

PLANNING BOARD MINUTES MAY 15, 2023

The Planning Board of the City of Texas City met in a regular meeting on Monday, May 15, 2023, at 5:00 p.m. Planning Board members present: Commissioner Jami Clark, Commissioner Thelma Bowie, Alternate Member Jose Boix and Alternate Member Aric Owens. Staff members present present: Kimberly Golden, Veronica Carreon, Casey Bennett (Chief Building Official), and David Kinchen (Deputy Building Official). Guests were: Fire Marshal Jason Brown, TCFD, Chief Joe Stanton, TCPD, John Wagner, Kyle Alpers, Carly Gast, Kittle Properties; Alix Osgood, BGE, Inc.; Erika Scott, Kittle Properties; Millard Johnson and Alex Fones, JDKG Law; John Seta, WD Partners; Ralph Lopez, BGE, Inc.; Reagan Lee, Saping Khone Kettarong and Lyle Henkel.

Commissioner Jami Clark indicated a quorum was present and called the meeting to order.

ITEM NO. 1 APPROVAL OF MINUTES

A motion to approve the minutes of May 1, 2023, was made by Mr. Jose Boix/Commissioner Thelma Bowie. All other members present voted aye.

ITEM NO. 2 PUBLIC COMMENTS

There were no public comments.

ITEM NO. 3 Tabled from the May 1, 2023 meeting - Consider and take action on the Development Plan for Buc-ee's Texas City #33 Car Wash. Located south of Texas City Buc-ee's Travel Center and north of Tanger Outlet Mall.

Ms. Kim Golden stated this item was tabled at the last meeting due to no representation at the time of presentation.

The Applicant will be adding a car wash to the existing Buc-ee's Travel Center on the Gulf Freeway. Staff worked with the developer and had a number of comments about the layout and the landscaping. Particularly, there was some concern about the noise from the dryer units because there is a hotel and apartments nearby. There was an outstanding issue about the generator that was installed without the proper screening in the Gateway Overlay District (GWY).

Buc-ee's has worked with staff and resolved comments except one remaining item about checking with the architectural review committee on their proposed plans, which is not a city requirement. It is just something to make them aware of.

She asked Mr. John Seta if that contact was made, to which he replied yes. He added that Colin Campbell has reviewed them, and his team is reviewing them now. Per Mr. Seta, Colin does not see any issues, but his other colleagues are still reviewing them. Staff are only making them aware of this because it is a civil matter.

Subject only to showing compliance with this requirement for architectural review, staff has no objection to approval of the Buc-ee's Car Wash Development Plan.

Commissioner Jami Clark asked if there were any more questions. There were none.

A motion was made by Alternate Member Jose Boix/Commissioner Thelma Bowie to approve the Development Plan for Buc-ee's Texas City #33 Car Wash. All other members present voted aye.

ITEM NO. 4 Consider and take action on the Development Plan for Texas City Martial Arts & Fitness. Located in the 6th Street Revitalization District at 411 6th Street North, Texas City.

Ms. Kimberly Golden stated this is an existing business already on 6th Street which is relocating to a new location on 6th Street because the founder has sold the building with the original location.

The use is compliant with the guidelines for the 6th Street Revitalization District. They are complying with the GWY with the exception of landscaping. As previously stated to the Planning Board, the TCEDC and Parks & Recreation Department are working together on a landscaping project for 6th Street. They have a project coming forward that will be addressed for the district. With this being the case, staff have no objection to approval.

Commissioner Clark asked if they have met the requirements of the 6th Street Revitalization District, to which Ms. Golden replied yes.

Mr. Jose Boix asked about Ms. Golden's report where she stated, "The anticipated use of the martial arts is consistent with the purpose of the Sixth Street Revitalization District..." and then read the following paragraph that stated, "Although the anticipated use as a martial arts and fitness gym is not one of the enumerated principal uses of the District..." Ms. Golden replied in the ordinance there is a list of eight specific items that are principal uses on what the city would like to see on 6th Street, but then there is also the "catch-all" phrase that says it doesn't have to be one of those enumerated. What the city would like is a lot of different businesses there. There is already a dance studio, so this use which includes lessons and training in martial arts is consistent with what is already there. Plus, it is already on 6th street, just at a different location. There is nothing to indicate that the use, even though it is not an enumerated use, would be a problem for 6th Street. Mr. Boix stated he just wanted some clarification and is okay with the use.

