

MINUTES OF PUBLIC HEARINGS and REGULAR MEETING
April 25, 2016
MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the regular meeting to order at 6:00 p.m.

Present: William Simpson, Nelson Cox, Arnette Easley, Jeffrey Waddell and Carol Langley

Absent:

Also Present: Jack Yates, City Administrator

VISITOR/CITIZENS FORUM

Any citizen with business not scheduled on the agenda may speak to the Commission. Prior to speaking, each speaker must be recognized by the Chairman. Commission may not discuss or take any action on any item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

No comments were made.

CONSIDERATION AND POSSIBLE ACTION

1. Discuss/take action regarding March 28, 2016 minutes.

Jeffery Waddell said he wanted to clarify on page 9 of the minutes that read “citizens did not understand their taxes would go up if they zoned their property commercial,” and asked to confirm the wording stated by Carol Langley. After discussion, City Secretary said that she would correct the minutes to read as follows: “citizens did not understand their taxes would not go not up if they zoned their property commercial” and adding it would be based on how the property was used”

Jeffrey Waddell moved to approve the minutes as read. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Public Hearing for rezoning of 10.36 acre site of McCoy's Center –SW Corner of Texas SH105 & Buffalo Springs Drive from Single-Family and Multi-Family Residential to Commercial.

Chairman Cox called the Public Hearing to order at 6:05 p.m.

Mr. Yates advised that McCoy's has applied for a zoning change of the 10.36 acres at the SW corner of SH105 and Buffalo Springs Drive to have the property zones as Commercial. Mr. Yates advised that City Council would also conduct a Public Hearing.

Mr. Sam Walker, with Eckermann Engineering, representing McCoy's, said that he was available to answer any questions that might come up. Mr. Walker said that the zoning, right now, sort of angles and consists of commercial, a triangle of multi-family in the back and residential, so they are trying to rezone the entire 10.36 tract to commercial. Mr. Walker said that the agenda had reflected 10.34 acres and should read 10.36 acres. Chairman Cox advised that was a typo.

Carol Langley asked whether McCoy's owned the land. Mr. Walker said that it was still owned by the Rampy family trust. Mr. Walker said that it was his understanding that they were planning on closing on the property in May. Carol Langley asked whether the written request came from the Rampy's or from McCoy's. Mr. Walker advised that it had come from a third party, for the McCoy's, with the Rampy's authorization to proceed.

Chairman Cox closed the hearing at 6:09 p.m.

3. Discuss/take action regarding rezoning of 10.34 acre site of McCoy's Center - SW Corner of Texas SH105 & Buffalo Springs Drive from Single-Family and Multi-Family Residential to Commercial.

Carol Langley asked how many letters had been mailed to the property owners. City Secretary, Susan Hensley advised that there had been four letters mailed, with the return of one green card, from A.L. Randall Rischer.

William Simpson asked whether the green cards all had to be returned for the notice to be complete. Ms. Hensley advised that the letters had all been mailed via certified mail, ten (10) days prior to the public hearing, as required, along with being published in the City's official newspaper two times and posted on the City's web site.

Jeffrey Waddell asked whether McCoy's was slated to go into Reserve "A." Mr. Fleming said that was correct. Jeffrey Waddell asked about the south end that shows the drainage, and said he was not sure if it was a retention set up against the residential, or more of a flow to go out. Mr. Walker advised that the site plan shows a triangle piece that is the detention pond. Jeffrey Waddell asked if there was a plan for the other three parcels. Mr. Walker said that there was no plan at this time.

Mr. Yates said that the Commission needed to remember that they would be zoning this property commercial and whether or not the deal works out for McCoy's, the property will still be commercial use. Carol Langley said that was why she was asking who submitted the request in writing, and whether the Rampy's actually asked for the property to be rezoned commercial, or was it because they think they have McCoy's purchasing the property. Carol Langley said that if both McCoy's and the Rampy's put in the request, then that is fine. Mr. Yates advised that it was both parties.

