ERNIE BUENROSTRO

City of Pearland

P. O. Box 2068 • Pearland, Texas 77588-2068 • 485-2411

July 10, 1990

Get another copy that is not written on

Theodore S. Abbott
Attorney at Law
521 N. Belt, Suite 105
P. O. Box 34179
Houston, Texas 77234-4179

RE: APPLICATION OF ROBERT J. FOLEY FOR BUILDING PERMIT, LOT 11, BLOCK 15, SLEEPY HOLLOW ESTATES

Dear Mr. Abbott:

On June 11, 1990, the Council considered and voted against a motion by Councilmember Smith which would have authorized a building permit for the captioned lot.

You are, therefore, referred to the Planning and Zoning Commission for appropriate action.

Very truly yours,

Lester G. Rorick, City Attorney
City of Pearland

LGR/tjv

TJ said he never received original memo

Dear Mr. Chairman,

I will not be able to attend the special meeting of the Pearland Planning and Zoning Commission July 24, 1990. I have reviewed my information packet have some strong feelings regarding both items on the agenda.

Item III.A

It is unfortunate that Mr. Foley did not plan for the use of his two lots more effectively. I understand that he is basically attempting to squeeze three lots of minimum size in an R-1 zone out of two lots. I have reviewed the information from three City Council meetings and I understand that the Sleepy Hollow subdivision was originally platted with lot widths of 100+ feet. I feel that deviating from the original intent of the subdivision is wrong. If we were to vote to allow such variance, it would be a severe injustice to the homeowners who bought homes and/or lots under the nature of the original plat. In my opinion, replats such as this should only be considered on plats where homes do not exist and not to rectify the mistake of one lot owner.

Item III.B

In consideration of the legal opinion of the City Attorney, Lester Rorick, and the current City Zoning Ordinance, I do not think a replat and upgrade of the T.P. Trailer Park should not be considered. This area is currently zoned commercial and mobile home parks are not allowed in areas which are zoned for commercial districts; Table III, Page 71 of the Land Use and Urban Development book. Considering the location of this tract of land, a mobile home park would not suit the businesses currently in the area. Out of due respect for Mr. Stahlheber, it is my opinion that the former owner had every intention of abandonment before he found a party interested in buying the tract as a mobile home park. Since there were 25 to 35 mobile homes there at the time of annexation and currently there are three, I feel that this situation is very much like that of a non-conforming use structure being more than 50% destroyed.

For the aforementioned reasons, I am opposed to a replat and an upgrade.

Sincerely,

James Garner

James Garner
Commissioner, Pearland Planning and Zoning

City of Pearland

P. O. Box 2068 · Pearland, Texas 77588-2068 · 485-2411

TO: JAMES O. DESHAZER, ACTING CITY MANAGER

FROM: LESTER G. RORICK, CITY ATTORNEY

DATE: JULY 12, 1990

SUBJECT: REQUEST FOR LEGAL OPINION - GARY STAHLHEBER

Recently Gary Stahlheber has appeared before the Development Committee in furtherance of his application to replat and upgrade a location commonly known as T. P. Trailer Park. The relevant facts are these:

City of Pearland annexed the subject tract in 1983 at which time there were as many as 25 to 30 mobile homes on the site. There was no formal map or plat of the tract; it had no paved roads or walkways and only a few trailer pads, which were largely runners, as opposed to full pads.

Stahlheber purchased the tract in 1988, at which time there were approximately eight mobile homes on the site. Presently, there are three and the tract is largely overgrown. There is in our files a copy of a letter dated January 3, 1987, by which the present owner, Mr. Castillo, informs the State Department of Health of his intent to close the park because of water problems. It appears, however, that the park was never completely abandoned, but rather a few trailers were kept towards the front of it and Castillo represented to Stahlheber, upon sale, that the park was "grandfathered" under the Zoning Ordinance. At present, utilities are not a problem. No plan conformable with the ordinances has been presented. Stahlheber professes that he does not want to spend money on a venture that will not be approved; accordingly, the tract continues to deteriorate. The permitting process has apparently continued in excess of a year. Upon annexation, the area was zoned Commercial; accordingly, the park was a non-conforming use. The question now is whether the non-conforming use has been abandoned.

The applicable sections of the zoning ordinance are the following: 26.1, 26.2 and 26.9, which are set out at length in Exhibit "A".

This is a close question, but it cannot be said that any of the three elements of abandonment is plainly established. A somewhat different result is reached, however, when this matter is viewed pursuant to Section 26.6, Repairs and Alterations. Stahlheber's proposal presents an enlargement or extension of the non-conforming use without question. He should, therefore, be referred to the Zoning Board of Adjustment for consideration of a special exception.

Lester G. Rorick
City Attorney

LGR/tjv

SECTION 25 - HOME OCCUPATION

Section 25.1.

The allowed uses under a customary Home Occupation shall comply with the following criteria:

a. No person other than members of the family residing on the premises shall be engaged in such occupation;

b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the Home Occupation;

c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, non-illuminated, and mounted flat against the wall of the principal building;

d. No home occupation shall be conducted in any accessory building;

e. There shall be no on premises sales in connection with such home occupation.

f. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard;

g. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises;

h. The operation of clinics, doctor's offices, hospitals, barber shops, beauty parlors, dress shops, real estate offices, health studios, tea rooms, palm reading, kennels, among others, shall not be deemed to be home occupations.