Commissioner Thelma Bowie then asked if anyone was in attendance to represent the project, to which Ms. Sapng Khone Kettarong indicated her presence. Commissioner Bowie asked if she had any comments or questions for the Board to which she replied no.

Commissioner Jami Clark asked if there were any more questions. There were none.

After presentation, a motion was made by Commissioner Thelma Bowie/Alternate Member Aric Owens to approve the Development Plan for Texas City Martial Arts & Fitness. All other members present voted aye.

ITEM NO. 5 Consider and take action on the Development Plan for Heights Battery Storage Facility. Located at 430 Hwy 146 N., Texas City.

Ms. Golden stated there are a couple of battery storage facilities in Texas City. These battery storage facilities collect energy during non-peak times and sell it back to the grid during peak times. The project on the agenda for action will be situated on a vacant piece of property and will enhance the tax base. It has very little impact on the environment and will not create a problem for traffic.

The application is compliant with the GWY as far as landscaping, and the Applicant has addressed all questions from staff. Staff have no objections to the project and recommend approval.

Commissioner Jami Clark asked if there were any questions.

Alternate Member Aric Owens asked for clarification on where the facility would be on the property. Mr. John Wagner indicated the location on the exhibit.

Mr. Owens asked if there is water or a fire hydrant on the site, to which Mr. Wagner replied the batteries are lithium and they won't have water connected to them. Often times what they do is a Siamese connector so that the fire department can hook a hose up to it. The best guidance that

is given now if there is a fire, which is very rare in these units, is to let that one unit burn out and to isolate it with a water curtain.

Mr. Owens then asked how they would prevent that water from running into Moses Lake because he believes the ditch goes into Moses Lake. Ms. Golden replied that this is a subject that has not come up. Mr. Owens believes it goes into the stormwater and this was his biggest concern with the last battery storage facility. He stated that the facility will allow the runoff to flow into the lake and then they will have to wait to see the consequences. His concern is about it going into the city's ecosystem, and it takes time to clear. Also, with the recent fire at O'Reilly's as an example, there is too much stuff that could potentially get dumped into the water. He added that this may not ever happen, but when it does happen it will be a huge problem.

Mr. Wagner replied they will have to do some grading on the site, so when they get closer to construction, they will have to do some engineering of the stormwater and containment to determine what is best for the project. He added that these units are each individual battery cells so there is an airtight sealant and they each have their own ventilation system that will trap any emission that can come out of a fire.

Mr. Owens stated what scares him the most is fire protection. He is very concerned about the foam getting into the bay because it is harmful to the environment. He then asked Mr. Wagner how he would prevent that from happening. What is the remedy because he will have to spray something on top of the fire to put it out.

Mr. Wagner replied that the manufacturer's recommendation for avoiding a situation like that is to let the one cell burn itself out. They do not suggest that water be used to put out a fire because they are lithium batteries, and water is an accelerant. Mr. Wagner advised the manufacturer they are working with offers training to fire departments and can train them how to handle this, but their recommendation is to do a water curtain. This is basically spraying two water hoses on either side of the unit to prevent it from spreading across to the other units.

Mr. Owens then asked how much water that would take, to which Mr. Wagner replied he did not know. Mr. Owens stated again that his biggest concern is that water will run off into the ditch. How can this be prevented?

Mr. Wagner replied the best way to alleviate that concern is to put in the proper measures to capture that water.

Ms. Golden added that the Board could make their approval of the development plan subject to the applicant addressing this concern with a containment plan. Mr. Wagner agreed and stated their goal is to alleviate any concerns that the city may have.

Mr. Boix stated he basically has the same issue because it is stated that no water or sewer will be needed. Site drainage will be accomplished by using on-site collection systems. Mr. Wagner replied they are raising the site quite a bit to meet ordinance requirements.

Commissioner Jami Clark asked if there were any more questions. There were none.

After presentation, a motion was made by Alternate Member Jose Boix/Commissioner Thelma Bowie to approve the Development Plan for Heights Battery Storage Facility upon condition that final plans for construction provide for containment of runoff to prevent environmental harm to Moses Lake. All members present voted three in favor of the motion and one [Owens] opposed to the motion.

