

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**AUGUST 8, 2013**

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 8<sup>th</sup> day of August 2013. 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.

Vice Chairman Tom Knotts called the meeting to order at 6:30 p.m.

\* \* \*

Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Curtis McCarty  
Jim Gasaway  
Robertta Pailles  
Andy Sherrer  
Sandy Bahan  
Tom Knotts

MEMBERS ABSENT

Cindy Gordon  
Dave Boeck  
Chris Lewis

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Jane Hudson, Principal Planner  
Janay Greenlee, Planner II  
Ken Danner, Subdivision Development  
Manager  
Roné Tromble, Recording Secretary  
Leah Messner, Asst. City Attorney  
Larry Knapp, GIS Analyst II  
Terry Floyd, Development Coordinator

\* \* \*

Item No. 4, being:

**ORDINANCE NO. O-1213-46 – SHARI VAUGHN REQUESTS CLOSURE OF THE NORTH THIRTY-FIVE (35) FEET OF THE SEVENTY (70) FOOT RIGHT-OF-WAY (STREET) RUNNING EAST AND WEST BETWEEN BLOCKS 3 AND 4, KNOWN AS FRANKLIN COURT (PLATTED AS MAIN STREET) LOCATED ADJACENT TO LOTS 12, 13, 14, 15, 16 AND 17 OF FRANKLIN ADDITION.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Application to Close
4. Franklin Addition Plat
5. Aerial Photo
6. Protest Map and Letters
7. Excerpt of Minutes – July 11, 2013 Planning Commission

**PRESENTATION BY STAFF:**

1. Ken Danner – I'd like to give you some background on this area. Franklin was filed of record in 1908. It was a unique development because it had small lots, alley rights-of-way, and street rights-of-way; basically an urban design. Developers back at that time were intending to incorporate it as a town, but that never took place. In 1961 City Council annexed the property and zoned it A-2 and honored the plat. Over the years there have been several alley rights-of-way that have been closed and vacated. A north/south street known as Blackburn Avenue has been vacated. You have before you tonight a section of a right-of-way that the street has never been built on, and at this time the City has no plans to build a street. The applicant has made a request for the closure and potential vacation. The property is adjacent to a large tract to the east. There was a discussion with that property owner that indicated that they did not want the closure because they allowed large vehicles to go through that right-of-way. However, staff would be opposed to that because it is not an improved street and they do have sufficient frontage on Franklin Road. Looking over the proposal, we do not see the need for the continuation of the right-of-way and we recommend approval of the closure.

**PRESENTATION BY THE APPLICANT:**

1. Blaine Nice, 100 North Broadway, Oklahoma City, representing the applicant – If the Commission will remember, a few months back I came forward for Franklin Baptist Church to close a road out there as Mr. Danner said. This was an area that was platted back in 1908 but it was never incorporated, so there are a lot of different public ways out there. My client desires to build a shop a little bit north of the dirt patch. He is going to move it back once they realized there was a right-of-way there and they had a survey. They are going to have to move it to the north in order to meet the setback requirements. As you can see in the background, that's the farm to the east that the property owner had objected; he indicated he wanted to bring heavy equipment through there, but he actually has access off of Franklin Road. I don't think anybody out there was really aware there were any rights-of-way until people started coming in and trying to get building permits and the City indicated that you were going to have to close and vacate these easements to do that. The only property owner, in my opinion, that is really going to be affected is Mr. Holland. He is here tonight and I believe desires to speak to you. His property is to the south of the applicant. We are only asking that half the right-of-way be vacated; the other half would still be a public way. I had talked to several of the property owners out there to try to clean this all up because we don't like coming hodge-podge one at a time to do this. At this time, I have not been able to get everybody to agree to do that. The applicant wants to put a shop right there. I think staff supports this and I think it's got to be closed and vacated in order for my client to build a shop and I think it fits. This is certainly the purpose of the ordinance and the statute that allows you to vacate these things. If you have any questions, I'll be happy to answer those.

