

PLANNING AND ZONING COMMISSION MEETING  
**RECORD OF PROCEEDINGS**

THURSDAY, MARCH 7, 2024 AT 12:00 PM

**1. DECLARATION OF A QUORUM AND CALL TO ORDER ROLL CALL:**

Chairman Bill Garwood introduced and welcomed a new Commission Member Andrew Heston to the Planning and Zoning Commission. Commission Member Andrew Heston was sworn in right before this meeting began.

**Present were:** Chair William Garwood, Commission Member Andrew Heston, Commission Member Will Clark, and Commission Member Deborah Spoor.

**Absent were:** Commission Member Regina Bieri, Commission Member Michelle Townsend, and Commission Member Ellen Eby.

**2. Discussion and possible action on the February 1, 2024 meeting minutes for the Planning and Zoning Commission.**

*Planning Commission Action: Motion was made by Commission Member Will Clark and the second by Commission Member Deborah Spoor to approve the minutes. There was no further discussion.*

*Roll Call Vote: All Ayes. Motion carried unanimously; the minutes were approved.*

**3. Conduct a public hearing, discussion, and take possible action on an Ordinance approving a request to modify an existing Specific Use Permit within a Single-family Residential 7.2 District (SF-7.2) to allow for the installation of a proposed eighteen (18') foot tall acoustic fence to reduce noise levels and operate lawfully during special circumstances of extreme temperature and emergency situations at an existing energy storage park on a 7.7 acre parcel identified by Property ID 570367, located at 319 Murray Ranch Rd., Angleton, Brazoria County, Texas.**

**D.S. Director Otis Spriggs** presented the Staff report findings, noting that this is a request for a specific use permit modification to allow for a proposed acoustic fence as described. The applicant will provide you with detailed information about the 18-ft. fence along with the reason any extra measures they're taking regarding sound generated for the Gambit Battery Storage Park, which is within the SUP Zoning District.

**Mr. Spriggs** added that the applicant will be illustrating a possible fix to some of the noise issues raised by some of the residents, as experienced during high temperatures during the summer months. Today we'll only discuss the modification to add the fence. The actual use of the property is under an SUP permit. We notified everyone within 200 feet of the property and posted notice in the local newspaper as required. There are a couple of proposed conditions that are in the proposed drafted ordinance in which we'll discuss later. Other than that, this is a public hearing, and staff is reporting this to you so that you can gain public input and answer any possible questions and make a recommendation to City Council with thumbs up or thumbs down on the proposed 18-ft. acoustic wall. The sound professionals are present to address the levels of noise to be abated with the structure. The staff report includes photographs of the facility, and all of the documents are on the website agenda packet.

**Mr. Spriggs** ended by noting that Staff will be available to address the Commission, regarding any of the conditions of the previous approval and any specifics as to what they're asking for.

**Applicant's representative Bill Kaufman**, introduced himself as a Land Use Lawyer from San Antonio, TX (, CEO, The Kaufman Group); Plus Power asked him to come assist with the SUP permit.

**Mr. Kaufman** introduced Applicant's Agent: Keith Merkel, Senior Technical Asset Manager, Plus Power and Mark Storm, Acoustic Services Manager, Dudek/Noise Expert, California.

**Bill Kaufman** gave background on the Plus Power Company, an electrical storage system, which employs around 150 persons and its importance to the power grid all over the state, and its capability to store energy in times of need and emergencies.

**Bill Kaufman** informed that Gambit Battery Park is the name of this project and is a subsidiary of Plus Power. Mr. Kaufman gave the history of the Council approval of the SUP, Specific Use Permit approved in January 2020. The next year it became operational. Mr. Kaufman showed PowerPoint slides of the facility with various photographs from different directions, with the existing vegetation, berms, and the 8-ft. masonry wall that surrounds the property on all four sides. He went on to discuss the specific conditions of the former SUP approval, regarding the structure height limits and the conditions on ambient noise, and the current need to amend the original noise condition.

**Bill Kaufman** introduced the need to incorporate sound barriers under extreme heat during the summer months, when the fans are running, usually at temperatures over 100° degrees. In order to protect the batteries, the fans run and can be loud. Mark Storm, the noise expert, came out and over three days in the heat of the summer did performed studies. The team is trying to figure out what is the best solution and are recommending an 18-foot-high sound barrier.

**Mr. Kaufman** added that Plus Power wants two things to happen: *To block the noise, and to absorb the noise.* When they received complaints last summer, it triggered a lot of study as late as this past February. The team went to both neighborhoods and knocked on doors (approximately 22 plus people). Heritage Oaks residents were a lot more responsive and expressive. The other neighborhood really didn't want to hear about it and didn't answer their door. The team left flyers on all those doors, to call in case of questions.