SECTION 26 - NONCONFORMING USES

Section 26.1. Definition.

"Nonconforming" shall be deemed to mean that a use or structure was lawful at the time it was begun, but could not presently be so begun,

used, or constructed under current ordinances and zoning.

Section 26.2. Continuance of Nonconforming Use.

The lawful use of any building, structure, sign or land existing at the time such property was more restrictively zoned may be continued except as this Ordinance may require abatement within a given period of time; provided, however, the right to continue such nonconforming uses shall be subject to regulations prohibiting nuisances and shall be terminated when such use constitutes a nuisance. Such nonconforming uses shall be subject to such reasonable regulations as the Zoning Board of Adjustment may require to protect adjacent property and shall be subject to the specific nonconforming use regulations herein contained.

Except as this Ordinance may otherwise require, any nonconforming use may be continued in operation on the same land area and on the same floor area in a structure or structures which were occupied by the nonconforming use on the effective date of these regulations or on the effective date of any amendment by which the use became nonconforming, but such land area or floor area shall not be increased.

Section 26.3. Accidental Damage to Building.

If a building occupied by nonconforming uses is destroyed by fire or the elements, it may not be reconstructed or rebuilt except to conform with provisions herein. In the case of partial destruction by fire or other causes, not exceeding fifty (50) percent of its current replacement value, the Enforcing Officer shall issue a permit for reconstruction. If greater than fifty (50) percent and less than total, The Zoning Board of Adjustment may grant a permit for repair but not for enlargement of the building.

Section 26.4. Substandard Structure.

The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure becomes substandard under any applicable ordinance of the City and the cost of placing such structure in lawful compliance when the applicable ordinance exceeds fifty (50) percent of the replacement cost of such structure on the date that the Enforcing Officer determines that such structure is substandard.

Section 26.5. Determination of Replacement Cost.

In determining the replacement cost of any nonconforming structure, there shall not be included therein the cost of land or any factors other than the nonconforming structure itself including foundation.

Section 26.6. Repairs and Alterations.

Repairs and Alterations may be made to an undamaged nonconforming building or structure; provided, however, no structural alterations shall be made except those required by law or ordinance, unless the

building is changed to a conforming use; and provided that no additional dwelling units shall be added where the nonconforming use results from there being more dwelling units on the lot than is permissible in the district in which the building is located. No enlargement or extension of a nonconforming use shall take place except as the Zoning Board of Adjustment may grant, as a special exception, an application to extend or enlarge a building occupied by a nonconforming use or of that portion of the lot occupied by such use provided such grant does not serve to prevent the return of such property to a conforming use.

Section 26.7. Registration of Nonconforming Use.

It shall be the right of the joint tenants and owners of a nonconforming use to register same by securing a Certificate of Occupancy as herein provided.

Section 26.8. Changing a Nonconforming Use.

Any nonconforming use may be changed to a use conforming with the regulations herein established for the district in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use. A nonconforming use shall not be changed to another nonconforming use.

Section 26.9. Abandonment.

A nonconforming use of any building or structure which has been abandoned shall not thereafter be returned to any nonconforming use. A nonconforming use shall be consideed abandoned when:

(a) It has been replaced with a conforming use, or

(b) Such building or structure is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of six (6) months, or the special equipment and furnishings peculiar to the nonconforming use have been removed from the premises and have not been replaced within such six (6) month period; or

(c) The intention of the owner to permanently discontinue the use is apparent.

SECTION 27 - BOARD OF ADJUSTMENT

Section 27.1. Establishment.

A Board of Adjustment is hereby established in accordance with the provisions of Article 1011g, Revised Civil Statutes of Texas, with the powers and duties as provided in said statute and this Ordinance. The Board of Adjustment shall consist of five (5) members, each to be appointed by the City Council of the City of Pearland for staggered terms of two (2) years and removable for cause by the appointing

AGENDA - SPECIAL MEETING OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, TO BE HELD ON JULY 24, 1990, AT 7:30 P. M. IN THE CITY HALL, 3519 LIBERTY, PEARLAND, TEXAS

I. CALL TO ORDER

II. APPROVAL OF MINUTES: Regular Meeting of July 16, 1990

III. NEW BUSINESS

A. DISCUSSION WITH ROBERT FOLEY REGARDING PLAT AMENDMENT OR REPLATTING.

B. DISCUSSION AND POSSIBLE ACTION - REQUEST BY GARY STAHLHEBER REGARDING MOBILE HOME PARK, WEST 1/2 OF LOT 3, WEST 1/2 OF LOT 11, WEST 1/2 OF LOT 14, FIGLAND ORCHARD SUBDIVISION, ABSTRACT 240 (6402 1/2 W. BROADWAY).

IV. ADJOURN

POSTED: 20 DAY OF July, A. D., 1990 5:00 P.M.

REMOVED: _____ DAY OF _____, A. D., 1990

482-2281 Fink
780-7168 Work

Helen Bechman

6-26 - 7-9