

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**MARCH 14, 2019**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 14<sup>th</sup> day of March, 2019. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chair Sandy Bahan called the meeting to order at 6:30 p.m.

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Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Lark Zink  
Nouman Jan  
Neil Robinson  
Chris Lewis  
Sandy Bahan  
Tom Knotts  
Dave Boeck

MEMBERS ABSENT

Erin Williford  
Steven McDaniel

A quorum was present.

STAFF MEMBERS PRESENT

Jane Hudson, Interim Director, Planning &  
Community Development  
Roné Tromble, Recording Secretary  
David Riesland, Traffic Engineer  
Ken Danner, Subdivision Development  
Manager  
Beth Muckala, Asst. City Attorney  
Bryce Holland, Multimedia Specialist

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**CONSENT DOCKET**

Item No. 2, being:

**TMP-135 -- APPROVAL OF THE FEBRUARY 14, 2019 PLANNING COMMISSION REGULAR SESSION MINUTES**

Item No. 3, being:

**COS-1819-4 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY MORNINGWOOD, L.L.C. (JAMES YAGER AND TODD D'AMICO) FOR HACKBERRY HILLS, FOR 37.86 ACRES OF PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF 84<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE NORTH OF STATE HIGHWAY 9.**

Item No. 4, being:

**SFP-1819-6 – CONSIDERATION OF A SHORT FORM PLAT SUBMITTED BY JOSEPH HARROZ, JR. AND THE BINRO H. LEE TRUST (SMC CONSULTING ENGINEERS, P.C.) FOR LOTS 1A AND 1B, BEING A REPLAT OF PART OF BLOCK 4, SMOKING OAK NO. 1, GENERALLY LOCATED AT 2515 AND 2511 MCGEE DRIVE (NORTH OF STATE HIGHWAY NO. 9 AND EAST OF MCGEE DRIVE).**

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Chair Bahan asked if any member of the Planning Commission wished to remove an item from the Consent Docket. There being none, she asked for a motion.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

*Chris Lewis moved to approve the Consent Docket as presented. Dave Boeck seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Lark Zink, Nouman Jan, Neil Robinson, Chris Lewis, Sandy Bahan, Tom Knotts, Dave Boeck
NAYES	None
MEMBERS ABSENT	Erin Williford, Steven McDaniel

Ms. Tromble announced that the motion, to approve the Consent Docket, passed by a vote of 7-0.

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Item No. 3, being:

**COS-1819-4 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY MORNINGWOOD, L.L.C. (JAMES YAGER AND TODD D'AMICO) FOR HACKBERRY HILLS, FOR 37.86 ACRES OF PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF 84<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE NORTH OF STATE HIGHWAY 9.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Norman Rural Certificate of Survey
3. Staff Report
4. Variance Request for Private Drive Width

This item was approved on the Consent Docket by a vote of 7-0.

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Item No. 4, being:

**SFP-1819-6 – CONSIDERATION OF A SHORT FORM PLAT SUBMITTED BY JOSEPH HARROZ, JR. AND THE BINRO H. LEE TRUST (SMC CONSULTING ENGINEERS, P.C.) FOR LOTS 1A AND 1B, BEING A REPLAT OF PART OF BLOCK 4, SMOKING OAK NO. 1, GENERALLY LOCATED AT 2515 AND 2511 MCGEE DRIVE (NORTH OF STATE HIGHWAY No. 9 AND EAST OF MCGEE DRIVE).**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Short Form Plat
3. Staff Report

This item was approved on the Consent Docket by a vote of 7-0.

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Item No. 5, being:

**O-1819-35 – AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, ADDING SECTION 22-431.65 ("RESIDENTIAL OUTDOOR LIGHTING STANDARDS") TO CHAPTER 22 ("ZONING ORDINANCE"); AND AMENDING SECTION 22-441 ("BOARD OF ADJUSTMENT") TO CHAPTER 22 ("ZONING ORDINANCE") OF THE CODE OF THE CITY OF NORMAN TO ESTABLISH RESIDENTIAL OUTDOOR LIGHTING STANDARDS AND PROVIDE FOR BOARD OF ADJUSTMENT REVIEW OF COMMERCIAL AND RESIDENTIAL LIGHTING STANDARDS AS SPECIAL EXCEPTIONS; AND PROVIDING FOR THE SEVERABILITY THEREOF.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report with Exhibits A and B
2. Ordinance No. O-1819-35

