



**Residential Design Compatibility Commission  
MINUTES**

**SPECIAL CALLED MEETING  
November 30, 2011**

**The Residential Design Compatibility Commission convened in a special called meeting for a work session with Residential zoning Staff. OTC – 505 Barton Springs Rd. 2<sup>nd</sup> Floor**

**William Burkhardt called the Commission Meeting to order at 3:00 p.m.**

**Commissioners in Attendance: William Burkhardt, Mary Ingle, Karen McGraw, Lucy Katz, Missy Bledsoe**

**Commissioners Absent: Keith Jackson, Chuck Mains**

**City Staff: Sylvia Benavidez, John McDonald, Kathy Haught, Keith Batcher, Darren Cain, Brent Hendricks, Elaine Ramirez, Edward Vigil, Victor Villarreal, Bryan Walker, Juan Camou, Wade Gilbreath.**

**1704 Determination relative to McMansion – John McDonald**

**SENATE BILL 1704 now CALLED CHAPTER 245 Determinations**

**Chapter 245 of the Texas Local Government Code not LDC**

**John McDonald is asked to attend Chapter 245 Committee when they have a residential application in for review of a 1 or 2 family residential dwelling unit  
Some call it a grandfathering project Chapter 245 does not mention grandfathering  
Persons are allowed to continue a project from their first permit on a series of permits an applicant submitted**

**Certain areas of town you can go back to the preliminary plan the first subdivision filed almost like a conceptual plan that is the date that they use if they have a subsequent final**

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plat and after the subdivision construction plans then you have the building permit for home

Chapter 245 allows if the project is not complete and a residential project is deemed to be complete once the initial home is constructed however on the case of 3704 Bonnell Drive the vacant lot had never been developed and what they were allowed to do was allowed to go back to the regulations in 1978 and or 1979 plat and at that time what was in place was the Lake Austin Watershed Ordinance (Interim Lake Austin Watershed Ordinance) and had to comply with the 1980 Lake Austin Ordinance. They only had to comply with certain zoning requirements. They did not have to comply with the GFA/ FAR even though Chapter 245 allows you to go back to older regulations does not allow you to grandfather to all aspect of the zoning regulations.

Applies to GFA sometimes to lots zoned LA they can count the inundated area for their lot area calculations. Any lot that extends into the waters of Lake Austin does not count towards the lot area. In some cases if you get a Chapter 245 determination you can count the entire lot where the lot is inundated or not.

Brief understanding of what Chapter 245 John opens for questions

Commissioner Mary Ingle that is ridiculous

John McDonald - It is the Local Government Code it is the same code that allows for any residential project that does not have a final

For residential project 1 and 2 family residential projects do not know about Chapter 245 Commissioner Lucy Katz so any homes that have been built any change do not qualify for Chapter 245 determination

John McDonald for any residential construction - no building permit that was final

Most of the residential community is not aware of the requirements of Chapter 245

Commissioner William Burkhardt - the whole idea of the ordinance was to control construction so it can be compatible with the existing context when you get a situation when it does not need to comply with McMansion and go back to civil war times pardon me for exaggerating but you get the idea. Where do you go where there? Understand there are only isolated parcel but, you can see how dramatic this could impact an existing neighborhood and the animosity that is created there.

John McDonald. Lake Austin has many lots that their boundaries extend into the water and if they came in to meet current regulations they could only count the lot area that has land area above the Lake Austin, it they are allowed to count the inundated land it is twice as large,. In the case with Bonnell even though they didn't have to comply for GFA they were still required to comply with setback, and the development tent.

Commissioner William Burkhardt that is totally inconsistent if you don't have to comply with GFA why are they required to comply with anything else that is related to the McMansion Ordinance?

John McDonald because that particular provision in Chapter 245 speaks specifically to certain areas that zoning requirements can be excluded.

Karen McGraw – the issue last night mentioned that is had to do with size vs bulk and they were saying that bulk should be controlled.