William Simpson moved to approve the rezoning of the property for the McCoy's Center from single-family and multi-family to commercial for recommendation to City Council. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

4. Public Hearing for 14375 Liberty Street regarding a Special Use Permit as a tattoo parlor.

Chairman Cox convened the Public Hearing at 6:17 p.m.

Mr. Yates advised that the Zoning Ordinance has a tattoo parlor as a Special Use Permit, which means that in the category of uses there are certain uses that are designated for “CC” that requires City Council approval. Mr. Yates said that Ms. Michele Martin had applied for a Special Use Permit for the tattoo parlor.

Mr. Yates said that he had added “eye shading” but all she is doing is eyebrows, and perhaps that should be removed since Ms. Martin won’t be doing eye shades. Mr. Yates said that doing eyebrows still required a tattoo license, which is why she required a Special Use Permit. Arnette Easley asked whether Ms. Martin would be doing both, or just eyebrows. Mr. Yates said she would only be doing eyebrows. Jeffrey Waddell said that he did not think that they had any problem with eyeshades, and if it was possibly needed in the future, he would hate to have to go through this again. Ms. Martin said that they could leave the eyeshades in the permit, in case it was needed in the future.

Carol Langley asked whether Ms. Martin had received a copy of the Special Use Permit, and whether she had read it. Ms. Martin advised that she had received a copy of the draft and had read it. Carol Langley asked Ms. Martin if she was comfortable with all the requirements of the permit. Ms. Martin advised that she was comfortable with the permit. Carol Langley asked whether Ms. Martin had her insurance. Ms. Martin said that she was also required to have the insurance for her shop for both the landlord and because she has massage therapy.

Chairman Cox adjourned the Public Hearing at 6:17 p.m.

5. Discuss/take action regarding special use permit to Michele Martin for a special use permit at 14375 Liberty Street as a tattoo parlor.

Ms. Hensley advised that there were 27 certified letters sent out for the mail notice and she had received approximately 10 of the green cards back. Ms. Hensley stated that the legal

notice was published in the City's official newspaper, Conroe Courier and on the City's web site.

Chairman Cox asked whether there had been any negative comments. Mr. Yates advised that there had been no comments. Ms. Hensley advised that she had received one call from a resident that wanted to know what the legal notice was regarding. Ms. Hensley said that she advised the resident what the notice was and the resident said they had no problem with the information.

Jeffrey Waddell moved to recommend to City Council approval of the Special Use Permit regarding Michele Martin's tattoo parlor located at 14375 Liberty Street. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

6. Report regarding lighting ordinance.

Mr. Yates distributed information regarding the proposed lighting ordinance. Mr. Yates noted that he had removed the wording "dark sky" because this is a lighting ordinance. Mr. Yates said that there will be a full draft of the ordinance on the City's web site for people to review.

Mr. Yates advised that they would conduct a public hearing regarding the ordinance on May 23, 2016 to discuss the information. Mr. Yates advised that he would try to have Mr. Solomon present for the May 23, 2016 meeting, or someone representing electricians, along with some example light fixtures.

William Simpson asked if Mr. Yates would have more of the parameters for the proposed ordinance, along with his recommendations regarding enforcement, sent to the Commission prior to the May 23, 2016 meeting. Mr. Yates advised that he would write a memo regarding enforcement and administration of the ordinance to the Commission.

Arnette Easley asked whether the wattage of the bulb could control the matter. Mr. Yates stated that he purposely did not get into that specifically because the ordinance states that the light can't go beyond the person's property. Arnette Easley said that he thought the amount of the wattage would control that issue. Mr. Yates said that the fixture can control where the light hits so he did not get into the wattage, because of the difficulty in administering the ordinance. Mr. Yates said that there are ordinances that use the wattage and described how they measure the wattage. Arnette Easley said that most businesses are going to the LED lights that are more efficient and not as bright. Jeffrey Waddell said the LED lights are more economical. Jeffrey Waddell said that any information that they can obtain regarding lighting, since there have been so many changes, will be helpful. Arnette Easley said that he felt it would be more economical to regulate the wattage versus the fixtures, because the fixtures could be expensive versus telling the public that they can't go over a certain wattage. Mr. Yates said that the reason for the full cut-off fixture or a shoebox fixture, which directs the light was they are trying to make the ordinance easier to administer.