**Mr. Kaufman** explained the proposal for the 18 ft. wall which will comply with all City requirements and will comply with all applicable laws and regulations.

**Bill Kaufman** completed his presentation by showing slides of the battery park, and an artistic rendering of the proposed acoustic wall to be 10 ft. higher than the masonry wall. There are color options as well: brown, green, camouflage, etc.

**Mr. Kaufman** explained that under the Sup we were required before anything was built to study the ambient sound levels currently on that site with nothing because you got to know what effects occurred on current sound ambient sound (to establish the baseline). Mr. Kaufman the results table which compared the decibel levels of the noise on-site and also the effects of the 18 ft. wall.

**Bill Kaufman** stated that he took Staff's recommendation and clarified it a little bit, defining the referenced term "*emergency*". We've added an example of ERCOT issued notification to conserve energy.

**Chairman Bill Garwood** recognized the sound expert: Mark Storm.

**Mark Storm** began by speaking on the sound barriers and sound blocking material, which could be a vinyl mesh or something more solid as acoustically absorptive material to reduce the reflection.

**Chairman Bill Garwood** asked how can the Angleton community be assured that those are the numbers that we will experience in periods of future heat, like we had in the July 2023?

**Mark Storm**, referring to the results table, explained the measurements that were conducted last summer, during elevated operation levels from the equipment.

**Chair Bill Garwood** inquired about Mr. Storm's background and previous experience.

**Mark Storm** stated he's done control engineering for over 30 years and is very familiar with three-dimensional sound and has experience with patent models. He added that he's actually been on the manufacturing side early in his career and then design engineering of noise barrier solutions similar to this. He has done stadium acoustic design for decades, design as well as designed fan tower acoustics in that type of facility.

**Chairman Bill Garwood** stated that these numbers are for a standard operating day in the summer at 85 to 100 degrees, do you guys have any similar numbers for the heat?

**Mark Storm:** Yes, we designed the barrier to function and absorb noise from the equipment. The fans are operating at system level. I am informed of what those levels are when the barriers are installed.

**Board Member Andrew Heston** asked, at what temperature is this thing going to start being louder than it was before we put the storage park in? Is there a chance that the ambient sound could increase higher than what we experienced in July 2023?

**Mark Storm** explained the fixed relationship between how fast the fans are running and the cooling systems running and operating to produce noise at that level. If we install this barrier, it's going to reduce the noise.

**Board Member Andrew Heston added** that this barrier is built to accommodate for the maximum noise level and keep the ambient noise down to where it was prior to the facility being created, so why do we need to grant additional exceptions?

**Applicant Keith Merkel:** Essentially, it is a combination of the temperature and the ambient temperature. So it depends on how the battery operates at a particular point in time. It makes the fans operate more or less; so it's hard to say with certainty that in all conditions it will never be at a point that is above the previously recorded ambient levels.

**Applicant Keith Merkel** explained the specifications that have been provided by the manufacturer allow for a variation in the speed limits up to a certain level. And it is an algorithm that they control in order to keep the battery operating safely. So,

there's variability in the fans increasing or decreasing in order to maintain similar thresholds. So, the batteries are always operating in a safe manner, and they're not impacted or hurting themselves or taking themselves out of operation.

**Chairman Bill Garwood** made the observation that if these corrective measures don't work, then at such time as the sound exceeds that ambient level from 2020 the situation, you will have to be addressing this yet again under the SUP. Obviously, you don't want to address this more than once.

**Applicant Keith Merkel** concurred.

**Board Member Andrew Heston** added that if we were to make the changes to Condition 'F' (*safely operations under emergencies*), we could see an increase in sound level, and it would be permitted under the SUP, if we adopted the changes you're making. Is that correct?

**Applicant Keith Merkel:** Concurred, explaining that the emergency conditions that they are trying to address are triggered by ERCOT, in the case of great instability.

He added that the language is to provide some clarity around what constitutes an emergency condition.

**Applicant Keith Merkel:** But that includes ERCOT issued notifications for an emergency. And what that means is ERCOT is constantly looking at their ability to maintain energy for the public and at certain levels they reach a point of concern and great vulnerability. Like on the on "ramp-up" or "lead-up", which could lead to rolling blackouts and when ERCOT issues notifications to operators, asking for additional reserves during emergency situations.

**Board Member Andrew Heston:** Can you, under any circumstances, contemplate the situation where you don't have an emergency? And you could safely ramp the batteries down. Just with the pure temperature alone, it is going to create an increase of the ambient sound level.

#### **PUBLIC HEARING OPENED:**

**Chairman Bill Garwood** entertained a motion to open the public hearing:

A motion was made by **Commission Member Heston**, seconded by **Commission Member Clark** to open the public hearing. Motion passed unanimously.

