

**Minutes  
Planning and Zoning Meeting  
September 14, 2009**

On this 14<sup>th</sup> day of September 2009, at 7:00 p.m., the Planning and Zoning Commission convened in a Regular Meeting, and the same being opened to the public at their regular meeting place; thereof, at City Hall, 303 S. Teel Drive, Devine, Texas. Notice of said meeting having been prescribed in Chapter 551, Government Code, and Vernon's Texas Codes, Annotated, and the following members thereof, being present, namely:

Doug Wilkins, Chairman  
Onis Wiemers, Secretary  
Darrell Murdock  
Jim Lawler  
Mike Herring

Absent being: Ed Dougherty; thus, constituting a quorum.

Personnel present: Darrell Rawlings, Code Compliance Officer.

Others present: Misty Schnautz, Devine; Paul Noak, Devine.

Commissioner Wilkins called the meeting to order.

The first order of business was to discuss and consider approving minutes from the meeting on August 17<sup>th</sup>, 2009.

The Planning & Zoning Commissioners reviewed the minutes. Commissioner Lawler noted an error on the minutes, wherein the commissioners that made the motion to approve the minutes from the meeting held on July 20<sup>th</sup>, 2009 were incorrect. Darrell Rawlings, Code Compliance Officer, advised the commissioners that he would see that this item was corrected. No other errors were noted.

Motion made by Commissioner Lawler, seconded by Commissioner Herring to approve the minutes from the meeting on August 17<sup>th</sup>, 2009, pending the correction of the commissioner's names on the motion to approve the minutes of July 20<sup>th</sup>, 2009 .

Ayes	--	Five
Nays	--	None
Absent	--	One (Commissioner Dougherty)

Motion carried.

**Planning and Zoning Meeting**  
**September 14, 2009**  
**Page 2**

The second order of business was to discuss and consider request made by Paul Noak on behalf of the Devine Evergreen Cemetery Association for a waiver of the platting and filing requirements of the Subdivision Ordinance of the City of Devine to allow the division and conveyance of 0.18 acre of a 5.49 acre tract of land in the San Antonio Trust Subdivision to an adjacent property owner, located within the ETJ of the City of Devine and adjacent to Allman Drive to eliminate minor utility encroachments

Mr. Paul Noak was present to speak regarding the requested waiver. Commissioner Wilkins addressed Mr. Noak regarding the requested waiver. Mr. Noak informed the commissioners that this property was due north of the existing Evergreen Cemetery and that it was purchased by the Devine Evergreen Cemetery Association in 1978. Recently, the Devine Evergreen Cemetery Association has started looking into clearing the property and making plans for the property. Mr. Noak explained that The Devine Evergreen Cemetery Association discovered that there was an encroachment of the fence on the property, and rather than the expense of moving the fence and relocating utilities, they wanted to sell this portion of the property to the neighboring property owner. Mr. Noak explained that the originally submitted survey indicated the city limit line in error and, with the assistance of Mr. Darrell Rawlings, Code Compliance Officer, documentation that indicated that the 1955 map of the City of Devine was in error regarding this portion of the city limit boundary was provided and the matter had been corrected. Mr. Noak stated that he had been working with Mr. Rawlings and Mr. Tom Cate, City Attorney, regarding this matter and the decision was made to request a waiver from the platting requirements due to the following:

1. The two resulting tracts will be greater than 5 acres.
2. The property to be conveyed is pie-shaped with no access to a public way or easement and therefore the neighboring property owner would not be able to sell this property for development, and that there would be little concern for development due to the size and shape of the property.

Mr. Darrell Rawlings, Code Compliance Officer, informed the commissioners that the matter had been presented to Mr. Raul Garcia, City Engineer, and Mr. Tom Cate, City Attorney, and that the platting requirements of the city require access and utilities to all lots and size requirements; however this division is being done essentially to relocate a property line between two neighbors, and not to create a useable lot for development. Mr. Rawlings stated that in consideration of all of the facts, Mr. Garcia, Mr. Cate, Mr. Rawlings, the Public Works Director and Superintendant, and the City Administrator did not object to the granting of the requested waiver to convey ownership of this property to the neighboring property owner by metes and bounds description as long as the property was to be attached to the neighbors property and not sold as a separate tract of land.

