

MINUTES OF REGULAR MEETING

July 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 6:03 p.m.

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

Absent:

Also Present: Jack Yates, City Administrator
Larry Foerster, City Attorney

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.

Mrs. Shauna P. Dodd, who resides on Caroline Street, advised that she wanted to learn what the procedure would be to add a dwelling onto the property she resides on, such as a Mother-in-law quarters. Mrs. Dodd said that she thought her lot was a ½ acre lot, but she did not have the measurements of the lot. Carol Langley asked if she was located in the Historic District of the City. Mrs. Dodd said that she was located in the Historic District, so she did not know if this type of addition would be allowed. Mr. Yates advised that he would contact Mrs. Dodd tomorrow to discuss the information. Mrs. Dodd thanked the Commission for their time.

CONSIDERATION AND POSSIBLE ACTION

1. Discuss/take action regarding June 27, 2016 minutes.

Carol Langley moved to approve the Minutes as presented. Jeffrey Waddell clarified that on page 5 of the minutes, where Mr. Fleming is talking about the set back on the side, where it states “the developer will replace the retaining wall.” Jeffrey Waddell said that what they meant was “the developer will install the retaining wall.” Mr. Fleming confirmed that would be new construction of the retaining wall. Ms. Hensley said she would correct the information. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Discuss/take action regarding sign permit for 202 McCown Street – Shawna Reilly.

Mr. Yates advised that Ms. Reilly was unable to attend the meeting tonight. Mr. Yates said that Ms. Reilly was applying for two signs at 202 McCown Street, which is next door to the Old Montgomery Steak House property. Mr. Yates said that Ms. Reilly is removing the existing signs and wants to put up two signs. Mr. Yates said that the signs are black and white with scroll around the lettering. Mr. Yates said that the signs appear to meet the requirements of the ordinance.

William Simpson moved to approve the sign permit for 202 McCown. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

3. Discuss/take action regarding cellular tower ordinance.

Mr. Yates reviewed the ordinance, as follows:

- Section 18-141 – states the Special Use Permit (SUP) process is in place and will still come before the Commission for recommendation to City Council. City Council will have the final decision.
- Section 18-142 – this section covers definitions.
- Section 18-142 (that will need the number corrected) – which states the setback standards for telecommunications towers from property that is residential use. Mr. Yates said that, in his opinion, residential use is not just property zoned as residential, but property that is being used as residential and has an actual structure on the property.

Jeffrey Waddell asked for clarification that number 2(a) states “that no more than two residential uses within 200 feet of the tower base” and said that he was not quite sure how to interpret that section. Mr. Fleming said that they might need to include a definition for residential use. Mr. Foerster said that they would add a definition for “residential use”. Mr. Foerster asked what type of residential use they were referring to, such as, single family, multi-family, etc. Mr. Yates said that he thought that it was any type of residential use. Mr. Yates said that he would review the information with the City Attorney tomorrow, then he will come back with an explanation.

Mr. Yates then reviewed the following sections of the proposed ordinance:

- Section 18-143 – deals with building mounted facilities, which is antennas on the roof tops, which shall be screened, constructed or colored to match the structure. They cannot be more than 10 feet above the existing building.
- Section 18-144 – covers accessory buildings and allows a building of not more than 300 square feet, for storage of equipment, not for office space or other long term uses.
- Section 18-145 – requires an annual inspection of the structure.
- Section 18-146 – application requirements and materials required to be submitted.
- Section 18-147 – addresses tower locations.
- Section 18-148 – addresses tower design, with the key point under 2) that states they must meet or exceed the requirements of the EIA/TIA-222-E. EIA- Electronic Industrial Association. TIA is the Tower Industry Association, and 222-E is the method of construction in the Structural Standards for Steel Antenna Towers. Mr. Yates said that they would probably need to have a specific tower reviewer to review the plans, and it will be part of the building permit process.
- Section 18- 153 – is related to additional antennas, and states additional antennas will be reviewed by the Planning and Zoning Commission, and approved by City Council.
- Section 18-154- covers maintenance and inspections of the tower.