**COMMENTS FROM THE AUDIENCE:**

1. Judy Martens, 7575 E. Franklin Road – We just haven't known out there – I and my neighbors – what has been going on when the complete right-of-way was blocked off by the entry gate that was set up by Ms. Vaughn. We also think that our neighbor Austin Holland, who probably is most affected by it, ought to have equal – it ought to be split down the middle, in other words, between the two properties and they ought to have access to their property. From my perspective, it's a scary place to park and pull back into Franklin Road there because of the traffic. But I'm here mostly in support of Mr. Holland and what works best in being equal to both parties – the Hollands and the Vaughns. And insofar as using the right-of-way, yes, we have used it in the past when OG&E has brought one of those huge trucks that doesn't always clear the cattle guard, and we had a truck put a dip in our cattle guard coming in to get to their lines to their right-of-way. And then one other occasion there was a cement truck – a lot of weight – and we have used that as a means of getting it onto our property to do what they came to do. But mostly we just want to see equality between the two parties that are most affected there.

2. Charles Thomas, 7351 Franklin Court – I have Lots 1 through 8 and 27 in Block 4. I also own Lots 1 through 13 in Block 3. I am against closing any part of Franklin Court. Steve Barnsmith and I bought this property a long time and we graveled the street so it would have an access to all these lots. This street was never meant to become private property. If you go out there, if the gate was closed, you'd see the sign up there that says "private property" – you can't get through. For any one person – cars that drive down there have to back up to my gate even to turn around. They've also hit my gate about three times, which I've always had to go back and reset it and the whole works.

3. Austin Holland, 7325 E. Franklin Road – I am the property owner to the south. First of all, I have a question. On the subject tract, the subject tract on my map does not extend all the way to the western edge of that property line. Is that correct that that's not being vacated to the entire edge of the property line? Okay. Then second, my wife wanted me to bring up the fact that they've closed the right-of-way with the gate. When we moved in, we were unaware that this was a right-of-way, and that's our own fault for not knowing that. But, as Judy mentioned, we live on a hill there on Franklin Road and the speed limit is technically 40, but it's not uncommon for people to go through there at 60 or 65. And, being on the hill, it makes it very dangerous to get in and out of our property, and if I die an early death it will be right in front of my own home. So, once we realized this was a right-of-way, we started realizing we could do our fences differently when we build a shop or garage we can then access that from the back side of the property if the right-of-way remains open. So that was one of our concerns. And then the general question I have is – I guess I'm a little surprised that right-of-way would be vacated when they have two acres of land that this shop could reside on as well. So those are my general concerns.

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

1. Mr. Knotts – It appears to me that you are only taking half of the right-of-way. Is that correct?

Mr. Nice – Correct. And let me point out, the statute requires that when you close and then vacate a right-of-way it splits and goes to the adjoining property owners. Mr. Rieger and I were talking about that – typically when you vacate the entire right-of-way, how that would work – would you do half of that – I suspect the judge would still split the property and it would go to the adjoining property owner. So Ms. Marten's comment about being fair to the property owner – that's the way that works. Now, as I said when I first spoke, I don't believe anybody knew this was a right-of-way out there. People have built all over this and Mr. Austin will still – the first time we came – this has been postponed a couple times because we didn't realize there was going to be really any objection because nobody uses this. And the people showed up and we visited with them, and so we postponed it that first meeting. I think Mr. Holland in theory

– he at least told me before the meeting and told the applicant that I think he's okay with it now. We've answered his questions. My clients had a survey done. He agrees to cooperate with him and Mr. Holland will still have access to the back of his property. But, as you can see in the picture there, that's his property. I'm not sure what kind of road or what you would put back there anyway to get there, but he will still have access through that right-of-way. Now, there is a gate there now. We've had discussion about that. My client is leaving it open most of the time – I'm not saying it hasn't been shut – but we're going to work through that. I don't think that can be a part – or should be a part of the Commission's decision. That's an enforcement issue and there are things in the rights-of-way out there all over. As I've talked to the neighbors, we hope we can work together as a neighborhood and resolve those issues, and that would be my goal. Certainly with respect to the closing of the public way, that's not a part of this application and that's not something the Commission, in my opinion, could condition that on, because that's an enforcement issue and Mr. Danner and I have talked about that. They're aware if that's a problem and it's blocked they would have to move that.