The commissioners held discussion on the requested waiver, and informed Mr. Noak that the City Council would meet to take action on the matter and consider their recommendation at 7:00 pm on Tuesday, September 15<sup>th</sup>, 2009.

**Planning and Zoning Meeting**  
**September 14, 2009**  
**Page 3**

Motion made by Commissioner Herring, seconded by Commissioner Lawler to recommend that the City Council approve Paul Noak's request on behalf of Devine Evergreen Cemetery Association to waive the platting and filing requirements of the Subdivision Ordinance of the City of Devine to allow the division and conveyance of 0.18 acre of a 5.49 acre tract of land in the San Antonio Trust Subdivision to an adjacent property owner, located within the ETJ of the City of Devine and adjacent to Allman Drive, by metes and bounds description to eliminate minor utility encroachments with the condition that the 0.18 acre tract of land be attached to the neighboring property and not be sold as an independent lot.

Ayes	--	Five
Nays	--	None
Absent	--	One (Commissioner Dougherty)

Motion carried.

The third order of business was to discuss and consider request made by Paul Noak for a refund of a \$200.00 subdivision fee, less the \$50.00 waiver request fee which was paid for a subdivision plat to divide 5.49 acres located within the ETJ of the City of Devine and adjacent to Allman Drive and owned by the Devine Evergreen Cemetery Association into a 5.30 acre tract and 0.18 acre tract to eliminate minor utility encroachments.

Mr. Paul Noak informed the commissioners that the subdivision fee of \$200.00 was paid when the initial plat was submitted for review, and that since they are seeking a waiver to the platting requirements, he would like a refund of \$150.00 of the Subdivision Fee, which is the balance after the \$50.00 waiver fee.

Motion made by Commissioner Herring, seconded by Commissioner Lawler to recommend that the City Council approve Paul Noak's request for a refund of a \$150.00 which is the balance of a \$200.00 subdivision fee, less the \$50.00 waiver request fee which was paid for a subdivision plat to divide 5.49 acres located within the ETJ of the City of Devine and adjacent to Allman Drive and owned by the Devine Evergreen Cemetery Association into a 5.30 acre tract and 0.18 acre tract to eliminate minor utility encroachments.

Ayes	--	Five
Nays	--	None
Absent	--	One (Commissioner Dougherty)

Motion carried.

The fourth order of business was to discuss and consider request made by Misty Schnautz for a waiver of the platting and filing requirements of the Subdivision Ordinance of the City of Devine to allow the division and conveyance of property located at 110 Warhorse Drive, within the City Limits of Devine.

Misty Schnautz was present regarding the requested waiver.

**Planning and Zoning Meeting**  
**September 14, 2009**  
**Page 4**

Commissioner Lawler addressed Mr. Darrell Rawlings, Code Compliance regarding the requested waiver. The land that makes up 110 Warhorse Drive was purchased from two different owners in two different transactions in 1959 and he referred to the letter that was sent to G&E Custom Homes, Inc. c/o Misty Schnautz in response to her request to divide the property. In the letter Mrs. Schnautz was informed that the land consisted of an unplatted area, 0.527 acres in size, that Ray Keith purchased from the Devine Independent School District in April 1959, and that Mr. Keith also purchased the North half of Lots 6, 7, and 8 of New City Block 81 of the Jamison North End Addition to the City of Devine from Ruby K. DuBose later in 1959. Under the Subdivision Ordinance the dividing of property requires platting, or if a plat exists, it must be vacated before it can be re-platted; however, according to Mr. Tom Cate, City Attorney, and Mr. Raul Garcia, City Engineer, the portions of Lot 6, 7, and 8, could not be vacated without vacating the lots in their entirety, which would require surveying the neighboring property owners land and obtaining their signatures on the plat. Mr. Rawlings explained that there are many properties in Devine that were platted years ago, but that the owners had sold portions of their property by metes and bounds description without platting or city approval. Mr. Rawlings informed the commissioners that the Subdivision Ordinance was adopted March 1988. Mr. Rawlings informed the commissioners that Mrs. Schnautz had expressed a desire to keep the property zoned Class A. Single Family Residence District, and has expressed a desire to build a one-family dwelling on the land that is the North half of Lots 6, 7, & 8. Mr. Rawlings stated that the area of the North half of Lot 6, 7, and 8 measured 70-feet wide by 135.4-feet deep, therefore the minimum lot width and area requirements were met for Zone Class A. Single Family Residence District. Furthermore, utilities were already in place and were serving the neighboring properties. He explained that Mrs. Schnautz was requesting to sell the unplatted portion separate from the platted portion of this property for future construction of a home.