- Section 18-155- is the removal of the tower, and states that any tower that is not operated for a continuous period of six (6) months, is considered abandoned and the owner of the tower shall remove the tower within 90 days of receipt of notice from the City Administrator.
- Section 18-156 – is a deed restriction covenant that states that the permit goes with the property when it is sold. Mr. Yates advised that this section requires a building permit to be obtained within 180 days from the date of approval.
- Section 18-159 - states that the final approval of the application is reviewed by the Planning and Zoning Commission and approved by City Council.
- Section 18-160 – addresses tower permit fees.

Jeffrey Waddell commented on the plan review, which would be done by the City Administrator, and asked if there would be inspections done during construction. Mr. Yates said that there would be inspections done the same as with any other building permit. Mr. Yates advised that the fees for the tower would be for the time it takes to review the application and any necessary reports.

Carol Langley asked how Mr. Yates came up with the fees in the ordinance. Mr. Foerster said that if they are going to have an engineer and a contract code official review the permits, a fee of \$2,000 is not an unreasonable fee. Mr. Fleming said that was a fair assessment. Carol Langley asked if the other cities had fees in their ordinances, and whether they were comparable to these fees. Mr. Yates advised that they were comparable, and he thought they were at \$2,000 to \$3,000. Mr. Yates said that if the City had to hire somebody other than the building inspector, they would add that charge to the building permit. Mr. Yates said that the fees listed were for the application, because if they got approved, then they would apply for a building permit. Mr. Yates said that they would have to submit plans, and the plan review allows for a plan review fee, which is half the cost of the permit. Mr. Yates said that they could add on the building permit that the tower was designed to the EIA/TIA-222-E Standard. Mr. Yates said that you could have an architect sign off on the plans stating that they met the standards, instead of the building inspector.

Jeffrey Waddell asked if they would be required to submit a soil sample. Mr. Fleming said that would fall under the EIA/TIA Classifications. Mr. Fleming said that the plans for the structures will have to be signed and sealed by a licensed structural engineer, licensed in the state of Texas. Mr. Fleming said that from an engineering standpoint, as the City Engineer, he is comfortable reviewing the plans for compliance, but said that he also felt that it would be good to pass it through the Building Code Official.

Rebecca Huss, City Council member, commented on Section 18-146(2) and asked if \$2,000 - \$3,000 would be enough to cover cost for the City obtain an engineering report. Mr. Yates said that he thought that the City Council could charge for any out-of-pocket expenses. Rebecca Huss asked whether it would have to be specifically addressed in the ordinance to cover the cost to pay for professional guidance. Mr. Fleming said that what he has tried to incorporate in the new development packet, as a qualifier, that all fees would include a “plus time and materials” clause.

Rebecca Huss asked whether there should be an annual inspection fee for the annual inspection of the towers. Mr. Yates said that would be easy enough to add to the ordinance. Mr. Fleming said that his intent was to require the entity to have the inspection done and then provide the report to the City. The City would review the report and issue the permit.

Chairman Cox asked if the annual inspection was addressed in the ordinance. Mr. Foerster said that it was addressed in Section 154(2). Mr. Yates said that the owner of the tower has to submit a written report 30 days prior to the annual anniversary. Mr. Yates said that Section 145 also addresses inspection on the City’s part.

Rebecca Huss asked about Section 154 and what the remedy would be if they don’t submit the annual inspection report. Mr. Fleming said that he was going to recommend stating if they did not comply within a certain window of time, the City would undertake that inspection at the owner’s expense. Mr. Fleming said that these requirements are pretty

standard operating procedure. Mr. Yates said there could be up to \$500 per day penalty through the general penalty clause in the Code of Ordinances.

After discussion, Mr. Yates said that he would add "or if deemed structurally unsound" following the word "abandoned" in Section 18-155. Mr. Foerster said that in this section, the City Attorney is authorized to pursue all necessary legal remedies to implement the provisions of this section.

Mr. Foerster said that Section 18-148(1) (2) – Tower Structure and Design, he thought they needed to be more specific and identify that the design structure has to be certified by a professional structural engineer. Mr. Foerster said that it is implied, but not formally stated. Mr. Fleming said that they might need to include the standard under 18-148(2) adding a sentence stating "The design must bear the seal of a structural engineer licensed in the State of Texas."

