (city) with less than five acres, and the different zoning in this area on the land use map (SDA) of the comprehensive plan. Steve Taylor stated that Staff was not present at this meeting to provide their input.

Brandon Voelker reviewed action taken by Council. After the P & Z recommendation, council looked at it and said that, in order to change it while you have the HC\*, to have a pre-standing zone would require five acres or more. The spot that Staff relied upon to look at in the comprehensive plan designation for the area was in fact SDA. Council is in agreement with Planning and Zoning that the HC\* zoning needs to be resolved, and council asked that this Board come up with some ideas, possibly a text amendment, as to how to make the HC\* and HC jive.

Steve Taylor said even if you come up with a text amendment, there are still less than five acres. In the HC\* or HC zones, there are protections in one that are not in the other and vice versa. The adjacent property owner, who was at the public hearing has no desire for his property, which is R-RE, to come into the city at this time. If he did, you would have the five acres.

Brandon Voelker stated that if we made this a text amendment, it would apply to what would be allowed in the permitted use and apply to all zones. It would not require a zoning map amendment. There may be a way to change and clarify the text to say that after a period of time, upon an annexation the uses of the county with the asterisk designation only applies to permitted uses of the property. All other aspects of the land use regulations shall be governed by the identical Cold Spring zone, if one exists. If we annex something that has a county designation of a zone and Cold Spring doesn't have that zone, then that brings up another issue. There is not a solution for that, except that with every annexation that we have looked at in the past five to eight years, we have considered the zoning to make sure it is right before it is annexed.

Steve Taylor stated that we could delay this until next month to work with Staff, but stated that it would be unfair if the delay would prevent the developer of the site from doing anything after we have already given him approval. Brandon Voelker stated that the developer is okay to proceed with construction. The only thing that he could run into, is that if something changed, he could end up with a non-conforming use.

Ken Warden stated that we were trying to get away from the county zoning so that we didn't have to keep going back to historical records. Everything should be in one zoning book, without an asterisk or Exhibit A, in order to bring it up to today's documents. The size of the lot shouldn't matter.

Steve Taylor stated that a map amendment falls in the same category as the zoning change as far as the letter of the law. A text amendment would circumvent that and would apply throughout. It would not make a difference about the size because it is neither a map or zoning amendment.

Joe Feinauer stated that, if you do a text amendment, then the zoning map would still have to show an HC\* which defeats the overall purpose. There should be no asterisk left, unless a text amendment can say, after a certain amount of years, zones with an asterisk behind it automatically becomes whatever that zone is in the city. We would have to deal with the very few county zones that didn't have a corresponding city zone. If nothing else, you might have a couple of non-conforming uses, going from a County to a Cold Spring regulation and it would be a zone change only by taking the asterisk off of it.

Brandon Voelker said there is a provision in the zoning ordinance that says if you get a zone change and don't do anything for year, you risk losing that zone change. Steve Taylor stated that he thought it reverted back. After a period of a year, the matter is referred to Planning and Zoning, regardless of the size of the land, to look at the appropriateness of the zone in the event that the zone doesn't exist in the city to make it consistent. The regulation just says "at its option". It doesn't say you have to change it back; it says the period of time has passed and let's just make sure that we still like the decision that was made.

Joe Feinauer stated that if we put in a time period and get rid of the asterisk, it doesn't keep an adjacent property owner to then join with the developer in the city, and say that now he wants to be annexed and HC is not the right zone for this acreage. Brandon Volker stated that you can get around your acreage limitation if you are adjacent to a zone you seek to be in. If we assume that he was annexed and we didn't change the zoning in time and he gets a contract to sell and they need a Highway Commercial zone, he could seek a zone change to HC\* but not HC because he is only adjacent to the HC\* zone not the HC.

Ken Warden questioned how you could go back and put a time limit on all of the asterisk zones. Joe Feinauer said you could start with today, and say that if any zone that is an asterisk isn't changed or combined with something, before a set amount of time, it will automatically revert to that zone without the asterisk. If there is no such zone, the most appropriate zone will apply. You could decide if it would be appropriate with the comprehensive plan or if there was something else that was coming that way.

Ken Warden questioned an event in which someone might make an agreement with the city that says when you annex me you annex me with this zone. Brandon Volker stated that that would be a contractual right which would override that. If you had someone with a non-conforming use, or they already built something, at that point it would be a non-conforming use. The city could change the zoning in a certain time period because they hadn't started to construct anything yet. They would not have a claim against you if they hadn't started construction yet.

Brandon Volker stated that from a Planning and Zoning standpoint, the asterisk is mostly on the R-RE\* zone, not along the highway. This is where a time period would be helpful because at that point you have a new comprehensive plan, and we have so many areas that are designated for certain residential densities. We should go ahead and get those changed now.

Steve Taylor questioned the appropriate period of time. If we zone something it can, at our option, revert after a year, why would you take a longer period of time. Brandon Voelker stated that council was referencing specific language in the text, so we are going to make a special area in the text that deals with the asterisk areas. He always advises council that they have the right, before annexation, to send it to Planning and Zoning. After a first reading of an annexation, the matter is then sent to P & Z who makes the recommendation. Council could approve or disapprove the recommendation and state the appropriate zoning. The safeguard is to have a public hearing. The courts now treat annexation agreements like business arrangements. The second reading does not occur until P & Z acts.

Ken Warden questioned if an annexation could be pulled if the property owners are not happy with the way that zoning is going to be. Brandon Volker stated that we have to decide if we are proceeding on a consensual or non-consensual annexation. Once they pick the consensual route, they have the ability to do that.

Joe Feinauer stated if you buy a piece of property you only have 18 months to get it recorded, and a certain period of time to get a building permit started. Those usually range from one year to 18 months or 2 years, which would be sufficient time limit to put in the text. We could send a notice to anyone who would be affected by this.

Brandon Voelker said it is at this Board's discretion. The key is to get rid of the five acre requirement for the asterisk. You can choose to do nothing. It would be a zone change at that point, it still would have to work its way to council. The people would still have plenty of notice and we can state that this is on a two year anniversary.

Steve Taylor said a summary of this would be forwarded to Staff and get their input on it, and we will bring it back next month.

Dave Thiem of the Board of Adjustments received a total of 5 hours of continuing education, Roger Bay, P & Z received 1.5 hours, and Alan McCullough received 9 hours of continuing education. Joe Feinauer made a motion to approve these continuing hours and Ken Warden seconded the motion. All were in favor. Motion carried.

Steve Taylor announced that two of our Planning and Zoning members are resigning, Joe Feinauer and Karen Stafford. Both are moving from the city and no longer hold property in Cold Spring. Steve Taylor thanked them for their help and input and thanked them for their valuable service to the community.

Steve Taylor welcomed the newest member to the Board, Alan McCullough.

Ken Warden questioned what had happened with the Aqua Drive project. Brandon Volker reviewed the Berberich / Water District project, and stated that they withdrew before the second reading because the cost to build the access road which was one of the conditions placed upon it by Council, was too expensive. Council accepted their withdrawal. The developer is free to come back to this Board.

Joe Feinauer motioned that the meeting be adjourned. Ken Warden seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk

***NEXT MEETING --- MAY 14<sup>TH</sup>***