The commissioners held discussion on the requested waiver, and informed Mrs. Schnautz that the City Council would meet to take action on the matter and consider their recommendation at 7:00 pm on Tuesday, September 15<sup>th</sup>, 2009.

Motion made by Commissioner Wiemers, seconded by Commissioner Herring to recommend that the City Council approve the request made by Misty Schnautz on behalf of G&E Custom Homes, Inc. for a waiver of the platting and filing requirements of the Subdivision Ordinance of the City of Devine to allow the division and conveyance of property as two portions of land by metes and bounds description, one described as 0.53 acres out of F. Niggli Survey No. 2, adjacent to the east boundary line of Warhorse Drive and the north boundary line of New City Block 81, and one described as the north half of Lots 6 and 7, and part of Lot 8 of New City Block 81, Jamison North End Addition, located within the City Limits of Devine.

Ayes	--	Five
Nays	--	None
Absent	--	One (Commissioner Dougherty)

Motion carried.

**Planning and Zoning Meeting**  
**September 14, 2009**  
**Page 5**

The fifth order of business was to discuss monthly Code Compliance, Floodplain Administrator, and Fire Marshal Reports for August, 2009.

Commissioners held discussion with Mr. Darrell Rawlings, Code Compliance Officer, on permits issued, inspections conducted, ordinance violations, and enforcement.

Commissioner Wilkins inquired about the status of the work being done at the Devine Independent School District campuses. Mr. Rawlings informed the commissioners that work is still being performed on the campuses, however the areas where work is being performed is made inaccessible to students, and that he was unaware of where any problems relating to the construction.

The Commissioner Wiemers inquired about compliance on ordinance violations where the property was posted, and stated that he saw that only one posted property had complied out of ten that were posted. Mr. Rawlings explained that the figures on the report represent the activity for the month and that some of these posted properties may be resulting from property posted at the end of the month, while others may have resulted in letters being mailed, notices of violation being sent, or the matter being filed in court. Mr. Rawlings explained that some properties in town, which had been problems for several years, had judgments rendered in court due to tax suits filed by the Medina County Tax Office; some of these properties may come up for auction by the end of this year.

Commissioner Wilkins asked if a previous property owner could take the property back after it had undergone a tax foreclosure and been auctioned to a new owner. Mr. Rawlings stated that he was not very familiar with the tax laws regarding this matter, but that to the best of his understanding there was a time period that a previous owner could obtain the property. Commissioner Wiemers stated that he had looked into the matter before and that he was told by the officials at a tax auction that they recommended that a person that obtain a property through an auction wait two years before investing in a property to avoid a previous owner from taking the property back. Mr. Rawlings stated that he had heard that a person could sue the buyer if something with "sentimental" value to them had been destroyed, but he did not know how accurate the information was. Mr. Rawlings stated that people purchase property to use it, and generally he found that people would at least mow the property, even if it took some time for them to start investing a lot of time or money on improvements. Commissioner Wiemers stated that he had spoke with the county about property up for auction and they told him that even if the owner gave a statement in writing and notarized that he had no interest in the property, the owner still had up to two years to reclaim the property.

There being no further business to come before the Planning and Zoning Commission, Chairman Wilkins adjourned the meeting.

---

Chairman

---

Secretary