Mr. Yates stated that in Section 18-142, they will delete the entirety of 2(a), which was a contradiction.

Mr. Foerster said that the ordinance would read better if they strike C(3) on page 3, which states "For the purpose of applying the restrictions the term "residential use" has the meaning set forth in the City zoning ordinance use charts, but excludes property that is vacant and unplatted." Instead move it to definitions, which would read: Residential Use has the meaning set forth in the City zoning ordinance use charts, but excludes property that is vacant and unplatted.

Mr. Fleming said that they might need to revisit the definition for residential use in the Code, because it is pretty broad. Mr. Foerster said that the City might want to develop their own residential use definition. Mr. Foerster said that he thinks the purpose of the tower ordinance is to prohibit any tower from being within 200 feet of any residential use. Rebecca Huss asked whether it was a safety factor or property valuation. Mr. Fleming said that it was probably more of the former, but it is a safety factor for clearance for a fall zone.

Mr. Foerster said that he feels that “residential use” needs to be a definition rather than stuck in all the other wording.

Mr. Yates stated that if the Commission was alright with the changes, they could vote to make the recommendation to City Council based upon the changes as follows:

- Delete Section 142-2(a) which states “There are no more than two residential uses within two hundred (200) feet of the tower base.”
- Move Section 142-2(c) to definitions of “Residential Uses.”
- Section 18-155 – adding the following, underlined statement or if deemed structurally unsound;
- Section 148(2) adding “The design must bear the seal of a structural engineer licensed in the state of Texas.”
- Mr. Foerster said that he would also suggest that 18-145 be changed to “City inspections” to differentiate that from 18-154 Maintenance Inspections, which is covered by the owner.
- Rebecca Huss asked about adding the “time and materials” to the expenses. Mr. Yates said that in Section 18-160 Tower Permit Fees, under (a), (b), (c) and (d) they would add “plus time and materials” to cover City costs.

Mr. Yates said that the Commission could either make the recommendation based on the changes or wait and review the changes next month. Jeffrey Waddell asked Mr. Yates if he would be able to make the changes for the Council Meeting tomorrow night. Mr. Yates said that he would be able to make the changes.

Carol Langley asked whether City Council has been discussing the tower ordinance, or will tomorrow night be the first time. Mr. Yates said that they had discussed the ordinance at their last meeting, but tomorrow night will be the first time that they will see the full ordinance.

Carol Langley asked Mr. Foerster if he was comfortable with the ordinance going before City Council with the changes. Mr. Foerster said that if Mr. Yates makes the suggested changes, he could have a chance to look at them before noon tomorrow. Rebecca Huss said that if they had a bulleted list of the changes and the sections that they apply to, that might be enough to allow City Council to approve the ordinance, pending insertion of the information. Rebecca Huss said they approve ordinances all the time like that, so that might be the easiest solution.

Mr. Foerster stated that there was also a numbering correction that would need to be made, because Section 142 is repeated. Mr. Foerster said that the changes could be done in red to show the changes, then once the ordinance is approved, they can make the changes. Mr. Yates said that he can make all the changes and review it with the City Attorney, and then present it to City Council tomorrow.

Jeffrey Waddell moved to send the Ordinance to City Council with the amendments, as noted. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Chairman Cox expressed his appreciation for the City staffs work, including the lack of legal ease and understandability that was really helpful for him. Chairman Cox said that it could tell that there is a lot of work and thought that has gone into the information, including from the City Engineer. Chairman Cox said that he just wanted to let City staff know how much the Commission appreciates their work.


Mr. Yates said that they try to write the ordinances to where they can be understood by everyone. Mr. Yates said that they want ordinances to be easy to understand so that they can enforce the ordinance, and easy for e person to understand so that they can follow it.

Mr. Foerster advised that Mr. Fleming had some really good input into the ordinance, just like the structural standards that are known in the industry that the City would not know of without his input, plus he had some other really good points as he did on the tree ordinance a few days ago.

ADJOURNMENT

Carol Langley moved to adjourn the meeting at 7:10 p.m. William Simpson seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date Approved: 8/22/16
Susan Hensley, City Secretary


Chairman Nelson Cox