Mr. Glynn Fleming, Associate Engineer, advised that in small municipalities, there are two concerns you will see are 1) sky glow when the light that floods up into the sky known as "illusive night sky" and 2) "light trespass." The light trespass is more prevalent where you have light industrial and commercial areas abutting a residential area where the light bleeds over the property line onto someone else's property. Mr. Fleming said that to some degree you can control light by regulating the wattage, but it can be pretty subjective and difficult to enforce, while specific types of fixtures are easier to administer and enforce. Mr. Fleming said that he would gather some photographs and examples of the fixtures and bring them back for the May meeting.

7. Report regarding tree ordinance.

Mr. Yates said that he did not have too much on this item, other than they could have a public discussion at the May meeting. Chairman Cox asked if that would be a Public Hearing. Mr. Yates said that was correct, but he had not put that on the agenda so it would

be just a discussion. Carol Langley said that she did not think that they were ready for a Public Hearing. Mr. Yates agreed and said that was correct, which was why it would be a discussion.

8. Discuss/take action regarding zoning districts in the city and any recommendations to the City Council.

Mr. Yates discussed some potential zoning changes that might occur in the City and made recommendations to the Commission. Mr. Yates said that all the areas that are to be changed will have to have a legal description to be included in the Ordinance amending the zones. Mr. Yates advised that there was an Ordinance for every zoning change that has been made in the City. Mr. Yates said that they always wanted to go for the highest and best use for the property being zoned. Mr. Yates advised that he would put together the recommended changes and bring back to the Commission. Mr. Yates stated that the City would have to go through the same process as anyone else that wants to rezone their property.

Mr. Yates said that he would work on getting the information and property descriptions put together so that the Commission could call a Public Hearing, possibly in June. Mr. Yates advised that the City would have to send out notice to all the property owners within 200 feet on the recommended changes. Mr. Yates said that as soon as he comes up with enough of a description of the property he will begin the process of identifying the property owners within the 200 foot boundary, which will probably take a couple weeks to complete. Carol Langley asked whether Mr. Yates was going to try and talk to the property owners that will be involved in the rezoning before any action is taken, or was he just going to send a letter. Mr. Yates advised that he would be contacting the property owners, which might take a while to complete. Mr. Yates said that he would move forward with the process.

9. Discuss/take action regarding setting a Public Hearing for a request for a special use permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in the John Corner survey, abstract number eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc., to be held

on May 23, 2016 (property is immediately east of Rampsy Lake and west of Lone Star Pkwy.)

Mr. Yates advised that this is a proposed 172 foot high monopole Verizon radio tower, which requires a Special Use Permit. Mr. Yates stated that there was no radio station involved, it was just reflecting the wording of the Zoning Ordinance.

William Simpson asked who was requesting the Special Use Permit. Mr. Yates advised that Mr. LeFevre owns the property and has allowed Verizon to file the application. Mr. Yates said that he has an email from Mr. LeFevre giving authorization for Verizon to file the application, which also states that he was neutral, neither against nor in favor of the tower.

Jeffrey Waddell asked if the single monopole would have a single cluster at the top of the tower. Mr. Yates said that he was trying to find more information regarding what the Commission should be considering for a monopole tower installation. Mr. Yates said that so far he had not been able to find anything.

Mr. Yates said he also asked the City Attorney for information, and Mr. Foerster provided an article that stated the Commission could either approve or deny the application for any reason that they wanted to, including appearance.