**PRESENTATION BY STAFF:**

1. Jane Hudson reviewed the staff report, a copy of which is filed with the minutes. Staff supports these amendments to the Zoning Ordinance and recommends approval of Ordinance No. O-1819-35.
2. Mr. Boeck – On the commercial, we set up standards so that all new construction had to follow the 100% cutoff at the property line. I've only heard you talking tonight about just taking it on a complaint by complaint basis. So we don't have a residential code that would be applied to all new residential construction?  
Ms. Hudson – This is only on a complaint basis.  
Mr. Boeck – Are we working toward a residential code to do that, like we did with the commercial?  
Ms. Hudson – I wasn't assigned anything like that. This is all I was asked to bring forward.  
Mr. Boeck – Can we ask you to – I thought we should go forward with a residential lighting code, because what it has done commercially has been really, I think, excellent.  
Ms. Hudson – It's my understanding, and I wasn't involved in it so I can't speak about it a lot, but when we moved forward with the commercial outdoor lighting standards there was a section for the residential component, but that was removed. Maybe you remember that. I don't know the reasoning behind why it was removed, so I can't tell you that.  
Mr. Boeck – So how do we move forward – does City Council have to ask you to move forward and look at creating a residential lighting code?  
Ms. Hudson – I would have to be assigned the task, yes.  
Mr. Boeck – And that would be through the City Council?  
Ms. Hudson – I believe that would be correct.  
Mr. Boeck – Since we're just a recommendation group, we cannot deal with policy. Okay. Thank you, Jane.
3. Mr. Robinson – Does this apply to residential subdivision street lighting on new construction?  
Ms. Hudson – For the actual street lighting that the City installs or maintains or anything? No. This is just ...  
Mr. Robinson – If it's a private subdivision with private roadways, how is that lighting regulated, or is it?  
Ms. Hudson – Private road ...  
Mr. Robinson – If you have a gated subdivision, for instance, with private roadways, how is that lighting regulated?  
Ms. Hudson – I believe that's just something that OG&E or OEC – whoever the provider for that subdivision would be – would be the ones that would be installing that lighting. There might be something in their covenants that they have as well.  
Mr. Robinson – But this doesn't deal with that issue at all.  
Ms. Hudson – Not at all. No.

4. Mr. Lewis – I have a couple of questions. It sounds like – and, again, I was here in 2011 when we pulled residential lighting out of the commercial lighting ordinance. It sounds like this is just a reactive measure – maybe two neighbors griping at each other and one trying to one-up the other one about a complaint about something and we're addressing it. Overall, did the City look at how many complaints, let's say over a year, or let's say since 2011 – over the last eight years – how many complaints have actually come in to the City regarding lighting?

Ms. Hudson – I visited with the Code Enforcement Division and – this doesn't count for PD, so I don't know what PD would get – but for Code our Code Supervisor said that, on average, he might get two a year. We didn't have a mechanism – and we still don't, depending on what happens to this – we didn't have a mechanism in place to go out and inspect and say that you need to adhere to these guidelines.

Mr. Lewis – Then my second question is, in regards to commercial lighting, when we went through that and it's very strenuous – obviously, it's multiple pages of a commercial lighting ordinance, and this is barely a page. There's very defined guidelines and what is considered obtrusive. If I remember correctly from commercial, it was 0.2 foot lumens or candle lumens over the property line. So if I made a complaint against you, then someone could come out and not be subjective, but say with a photo gun, or whatever it's called, evaluate are we having light spillover. It seems like in this residential lighting ordinance that it's very subjective, that if a complaint is made then someone comes out and evaluates the offense and if the person that maybe is evaluating prefers lighting, it might not be an offense, but if they don't prefer lighting and prefer darkness, it might be an offense. So I see a lot of latitude in here. It concerns me that we're trying to take care of an issue that comes up twice a year and we're trying to kill it with a sledge hammer. Do you see what I'm saying? It's very broad and very overlaying, and that's my general concern.

Ms. Hudson – I see what you're saying. But when we do have Code officers or Norman PD go out, they are the ruling officer. So they would go out and they would view the site and report back to whether or not – and, again, like you said, what they thought would be a nuisance to an adjacent property owner – that's about as much as I can answer on that. I don't know if Legal might be able to answer anything more on that.