ITEM NO. 6 Tabled from the April 17, 2023 meeting – Consider and take action regarding denial of the Development Plan for Juniper Landing. Located at 7720 Emmett F. Lowry Expy., west of the Gatsby Condominiums.

Ms. Golden stated this item was tabled at the April 17, 2023 meeting. The Planning Board requested additional information in two specific areas. They wanted additional data from Public Safety – Police, Fire & EMS. Staff also reached out to Emergency Management for some input. The data was collected and provided to board members, and also to the Applicant about a week before the meeting.

Staff were also asked to provide a detailed site plan review, which was done. Staff provided approximately 25 comments to the Applicant. Many of those comments have been resolved, but there several remain either pending or unresolved.

- Specifically, the drainage review is pending with the drainage district. They have made their submission with GCDD and it is under review.
- There is a need for a drainage easement from the proposed outfall at the site to the canal across a pipeline. The Applicant has indicated they are working with that pipeline to get the easement, but they don't get have the easement, yet. This matter is considered as pending.
- The requirement for a fence around the proposed detention pond is unresolved. The Applicant is declining to provide the fence because they say it is not specified in the ordinance.
- Another unresolved matter is Applicant's intent to connect to Catalpa Street as the required second primary connection. Catalpa Street is an existing street through an existing neighborhood. Staff have indicated that connection is not consistent with the city's prior practices regarding similar developments. Also, it is in the city ordinance that you can't have an adverse impact on an existing single-family neighborhood. They are declining to follow staff's recommendation to plan another access, possibly to 25th Avenue North.
- The proposed connection to the Emmett F. Lowry northbound frontage road is pending. The Applicant has applied but not yet received a permit from TxDOT for the connection.
- The requirement for a screening wall on the west side of the property between the proposed multifamily development and the existing single-family neighborhood is unresolved. The city's ordinance is clear that the screening is necessary and has been followed consistently by the Planning Board. Applicant asserts the screening wall is not required because the property is zoned C-1.
- The last remaining unresolved item is the requirement for a high percentage of covered parking, with some required to be garages. The city has applied this policy requirement consistently for approximately the last five years and codified the requirement at its meeting on May 17, 2023. The Applicant refuses to follow that policy because it is not in the ordinance.

Ms. Golden stated these are the remaining issues as far as the site plan review.

Regarding the Public Safety Data, Chief Joe Stanton and Assistant Fire Chief Dennis Harris are in attendance to speak to it, but Ms. Golden guided everyone through the data.

- The chiefs gathered existing data from 12 apartment complexes, which are similar in size to the proposed development consisting of 228 proposed units. They also included complexes that are either age restricted to 55 and above, or income restricted to qualify for tax credit financing, or both. They tallied the actual call data for the twelve selected complexes for the last 3 years – 2020, 2021 and 2022. The data was analyzed and presented in a tabular chart. The first column of the chart has the unit count per apartment

complex which adds up to about 2,474 units. This means that Colonial Park Apartments with 50 units has 2% of the total units. Village at Morning Star Apartments with 100 units has 4%, etc. If calls were of equal probability, then you would expect the call volume to be around the same as the proportion of units to the total number of units. But the analysis shows that Colonial Park Apartments, with 2% of the total units, had 7% of the FD calls and 3% of the PD calls. And if you look at the 55+ and tax credit complexes, Village at Morning Star Apartments with 36 units had 1% of the units, but 15% of the FD calls and 6% of PD calls. Mansions on Moses Lake, which the Applicant says is the most similar to their proposed development, had 10% of the units and over a 3-year period had an average of 21% of the FD calls and 11% of the PD calls.