Carol Langley said that the Zoning Ordinance does not allow anything to be over a specific height, and asked what that height was. Mr. Fleming advised that the maximum height was 45 feet. Carol Langley said that height limit was put in the Zoning Ordinance to keep these things out of the City. Mr. Fleming said that he would assume somewhat by design that was true. Mr. Fleming advised that this property was part of Mr. LeFevre's Planned Development District that has a more restrictive criteria.

Mr. Yates said that at the next meeting the Commission will probably need to set a public hearing at the next meeting regarding a 75' foot flag pole to be located at the Welcome to Montgomery monument at the corner of SH 105 and Lone Star Parkway in front of Kroger.

Jeffrey Waddell asked if the proposed location of the tower would be in the line of sight with the monument and might be located close to the flag. Mr. Yates said that he thought it would be far enough away from the flag. Mr. Fleming advised that there was several hundred feet between the two sites. Mr. Yates said that he could get a survey and stake the property that way the Commission could get a better idea of the property.

Mr. Yates said that the Commission does not have to make a decision on the tower at the public hearing, they could postpone their decision. Mr. Yates said that he would try to find some more planning information for the Commission. Mr. Yates said that he would also check regarding the height information, because if it is just height then it might be a decision for the Board of Adjustments, but he would verify that information.

Mr. Yates said that the only tricky part of a cell tower permit would be if they abandon the tower or have to adjust the size of the tower. Mr. Yates said that he would try to contact someone from the FCC to get some additional information for the Commission.

Jeffrey Waddell asked whether there would be a building involved or whether it would just be an antenna. Mr. Yates said that he thought there would be a very small building, almost the size of a Port-o-Potty. Jeffrey Waddell asked if Verizon had looked at other locations, because this site seems so close to the street. Mr. Yates said that his question was why the tower had to be so high, because to him 172 feet seemed very high.

After discussion, William Simpson moved to schedule the radio station/tower public hearing to be held on May 23, 2016 at 6:00 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

10. Consideration and possible action regarding a variance request from Corin Homes and the Buffalo Springs Architectural Control Committee.

Mr. Fleming advised this was a variance request for two lots in Buffalo Springs, Section 2, Lots 11 and 12, Block 1. Mr. Fleming said that the variance request was for the platted

building line setbacks. Mr. Fleming said that these particular lots were platted with larger building setbacks than the surrounding lots. Mr. Fleming noted that Lot 11 has a 45 foot setback and Lot 12 has a 50 foot setback. Mr. Fleming said that these lots were platted this way to avoid a variance request.

Mr. Fleming stated that there is a minimum lot width of 75 feet. In the case of radial lots, such as these two lots, the front building setback is determined by how far back you have to go from the right-of-way to obtain that 75 foot width. Mr. Fleming said that the prospective homebuilders looking at these lots is requesting a reduction of the setback to 25 feet, which would make them in keeping with the other adjacent properties. Mr. Fleming said that the builder is asking for this two fold, one there is a good bit of elevation change from the street and going back to the creek, where these lots fall off very quickly by 10 to 15 feet. The second concern for the builder is the paving costs should they have to set the home that far back on the lot, which he feels will be an undue expense.

Mr. Fleming said that he could not offer any specific objection to this request, and he did not know if there was any harm in granting the variance. Mr. Fleming said that the Buffalo Springs Architectural Control Committee has reviewed the information and they do not have any concerns about the aesthetics.

Mr. Fleming said that he did have a couple of comments that are secondary aside from the variance request. Mr. Fleming advised that Lot 12, along the eastern side, has a drainage easement, and they would have to be very careful to assure that is maintained and not disturbed. Mr. Fleming said the second issue was this area had been platted in 2001. FEMA redrew the Flood Plain Map in August, 2014. Mr. Fleming said in 2001 the Flood Plain just touched the rear lot line of Lot 11, and barely cut across the corner of Lot 12. Mr. Fleming advised that the new Flood Plain encroaches on both of these lots to a significant degree, reaching almost halfway onto Lot 12. Mr. Fleming said that in talking with the homebuilder this morning, the builder was not aware of this information.