Mr. Boeck – Are they getting some kind of training?

Mr. Lewis – My more concern was was there any type of measurement built into the ordinance, the way we have it in the commercial ordinance. Because, again, commercial is very objective. If you're greater than .2 over the property line, that's an offense. Where in residential it's just an eyeball of – I mean, there's no objective point of view to say these are the criteria and if you go past that, that's offensive.

Ms. Hudson – We did not include the .2 foot candles going over the property line in the residential ordinance. I guess one of the things I could respond to that is, when you have the requirement to submit an engineering lighting plan, that can be several hundred dollars of an expense to an adjacent property owner. I would hate to have that impact someone when it could be easily addressed by re-aiming a light away from a fence to keep it onto their property, as opposed to having it go over.

Mr. Lewis – I think more where I'm coming from is, again, if you have two neighbors that are at odds with each other, and someone's porch light that's left on throughout the night for security, or maybe they can't see at night and they happen to want more light to know where they're walking, and maybe the other neighbor who doesn't like them is offended, then if it's a coach lamp and that coach lamp shines 360 degrees, which qualifies under the ordinance, then that would define as offensive, and then that person would potentially be fined \$100 to \$500, have to remedy it, or have 30 days to remedy it. Very encompassing, very overlaying, and that's my concern with this. It really doesn't have defined standards.

Mr. Boeck – But it's still being done on the observation of a Code Enforcement person or a Policeman, right? They're not just taking the neighbor's word for it.

Mr. Lewis – It's complaint driven.

Mr. Boeck – It is complaint driven, but someone comes out and looks at it.

Ms. Hudson – And assesses the site.

Mr. Lewis – Again, that person that's coming out has no objective criteria to follow, other than saying if I like light this isn't offensive, or if I don't like light it's not. You see what I'm saying? I'm trying to give it some type of objectivity.

5. Ms. Muckala – Part of the reason for it being complaint driven was that this issue has not been previously addressed by our code and there was a want to encourage adjacent property owners or nearby property owners to work together. So being complaint driven is one way to get that to be less of a regulated on the front end, you have to get a permit, and we're going to check and make sure if it's right. It does allow neighbors the leeway to work together and be neighborly. As far as the standard, the residential lighting ordinance, as directed, was a little bit more broad in its terminology, in that it refers to adjacent or nearby properties. So the standard is required for the Code officer or the Police officer to have evidence – document evidence – of the adverse effect on the affected property owner before a decision is made. Also, is given leeway in the way in which that can be corrected, so they can also find the least obtrusive way to resolve the issue. So there was both a little more breadth in the application of determining the adverse effect, as well as the decision in how to make that adverse effect go away in the least burdensome way possible. There was an attempt to balance those.

Mr. Lewis – Clarify for me, when you say the adverse effect, what is the definition of adversely affect? I understand if we shine a floodlight into someone's back window where they're trying to sleep, that's adversely affecting them. But if it's just the glare from the room across the way, and I don't like glare – what is the definition of adversely affecting? Again, in commercial we say that's .2 candle power – candle lumens – whatever it is – over the property line. But in residential, it seems to be subjective instead of objective.

Ms. Muckala – Well, I wouldn't say it's subjective. It is going to be made on objective factual circumstances basis. When a term isn't defined in our City code, it will go with the reasonably defined meaning within the ordinary English language. So an adverse effect would be defined in its ordinary sense, and all the circumstances would be taken into account. A majority of the factual circumstances that were discussed in the context of this draft ordinance were situations such as where windows are placed in someone's home, whether that window is looking into a living area or perhaps a private bedroom area, the height of those windows. The standard is broader to allow all of those circumstances to be taken into account so that it can be determined whether, under all of those facts, there is an adverse effect. Whereas under the commercial ordinance, when you have new development going in, there will be very strict circumstances interpreting how that commercial structure can be erected, which wouldn't necessarily give adjacent or nearby property owners the ability to become part of that conversation. So this is a bit of a different approach.

Mr. Boeck – Well, I see where you're coming from. What I would do to approve this is I want to amend it to say that we need some kind of a measureable level of offense – intrusion. We deal with the commercial code, so obviously we have light reading weapons? It's not a weapon – light reading mechanisms that they take out there to measure the offensive overflow of light on existing properties? Do they not have that? Don't they measure that? Or do they have to get an engineering report?