- Fire also looked at the breakdown between its EMS and other calls. In 2020, at Mansions at Moses Lake Apartments, with 240 units, they had a total of 152 calls – 117 were to EMS and 35 were calls to the FD. Again, this was presented for 2020, 2021 and 2022 and for all twelve complexes in the sample.
- Fire also looked at the EMS standby time of the ambulances and EMS crews at the emergency rooms. The calls were broken down into calls with standby time of less than 20 minutes, 20 – 30 minutes, 30 – 45 minutes, and 45 minutes to an hour and beyond. It was then shown in pie charts by year. In 2020, they were logging in calls with standby time of less than 20 minutes at 22% of the time. Less than 20 minutes is the goal. But they were exceeding 30 minutes at least 47% of the time in 2020. By 2022, you can see that the number of times they have standby time for less than 20 minutes is reducing and the time that they are more than 30 minutes is increasing. By 2022 over half of their calls to emergency rooms had standby time greater than 30 minutes, and they were able to make only half as many calls with less than 20 minutes standby time.
- Lastly, they looked at the data according to the service area for each fire station, including the area to be served by Fire Station #4, which is under construction and not yet in service. The record of calls in that district shows an increasing trend in line with population.

Ms. Golden completed the presentation of data and again stated that the chiefs were in attendance if anyone had any questions. Staff have met with board members in information sessions and provided all of this data and answered their questions. Staff still maintain their recommendation that this project is not right for Texas City at this time. The recommendation from staff is to deny approval of the development plan.

Commissioner Clark emphasized that the timing is not right at this time and asked if anyone had any questions for Chief Stanton or Assistant Chief Harris. She stated that she has all the information that the other board members have received, and she can't go against what she sees. She added that they hate to deny anything, but as staff have stated the timing is just not right. She wishes they could hire more staff for PD and FD, but at this time it is not feasible.

Commissioner Clark then asked if anyone had any more comments or questions for staff or the Applicant.

Mr. Jose Boix stated that it would be hard for him to go against the recommendation concerning safety to move forward with something that the data clearly affects the quality of life so severely. He added that it seems like the data supports not having such a facility. Commissioner Clark agreed and added that in 3 – 5 years if they could get more staffing needed for public safety, she believes it would be a whole different "ball game". Texas City just can't handle the proposed project right now.

Commissioner Clark asked if there were any more questions, to which no one replied. She then entertained a motion. Commissioner Thelma Bowie made a motion to deny approval of the development plan as recommended in Action Item No. 6.

Mr. Millard Johnson, council for Kittle Properties, then asked if he could be heard, to which Commissioner Clark replied yes. He asked for clarification because he is hearing the Board say that the basis for denial is based on the inability of the city to provide emergency services based on the recommendations and statistics of the PD Chief and the FD Assistant Chief in attendance. He asked if this is the basis the board is relying upon to not approve this project, to which Commissioner Clark stated yes.

Mr. Johnson then stated that Kittle Property Group is a serious developer, and this is a good project. He stated that Ms. Golden has admitted as much previously. This development is a multi-family project proposed in an area that is zoned Multi-Family Development. When he looks at the statistics, he thinks they need to be really careful because many of the FD calls of many fire departments, and he's not sure if this is the case here, roll with EMS calls. They are talking about senior living, and a 3-year running average during COVID, and response time with EMS people going into hospitals that are understaffed due to COVID. He is concerned about the statistics that have been compiled. They haven't had an opportunity to test them and have not seen the underlying data, but it appears to him that if you look at the statistics that this is something of a future threat. They are worried they are not going to be able to do something in the future. He added that this development is not going to come online until mid- 2025.

He stated there is a fourth fire station in the works, and he claims that he has been authorized by the Kittle Property Group to say that if this is approved, they are willing to contribute to that fire station. They have authorized him to say they will contribute \$25,000 to assist in building that fire station. They believe this is a good development and the time is now. He claims that more and more people are going to need these facilities. It is true that 55+ developments like this garner more calls because the residents are older.

He stated again this is a good development for the community. They are asking staff to take a real serious look at this development because by the time it comes online many of the concerns that staff have, they believe can be rectified in the next 24 – 28 months. He added that everyone is looking to hire more people and that hopefully the response time at the hospitals will go down as they are able to restaff. He claims this is not a reason to put the brakes on something that will be a good development on a good piece of property in a place that is zoned for multifamily. All of the issues raised by Ms. Golden were addressed to staff and they are asking to get approval of the submission of the development plan with conditions. They can clear the TxDOT issue, the fencing issue is not required around detention, which is something that just popped up. The parking issue is not in the ordinance - this development plan is not subject to that ordinance by law.