2. Mr. McCarty – Could you go back a couple of photos? You had one that showed straight down. So that dirt pad is in the right-of-way, correct?

Mr. Nice – Part of it is. Just a portion of it. When they put that, they intended to put their building there. They're actually going to move it to the north because, even if this is closed and vacated, where they originally had it planned would violate the setback requirements.

Mr. McCarty – That's what I was going to ask. So we still have a setback we have to abide by.

Mr. Nice – Yes. And they know that. Yes.

Mr. McCarty – So if you move back your building to the setback requirement, what's the purpose of closing the right-of-way?

Mr. Nice – Once they close it, that gives them some more room. If they left the right-of-way open, they would have to move it even farther north and it wouldn't work where it's at. There have been some issues out there. I think there have been permits issued and things over the years. The enforcement out in this area has been – I'm not saying lax. I don't think anybody realized these rights-of-way – sometimes there have been some permits issued ...

Mr. McCarty – Probably weren't getting permits would be my guess. I guess what I'm asking – you still have to abide by your setback. So by vacating the right-of-way, that's not alleviating the setback requirement. That's what I'm trying to ask. So it really doesn't matter.

Mr. Danner – It alleviates the front building setback.

Mr. McCarty – So they're able to move it closer to the street – or where the street was going to be.

Mr. Nice – Yeah. The slope of the property doesn't fit if they move it much farther north.

Mr. McCarty – What is the purpose of not vacating the whole right-of-way in front of the property?

Mr. Nice – Because you have to have the cooperation of the other property owners. I had talked to Mr. Holland about that. We thought that, once this was filed – I had contacted him and Mr. Holland works for the Geological Survey, I believe, and he's busy and gone a lot and we never could make contact.

Mr. McCarty – Not his side. Not the piece that abuts his property, but the piece that's short of your clients. The dashed line doesn't go all the way to his property. Right? I guess it would be his west boundary.

Mr. Nice – It's because the City – there's trash service there and they require – they want that left open. Mr. Danner and I had that debate. I felt like it should go all the way, but he said because there is trash service that he wasn't comfortable going along with that. And that's hence what makes the gate technically in the right-of-way. You have trash trucks coming down private roads all the time, so I wasn't sure. But I lost that argument with him.

3. Mr. Gasaway – We had a concern by one of the citizens that spoke that it was difficult to turn around once you got in that area and ended up on his property. How do the trash trucks turn around that get down there?

Mr. Nice – I think they back up, and they're going to do that whether this is closed or not.

Mr. Gasaway – Right. I was just trying to address the concern.

Mr. Nice – This is Mr. Thomas – the front of his property right there where the arrow is, I think. The trash trucks come all the way up to there. Like I said, I tried to get Mr. Danner to go along with doing it all the way to the property line and then it wouldn't affect the gate – wouldn't be an issue, but I lost that argument.

4. Mr. Danner – The reason it didn't go all the way is because it had to have frontage.

5. Mr. Gasaway – I've got a question for Mr. Danner. You had mentioned that there were some large vehicles that occasionally were brought onto the property to the east. But, since that's not an improved section, technically that should not be used for that?

Mr. Danner – That is correct.

6. Mr. McCarty – Here is my concern, and she was explaining it to me. So if all the land owners around him wanted to vacate this same right-of-way, then how would he ever get to his house if they wanted to do the same thing? And so what she was saying is there would have to be an easement that would be put in there. And that would be my concern, is that they all say, well, let's vacate this whole right-of-way, then how is he going to get there?

Mr. Danner – I think the point is where there are existing roads, we would not recommend approval of the vacation.

Mr. McCarty – Well, there is an existing gravel road.

Mr. Danner – Not in the location where this is.

*Andy Sherrer moved to recommend adoption of Ordinance No. O-1213-46 to City Council. Jim Gasaway seconded the motion.*

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

YEAS	Curtis McCarty, Jim Gasaway, Andy Sherrer, Sandy Bahan, Tom Knotts
NAYS	Roberta Pailes
ABSENT	Cindy Gordon, Dave Boeck, Chris Lewis

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1213-46 to City Council, passed by a vote of 5-1.

\* \* \*