Victor Villarreal – the project does comply with the tent

Karen McGraw – John you said the project had not been finalized? Did you mean that? We might have a house that was torn down from the 1920s before there were any permits

John McDonald – they do not have any Chapter 245 entitlements – it has to be a vacant lot that never was developed. Once the development is done there are no more entitlements.

Karen McGraw – what if an applicant comes in and says the lot is vacant, how do you prove the lot has been developed? Do you use the sanborn maps?

John McDonald: Chapter 245 has a facilitator that does the research before the committee makes a decision. Research is done from the building permit back to the preliminary plan. Infill lots are only dealing with the building permit or the subdivision before that. Older subdivisions do not have a preliminary plan.

Commissioner William Burkhardt – what was the latest date a vacant lot could comply?

John McDonald it has to go back to the subdivision.

Commissioner William Burkhardt – that is where I was going, how does a recent one acre subdivided lot fall into that? Can you get a Chapter 245 if it pre dated 1976? Can you get a Chapter 245 determination?

John McDonald – on a recent subdivision the only thing that could help would if it had to do with something that was passed right after the subdivision was approved,

Commissioner William Burkhardt: a huge acre lot gets subdivided into several lots and they have never been developed?

John McDonald – It would not be entitled for a Chapter 245 determination because they changed the project. Chapter 245 is when you increase the density by changing from one lot to several lots that is a change in the project by increasing the density and would not qualify.

Commissioner William Burkhardt – I am not clear on what the definition of a project this would be a new subdivision

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John McDonald – the old subdivision was a 1970 subdivision when a resub is submitted they are no longer entitled to the requirements of 1970 because the project has changed. They would be subject to all current code regulations.

Commissioner Karen McGraw – what if they had a lot that measured 100 ft wide and 50 feet of it was not developed and was not subdivided or if you had two 25 foot lots that were never developed never had a home and you decide to sell? Do they have to meet any zoning regulations?

Commissioner William Burkhardt? Concerned about vacant lots that are owned as one lot claimed as a homestead and paying taxes and the home is built and the other lots are used for yard or ponds, do the vacant lots qualify for Chapter 245 determination?

John McDonald – This a question that can be taken to the Chapter 245 Committee

Kathy Haught – The Chapter 245 Committee make the determination of each application submitted.

Commissioner Mary Ingle – who is on the Committee? How many are they?

Commissioner Karen McGraw – can the decision be appealed?

Kathy Haught – Greg might be able to answer that

Commissioner William Burkhardt – there has to be a process in place

John McDonald – the Local Government Code also sets up the Board of Adjustments Of what they can hear, it talks about State provisions that the City has to follow. I am not sure which body would hear the appeal,

Kathy Haught – my understanding the appeal would probably be heard by district court.

Commissioner Mary Ingle – John you understand the frustration with this particular code. It seems to be incomplete and not having the right to appeal Do we have to follow it?

John McDonald – the Local Government Code allows us to do what we do

Commissioner Mary Ingle – Maybe City Council needs to consult with the legislature

Commissioner William Burkhardt – would like to see flowchart of the Chapter 245 process

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## **Attic and Shed exemption – Open Discussion**

Commissioner Karen McGraw – Which memo is in effect?

Commissioner William Burkhardt – Series of Memos in the MtBonnell case last night  
Is there a internal memo that the attic exemption contain within the roof structure only  
applies to existing construction and not new construction?

Victor Villarreal the memo I referred to last night was the Erica Eichert memo.

Commissioner William Burkhardt you said that it had been the understanding through  
interpretation that the requirement for the attic exemption contained within the roof  
structure it only applied to existing construction.

Victor Villarreal – I never said that

Commissioner William Burkhardt refers the question to Commissioner Karen McGraw

Commissioner Karen McGraw I think what is difficult about this is that it seem confusing  
And every person you have talked to has a different idea. I would like to know what  
everyone does relative to attic exemptions because I'm sure you all have all review them  
the same way.

Victor Villarreal Yes, we all review them the same way I think what you are referring to  
is my explanation of that one criteria of adding additional mass.