Mr. Boix stated he can see the safety issues and the strategic planning from the city, and he believes the city should have some capabilities of foreseeing expansions like this. If the implementation of this project won't be here for another 2.5 years how will that be factored in the strategic planning for the city as it grows? How does the city's strategic planning include the additional safety requirements that they are requiring as the city grows?

Commissioner Clark replied that they have discussed this and just like Mr. Johnson mentioned about the short staffing at the hospitals, the city has the same issue in the police and fire departments. As mentioned earlier, if staff are increased in 3 - 5 years the city could be where they need to be, but to say that this project can be done within the next 2 – 3 years, she can't go against what PD and FD are saying. They have the facts in front of them. She hears what Mr.

Johnson has said about it maybe being 2024 before their project starts, but in listening to the city's experts, PD and Fire, they have to consider public safety and take care of our citizens.

Ms. Bowie then asked Ms. Golden if the city has received any like proposals in the past, to which Ms. Golden yes - pre-development inquiries are received routinely. Pre-Development staff have been very transparent with callers, as they were very transparent with Kittle Properties about how they see the position of Texas City and that it's not ready for multifamily development right now for these reasons.

Mr. Owens then asked if there is any reason this can't be a one-story development for 55 and up. His concern is elevators going out and putting a strain on police and fire staff to bring folks downstairs. There are already 6,000 apartment units in Texas City. There is one across the street that has placed 850 calls to TCPD in a year and now the developer is asking them to bring in another facility, very similar in nature to that, giving them a potential of adding 900 more calls. That would mean 2.5 calls per day to one facility. The data is counting calls, not the number of people responding to the call. It's one call and maybe 5 showed up. The data is number of calls, not per people on site. He doesn't see how this can be resourced. This site is supposed to be age-restricted, but he sees other sites in town that are not. They are supposed to be age-restricted, but he drives by the Mansions at Moses Lake quite often and sees folks that are not 55 and over living there. He doesn't know if there is a way that Kittle Properties can stop that. If younger people move in, how do you make them move out? Kittle Properties staff does not live on site and probably not in Texas City so how does this get managed? What is their plan to enforce this?

Ms. Carly Gast replied that the age restriction is heavily regulated by state agencies. Internally they have a compliance team that oversees all move-ins. No guests can stay on the property for more than a week at a time. Mr. Owens asked how they regulate that. Ms. Gast replied that in order for their lease and move-in to be approved they have to go through a third-party age verification process. Mr. Owens stated that his hang-up is that Ms. Gast stated guests can't stay more than 7 days, but how is this monitored? Do they check in at the gate? Are they given a token or something that they have to return when they leave? How will they prevent this because he doesn't see it happening. All he sees is more strain on the city's resources and he can't make sense of it as a taxpayer.

Commissioner Clark stated that Mr. Owens has made a good point, referring to the Mansions at Moses Lake, because the city heard the same thing when they were moving in regarding age restriction, but after a few years who is monitoring this now. As a fact it is known that so many of the people that live there are elderly grandparents and the next thing you know is they have a grandson living with them. She stated that she hears Ms. Gast stating this is monitored, but they can see it happening now in Texas City. This is consequentially the reason for so many police calls. During Hurricane Harvey, for instance, she knows that the city's Emergency Management Director stated he was in the fire department then and they spent hours and hours trying to vacate people, which Assistant Chief Harris can attest to, because there were no elevators. Is the developer planning on having elevators installed, to which Ms. Gast stated yes. Commissioner Clark then asked if the elevators are not working, they must consider that it can put a huge strain on emergency personnel in the case of storms and the like.

Ms. Gast stated that she understands, and they are not denying that a senior community isn't going to generate more police and fire calls. When you concentrate that many people in an area it's going to generate those types of calls. They have a third-party market study completed and they have determined that the people that would live on this property would come from within Texas City. Apartments are built for seniors. They are built with accessibility requirements and features so that it's easier for them to live and easier in turn for police and fire to service those

properties. Back to the age-verification, she can speak on behalf of Kittle Properties, and they will not allow anyone under the age of 55 because they can get in trouble and their funding could get pulled.