Mr. Jan – Does it really make sense to set the threshold when you have just two complaints in a year?

Mr. Boeck – Sure.

Mr. Jan – So I think it goes in the favor when there are no thresholds.

Mr. Boeck – Well, there are thresholds. Obviously, something is either offensive or it's not. It has to do with the amount of light that's overflowing from one property to another. It's very easy to measure.

Mr. Jan – My threshold is going to be different than yours, perhaps, which is why ...

Mr. Boeck – If we have a number that's in there that we use, then it's not different. It's not a different threshold; it's a consistent one.

Mr. Jan – But enforcing – don't you think enforcing that would be like a big growth of problem?

Mr. Boeck – No. I mean if we're going to have this, then let's have it. If we're going to have this ordinance, then let's do the right thing to do it.

Ms. Bahan – What would you set the limit at?

Mr. Boeck – Whatever it's set for commercial.

Mr. Lewis – 0.2 past the property line.

6. Ms. Hudson – In response to your question, I don't believe that we have a meter. PD might, but I don't know that for a fact. As you know, when we get commercial applications in, we get an engineer's report on the foot candles and they lay out everything for us there. But, obviously, we don't get those with residential.

Mr. Boeck – This only pertains to existing conditions. With the commercial, we also have existing conditions, I thought, where they had to – no, I guess we didn't require them to go back and change.

Ms. Hudson – It's for new.

7. Mr. Boeck – The only comment I have is we had that situation on Duffy Street. My neighbors across the street had an OG&E security pole in the front yard and the back yard. When we first moved into our house, it was shining into our bedroom. So I asked if I could get up on a ladder and paint the back side of their light with black paint, which took care of it for 23 years. Then when we moved across the street, the one in the back yard was shining in our bedroom, so I was able to take a ladder and go paint the back side of that light fixture, and that's only lasted 5 years, but it's done really well. So I've been able to work it out with my neighbor. That worked really good. I'm not sure everybody would want to do that.

Mr. Knotts – The light is actually owned by the utility company, and so they should – I'm wondering if this ordinance could compel them to do a shut-off on security lighting out particularly in A-2.

Mr. Boeck – Is this about security lighting? I thought this was just about house lighting.

Ms. Hudson – My understanding is this is written – we're looking at residential areas, so we're looking at the single family and the duplex areas, so that would be single family R-1. It doesn't specifically say R-1 and R-2, but it does specifically say residential areas for single family – in residential zones.

Mr. Knotts – You may remember that I lived in A-2 for 20 years and I had a single family residence next door and they had a light out and I requested that they get a cut-off or do something so that it wasn't shining on my property and I couldn't compel them to do that. I had a long ladder, but I didn't want to get shot, either.

#### **AUDIENCE PARTICIPATION:**

1. Sean Rieger, representing BASCO, Builders Association of South Central Oklahoma – I just wanted to make you aware. When we first saw this come out of committee, we reached back at the committee and asked them if they intended this to affect coach lights. We actually sent a photo to one of the Council members of a typical new construction front porch that has coach lights and decorative sconces and lights. We simply asked the question, is this intended to affect those, and the response we got, shared with Ms. Hudson, was no, it was not intended to affect those. So our understanding is the intention was not to affect that type of a fixture. I do agree with you that the wording leaves it questionable. So, as the building industry goes, if you drive through any building addition right now, you would probably rarely see a full-cut-off fixture when you look at the decorative light fixtures around the front porches and the driveways and things of that nature. It was our understanding as this came out of committee, that this was intended to affect, as it reads, security lights and floodlights, and not just the service providers, but also when people have those directional floodlights that are shining. That was our understanding.

Mr. Boeck – Does it say specifically in here floodlights and security lights?