Commissioner William Burkhardt that could be what you were referring to specific to the  
Mt Bonnell case that there was no additional mass.

Commissioner William Burkhardt that is the questions Karen and I have when an area is  
adjacent to an attic it doesn't necessarily get an attic exemption particularly when you see  
the Daniel Word memorandum. That particular building design that is a second floor with  
an attic above it and an attic next to it and that is not an attic and that is where we were on  
that one. So when you look at the Daniel Word memorandum you can clearly see what is  
acceptable and what is not in respect to the interpretation. And even if you work in  
conjunction with the Erica Eichert memorandum then you would have to say that the  
interpretation was incorrect.

Victor Villarreal which interpretation?

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Commissioner William Burkhardt the interpretation that allowed the attic space on the Mt Bonnell case we both go back to the original task force and what was discussed and what the intent was. I can tell you Karen and I are both architects and there are several architects on the task force we all had a very clear understanding of the intent and the ratifications and potential interpretations and the original intent was to give bonus space that did not add mass or scale you tend to go back to the original language in the ordinance not to the interpretation.

Victor Villarreal – what we are working with today is what is currently in Subchapter F

Commissioner William Burkhardt- the original wording in the ordinance is the same today and I want to make sure that when a project comes in it is reviewed the same. And the designers understand it the same way. When you compare the Daniel Word memorandum to the Mt Bonnell house the second story space it's got an attic exemption you can not reconcile the two,

Victor Villarreal which portion are you not able to reconcile?

Commissioner William Burkhardt – the side wall extension into the attic space.

Commissioner Karen McGraw – I think what we were seeing was where we look at the entire attic from eave to eave the entire space

Victor Villarreal – it doesn't matter where we put the interior walls under the roof and if it meets the less than 7 foot high exemption

Commissioner William Burkhardt –that is consistent with the Erica Eichert memo and Karen and I disagree with that is not what the code says. The intent has always been the occupied space. I would like to go back to the original intent from the task force.

Commissioner Karen McGraw – I had a project that had an attic space what I am hearing is that as long as it meets 50% less than 7' feet it gets an exemption.

Edward Vigil – how about revising the section of the code so it is black and white and you do not have to refer to different interpretations. Memos are just memos someone's interpretations and it is not code.

Commissioner William Burkhardt – I look at memos

Commissioner Karen McGraw – as a group you must be consistent and you are all measuring the same way.

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Commissioner William Burkhardt – Chris made a comment last night that the memos are not found on line, is there a place where applicant can get these memos? It's a de-service to the design community,

Commissioner Karen McGraw are we exempting shed roofs?

Commissioner William Burkhardt – must be fully contained within the roof

Victor Villarreal – I have worked in several jurisdictions where there are regular work sessions to discuss up coming cases requesting waivers from RDCC and ask questions from staff on the review.

Commissioner William Burkhardt – maybe 2 to 3 months have a work session. RDCC packets have come to us with various submittals that do not meet our expectations. We can not do our job if we do not have the proper materials. It would be nice to get the packets 10 day in advance instead of 5 days in advance.

Commissioner Karen McGraw – Actually 5 days is better than other Commission Boards and I have asked questions about the applications that I refer to Sylvia to figure out who can answer the questions and who the reviewer was and if we can have the residential reviewer at the meeting that would be fabulous.

Kathy Haught if you have a submittal that is better than the others could you let Sylvia know.

Commissioner Lucy Katz what I would like to see for my benefit is what reviewer reviewed the project and why it was sent to RDCC for a waiver and see their rejection comments.

Commissioner Mary Ingle I would like consistency

Commissioner Karen McGraw we want a clear understanding what the historical review process is in conjunction to the residential review in particular with cases that heard at RDCC.

Commissioner William Burkhardt Summary – I would like us to come together with some ideas on getting some drawings on what is and what isn't. It would be nice to have the recourses in graphic format. That we are all consistent with what you think and we think, Thank you for your time.