Ms. Gast wasn't aware if the Board was given some of the information related to the mitigation items that they are including in the property that could help with the concerns. These were submitted with one of their written responses. She pointed out that all of the buildings will be "sprinkled", ADD's in all of the buildings, first aid kits in all of the buildings, and additionally all of the on-site property staff will be CPR certified. Security cameras will be installed throughout the property. They are using a new technology where city staff, PD and FD, can log in to view surveillance footage for whatever reason. That camera system will also include license plate readers. All of their residents will receive a detailed rules and regulations package that will include emergency numbers. They will also have fire evacuation and hurricane preparedness videos that residents are given to watch when they sign their lease and are ready to move in. They have an emergency action plan that was submitted, which she supplied to the Board. Ms. Golden stated all of that information was shared with the PD Chief, and the FD Chief.

Assistant Chief Dennis Harris wanted to clarify a couple of things. It was stated that the primary reason for staff not recommending the project was because of the EMS and police calls. Being one of the reviewers, he and staff have had a lot of conversations about this project and the reasoning behind TCFD not recommending the project, was not only the increased EMS calls that these sites generate, but also the multiple issues that they feel were not addressed as per city ordinance or their recommendations. It was a compilation of both of these items put together - not only one or the other. As far as COVID being a contributing factor, in 2022 and 2023 the numbers are trending up regardless of COVID or not. The call volume is going up every year. Single family is less dense and for 250 units that is a larger population, which is going to be more mixed. At some point can everyone in that number be of a certain age – yes. They also responded to the 55 and up occupancies and some of the responses they make to them are people that are younger than 55. They being the responders, if they receive a 911 call, have to go. They can't legislate how management lets people in or out, but if they do a poor job of that TCFD still has to respond regardless.

Mr. Boix then asked if the Planning denies the project does it go before City Commission, to which Ms. Golden replied if the Applicant is denied they have a right to appeal to City Commission.

Commissioner Clark then added that while she has addressed her concerns regarding the public safety part, she also wants to express as earlier, when speaking of connection to Catalpa Street, those neighbors will be in an uproar with an apartment complex. Ms. Gast replied they are only requesting access to Catalpa Street for emergency access only. They only want one point of entrance and exit and don't want Catalpa Street as an open public access.

Assistant Chief Harris added to this and stated what has happened countless times that is occurring every day in Texas City and countless other places, these communities put in "emergency access gates" and then the maintenance guy decides to open it so that the residents can use it as another access to the site. FD can go back and forth trying to keep it locked, but in the end if the residents want to keep the gate open, they will keep it open. The FD can't legislate this either and they have given Ms. Gast several examples (photos) of the same thing that has been discussed – the gates being left open all the time.

Ms. Golden added that Costa Mariposa is supposed to have an emergency-only gate and it has been open for five years now. Assistant Chief Harris stated they have had them close it before, FD has put locks on it, and they always end up taken off of the gate.

Ms. Gast stated that it is important to say that they do not manage or own any property in Texas City, and it sounds like they do things differently than some of the other property owners and managers. They don't want to generate traffic through their property and the gate will be locked at all times.

Mr. Owens asked if they plan to own this all the way to the end, to which Ms. Gast stated yes. Mr. Owens stated there has been a lot of "heartburn" with other multifamily units, to which Ms. Gast replied they develop, they are the general contractor and property manager. They don't really sell anything ever.

Commissioner Clark asked if there were any more questions. There were none.

After presentation, a motion was made by Commissioner Thelma Bowie/Alternate Member Aric Owens to deny approval of the Juniper Landing multifamily project based upon 160.053(D)(3)(j) in the interest of promoting the public health, safety, order, convenience, prosperity and general welfare of the citizens and residents of Texas City, TX. Additionally, denial is based upon the pending and the unresolved issues with the development plan regarding drainage, fencing of the detention pond, lack of secondary vehicular access, lack of TxDOT permit for primary vehicular access, lack of required screening for lower density residential areas, and failure to follow policy regarding covered parking and garages. All other members present voted aye.

ITEM NO. 7 GENERAL UPDATES

There were no updates to present.

ITEM NO. 8 OTHER BUSINESS (Any conceptual development proposal requesting to come before the Planning Board)

There was no other business.

Commissioner Jami Clark asked if there was any other business to which there was none. **A motion was made by Alternate Member Aric Owens/Commissioner Thelma Bowie to adjourn. All members present voted aye.**

Kimberly Golden, Secretary

Date

Minutes approved by the Planning Board at its meeting on _____.