Mr. Rieger – The title does, but the definitional wording doesn't. The email that we exchanged, and I just showed Ms. Hudson that again, confirmed what we asked, that it didn't



affect those. So maybe there's some wording that needs to be cleaned up, would be our suggestion. I do somewhat agree with Commissioner Jan that if we've got two offenses a year, that's questioning whether we should do it. I certainly remember those days of the lighting ordinance. I think there were several of you on here that we debated with and talked with at that time. So we had some long battles on that one. But I do remember we did discuss some things like – I think at the time it was proposed, for instance, if you had a fixture of – I don't remember if it was 150 watts or 200 watts, that that would be exempt. I think we talked about distance from a property line – as Commissioner Knotts said, if you were a long way out – distance plus wattage limit. You can start to look some standards, maybe, that get you there and keep you from being the punitive side of a neighbor that is just complaining out of maliciousness. Because that happens. Absolutely that happens. One other thing, too, they do have photo meters – I mean light meters. The challenge that you get into with that is how do you prove that it was that fixture displaying that much light? Because if you have a light meter and you're standing here measuring the light, it may be that fixture, but it may also be that one and that one and that one. So it's very difficult to prove with a light meter what light is registering onto that light meter.

Mr. Boeck – You just change the light fixture you are pointing at.

Mr. Rieger – It's not that simple. It's a little bit like noise meters. How do you know what noise? So I guess my message would just be that we would – our understanding was that it was not to affect new construction residential lighting, and I encourage you to walk down the aisles of Home Depot or Lowe's and all of those lights are typically not full-cut-off – very few, if any, are. So that was our understanding. We would appreciate that it be cleaned up to confirm, particularly in light of the number of offenses. Thank you very much.

#### **DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

1. Mr. Knotts – So even if there's a dispute and a disputed result, there is a process for appeal. So I think that basically takes care of that.

2. Mr. Lewis – Again, where my concern comes from in regards to the Commission now having discussion, is, as Sean clearly pointed out, and where my concern comes from, the intent may have been one thing. I mean, everyone on this Commission knows that my father was an attorney and I grew up in that household, and he always said, "It's not enough to know the letter of the law; you must know the heart of the law as well." Part of that is intent. We know that in the court of law, intent is a very difficult thing to prove. So my question here is, this, again, seems to be very broad and overlaying, very subjective. Commissioner Boeck and I talked about the measurement with some type of device, which I would certainly support adding to this ordinance. It seems that this really needs to go back, and I don't know the process in doing that, and really make this a bit more defined. Because the way it is now, the intent may be just to work with flood fixtures, but when it says 360 degrees, that encompasses the coach lamp on the front of my home. My coach lamp has no back on it.

Mr. Knotts – It's not up against the wall?

Mr. Lewis – Just because the house is against the wall, it still shines 360 degrees. So that meets the definition of this ordinance.

Mr. Knotts – I don't see how that can be done physically.

Mr. Boeck – It can, because it's sticking out from the wall because it's a coach light. So the light reflects off of everything, including the wall.

3. Mr. Boeck – Well, what we could do – this is where my thinking is, is we call to approve and then vote it down, with the note that we're sending it back to get defined a little bit better. That's my thinking.

Mr. Lewis – I think in that case we might need legal advice on how we proceed as a Commission when many of us have vocalized our concerns over the broadness and overlay of this ordinance and its lack of specificity.

4. Ms. Muckala – There can certainly be a recommendation made. This panel, on this issue, is recommendary so I don't think there is an action that guarantees it goes back to committee before it comes to a vote, but the panel can certainly submit its concerns in more detail with its vote.

5. Mr. Robinson – If, let's say, this Commission votes unanimously no we don't like this, the City Council can still adopt it as it is, and we really don't really have that much to say about it. Right?

Ms. Muckala – Their vote is the one that would pass it, yes.

Mr. Boeck – And they have proven that a number of times in the last year.

*Tom Knotts moved to recommend adoption of Ordinance No. O-1819-35 to City Council. Dave Boeck seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS

Nouman Jan, Sandy Bahan, Tom Knotts

NAYS

Lark Zink, Neil Robinson, Chris Lewis, Dave Boeck

MEMBERS ABSENT

Erin Williford, Steven McDaniel

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1819-35 to City Council, failed by a vote of 3-4.

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Item No. 6, being:

**MISCELLANEOUS COMMENTS OF PLANNING COMMISSION AND STAFF**

1. Dave Boeck announced the Senior Center Forum on March 15 at Moore/Norman Technology Center from 10:00 a.m. to 4:00 p.m. to discuss what kind of shape and form and activities and programs and size the senior center will be in the future. Everyone is invited to attend and discuss the leading edge designs around the country, and what and where the senior center should be.

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Item No. 7, being:

**ADJOURNMENT**

There being no further comments from Commissioners or staff, and no further business, the meeting adjourned at 7:03 p.m.



Norman Planning Commission