Mr. Fleming said that the Flood Plain was really a concern for the City for a couple of reasons. One being an increased amount of fill will have to be placed on that lot, because the elevation of that structure has to be a minimum of one foot above the base flood elevation in that area. Second, anytime that you work in a Flood Plain area and disturb it in any way, namely with fill, they are going to have to engage a third party engineer. The engineer would have to, at the very least, design their foundation, because there is going to be 10-15 feet of fill needed, if not more. The engineer will also have to do a detailed study and obtain a Letter of No Adverse Effect for adjacent or downstream properties, because they will be changing the makeup of the 100-Year Flood Plain.

Carol Langley asked how wide the lot would be if they changed the setback to 25 feet. Mr. Fleming said that they are all large lots, well over the required minimum 9,000 feet. Mr. Fleming said that the builder is just trying to move his structures a little bit closer to the right-of-way to minimize the amount of fill required in the back and to be out of the Flood Plain all together. William Simpson asked whose decision is that. Mr. Fleming said that it would be the developer's choice. Mr. Fleming stated that the City has a review process, which this will be a bit beyond what they normally review.

Mr. Fleming said that since the City is a member of the FEMA Insurance Program, they would very interested in verifying, by a third party surveyor at the developer's expense, a Flood Plain Elevation Certificate to insure that the finished floor of the structures are at least one foot above the Flood Plain Elevation.

Jeffrey Waddell said that there is only a 30 foot width there, so a structure might not even be doable. Jeffrey Waddell said that what is going to be built would have to be approved because it will need to be in keeping with the rest of the neighborhood. Jeffery Waddell said that most houses are 95-120 feet wide and the narrowest one that he could think of was 85 feet wide, so maybe they could have a garage and then the house would have to be behind the garage because of the pie shaped lot. He said that he just wondered how it could be done, because they would lose all their lot width by coming up that far. Mr. Fleming said that the builder is trying to get the homes as close to the curb as he can and still work in a

12-16 foot wide driveway. William Simpson said that even if the variance is granted, the builder still has a lot of work to do. Arnette Easley asked whether the 25 foot variance would take them out of the Flood Plain. Mr. Fleming said that it would not.

Mr. Bill Parker, Buffalo Springs Architectural Committee member, said it is up to the builder to make the plans work. Mr. Fleming said that the City's standpoint is whether to grant the 25 foot setback, the aesthetics of the home will lay largely with the Architectural Committee.

William Simpson moved to grant the variance for Corin Homes to move the setback to 25 feet for the requested lots. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

11. Discuss/take action regarding McCoy's Development Preliminary Plat.

Mr. Fleming presented the plat information to the Commission, advising that he had some minor and routine comments on the plat regarding easement placement, clarification on abandoned easements and a comment about observing the required setbacks between the various reserves. Mr. Fleming said that he found the preliminary plat to be in keeping with the City's Code of Ordinances, and it was staff's recommendation to approve and accept the plat as submitted.

Mr. Yates asked where the driveways would be located. Mr. Fleming said that they would not be shown on the preliminary plat submission, but indications from the preliminary land plan was there would be a single curb cut on SH105, and one or two curb cuts on Buffalo Springs. Mr. Fleming advised that until the zoning classification of McCoy's is finalized, they can't address any variance requests, which he expects to have possibly two variance requests for minor things, such as, setbacks and driveway spacing.

William Simpson moved to approve the Preliminary Plat for McCoy's. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

ADJOURNMENT

William Simpson moved to adjourn the meeting at 7:20 p.m. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

Submitted by: *Susan Hensley* Date Approved: *05/23/16*
Susan Hensley, City Secretary

Nelson Cox
Chairman Nelson Cox