**City Attorney Judith ElMasri** interjected that in the attached draft Ordinance in the packet, there is the absence of a reference of the adopted noise ordinance and to

what state law is. If that will make the P&Z Commission more comfortable, we can certainly add that. Our noise ordinance tracks state law, and the maximum decibel measurement allowed is 85 decibels.

**PUBLIC INPUT:**

**Chris Peltier**, developer of Heritage Oaks Subdivision. He spoke on his involvement in every meeting for months with the former Mayor, and with Molly Anderson of Gambit Energy.

When we had problems, we would contact Michael Gradstein with Tesler, and he was very responsive.

He spoke on the Council's agreement and the conditions of the SUP, *Condition 'F'*, referencing "operating safely", which is an *open season* for violating.

The whole premise of the SUP was based on what we decided originally.

I understand you have to modify it, but that's a big problem. Mr. Peltier also played an audio recording of the loud noise.

It was discussed that prior to the SUP being created that we'll never have noise outside the boundary. And so we went on in good faith that was what was going to be done. He raised concern about the term "safely" which is scary.

Mr. Peltier added that he is not sure if the 18-ft. acoustic wall will meet windstorm approval, but Kyle Reynolds will have to look at it. He noted concerns about the fence flopping in the wind, which could produce noise on its own. He raised concerns about Texas New Mexico having possible issues with the tall structure next to their substation.

**Ms. Clara Dannhaus** passed out her typed questions. Stated that she was at the 2020 meetings and we asked all those questions and I'm looking back at the paper that they provided. They gave us an FAQ. The site is visible to us now, especially in the winter. We support the fence, but will it hold up in the winds? We all hope that it works. Most are the neighbors are in favor of the fence, but sound is our major concern (humming like vacuum cleaners, in mornings and evenings/she recorded the sound on Sept. 5<sup>th</sup> at 9:02 PM). She noted that her home is 500 ft. away, but she hears it in her backyard. Because of the direction of the wind, they hear it, but the folks to the east do not. She is not in support of giving them any leeway on the sound or any increase in the noise level. Who do we call when we have a complaint, she asked.

**Mr. Spriggs** informed that there is a process for filing complaints with the City and we will respond to the complaints.

**Chairman Bill Garwood:** Right now, I've got three more requests, but if the three folks feel exactly the same way as Mr. Peltier, I won't make you come up to the podium, but you're welcome to.

**Mr. Gary McDaniel,** 883 Spreading Oaks, Heritage Oaks (lives 351 ft. from the fence). Described his visit from Plus Power back on February 26th. Since they left that evening, he has heard the roaring noise on his back porch, six times since that day. He'll be happy to call and complain the next time. Added that we should hold to the original conditions.

**Bill Kaufman:** On the condition of "safely", it does appear to be broad and if that's a makes you uncomfortable, we are willing to delete that part of the request. Amend the rest of it, but just delete the part about the safety.

**PUBLIC HEARING CLOSED:**

**Chairman Bill Garwood:** Entertained a motion to close the public hearing:

A motion was made by Commission Member Spoor, seconded by Commission Member Clark to close the public hearing. Motion passed unanimously. **The Public hearing was closed.**

**Commission Member Clark:** Obviously, something's going to have to be done. Anything that they're going to try to do is going to improve what's already there.

**Chairman Bill Garwood:** I'm hoping that our visitors here do not want to spend any more on future improvements, and they want to get it fixed right the first time, correct?

**Commission Deborah Spoor:** What is the life of the original SUP?

**D.S. Director Otis Spriggs** explained that there is no expiration (or sunset).

**Commission Member Andrew Heston:** So, you're proposing that the only situations in which you would be allowed to exceed the ambient noise level would be in an ERCOT emergency, including an ERCOT declared emergency?

**Bill Kaufman:** I'll leave it to the City's legal counsel to give you advice. But the way I read this- *but for extreme temperatures in emergency situations, and during days of extreme temperatures.* Bill Kaufman concurred: We've got to comply with the requirements that you currently have.

**COMMISSION ACTION:**

**Board Member Andrew Heston** made a motion to approve the SUP modification for the 18ft. sound wall/fence conditioned that the sound level emitted from the energy storage facility shall be no louder than the ambient noise level prior to the installation of the project at 100 feet outside of the parcel boundary and the nearest existing receptor except under ERCOT declared emergency requesting additional resources and that the City's adopted ordinances and state law be fully complied with.

**Roll Call Vote:**

Commission Member Deborah Spoor- Aye; Commission Member Will Clark- Aye; Commission Member Andrew Heston- Aye; Chairman Bill Garwood- Aye.

**Motion carried.** The SUP modification was **approved** by the Commission. (4-0 vote).