

NOTICE OF PUBLIC HEARINGS and SPECIAL MEETING

January 14, 2019

MONTGOMERY PLANNING AND ZONING COMMISSION

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

NOTICE IS HEREBY GIVEN that **Public Hearings and a Special Meeting** of the Montgomery Planning and Zoning Commission will be held on Monday, January 14, 2019 at 6:00 p.m. at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas for the purpose of considering the following:

CALL TO ORDER

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.

PUBLIC HEARING(S):

Convene into Public Hearings for the purpose of giving all interested persons the right to appear and be heard regarding the following:

- 1) **Public Hearing** - regarding rezoning of a 7.710-acre tract of land located at tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R-1-Single-Family as requested by Michael and Judith Kammerer. *(Second of two public hearings)*

Adjourn Public Hearing.

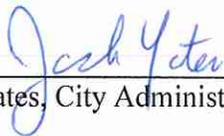
- 2) **Convene into Public Hearing** - regarding rezoning of a 2.187-acre tract and a 0.475-acre tract located at 1062 Clepper Street, Montgomery from R-1 Single-family to B- Commercial to be held as requested by James Ward. *(Second of two public hearings)*

Adjourn Public Hearing.

Convene into Regular Meeting

- 3) Consideration and possible action regarding Minutes of Regular Meeting of November 26, 2018, Special Meeting of December 13, 2019 and Special Meeting and Public Hearing of January 7, 2019.

- 4) Consideration and possible action on Final Report regarding rezoning a 7.710-acre tract of land located at tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R-1-Single-Family as requested by Michael and Judith Kammerer.
- 5) Consideration and possible action on Final Report regarding rezoning a 2.187-acre tract and a 0.475-acre tract located at 1062 Clepper Street, Montgomery from R-1 Single-family to B-Commercial to be held as requested by James Ward.
- 6) Report regarding Zoning Table of Uses.
- 7) Report regarding the Tree Ordinance.
- 8) Announcement of the Comprehensive Plan Community Meeting scheduled to be held on February 28, 2019.
- 9) Consideration and possible action regarding cancelling the Planning and Zoning Commission Regular Meeting scheduled to be held on January 28, 2019.
- 10) Adjournment



Jack Yates, City Administrator

Posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 11th day of January, 2019 at 3:45 o'clock p.m. The following news media was notified of this meeting as stated above: The Courier



Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Letter of Request Map with Request Area map from Staff
Date Prepared: January 10, 2019	

Subject

Public Hearing regarding rezoning a 7.710-acre tract of land located at Tracts 23-A & 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R1-Single Family Residential as requested by Michael and Judith Kammerer.

Description

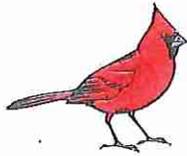
This is the second of two public hearings.

Recommendation

Listen to any comments received from the public.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19



Red Bird Meadows Ranch

Mike and Judy Kammerer
11900 Womack Cemetery Road
Montgomery, Texas 77316

October 24, 2018

Michael J. & Judith L. Kammerer
11900 Womack Cemetery Rd.
Montgomery, TX 77316

City of Montgomery
101 Old Plantersville R.
Montgomery, TX 77316

Attn: Mr. Jack Yates – City Adm.

RE: Request for zoning revision

Dear Mayor Countryman and Council,

We, Michael J. & Judith L. Kammerer, are owners of a 404 +/- acre tract in the Landrum Zacharias Survey, A-0022, tracts 23-A and 24-A on the 2017 Montgomery County property tax statement. We wish to engage and hereby authorize our real estate agent, Webb K. Melder, to act on our behalf regarding our request to change the current zoning designation for 7.710 acres of the aforementioned 404 +/- acre tract, located at the southwest corner of Old Plantersville Rd. and Womack Cemetery Rd, (see plat exhibit) and designated as tract 24-A. Our request is for all of the land located inside the Montgomery City limits as shown on the plat exhibit and that is part of our ranch, to be revised to residential.

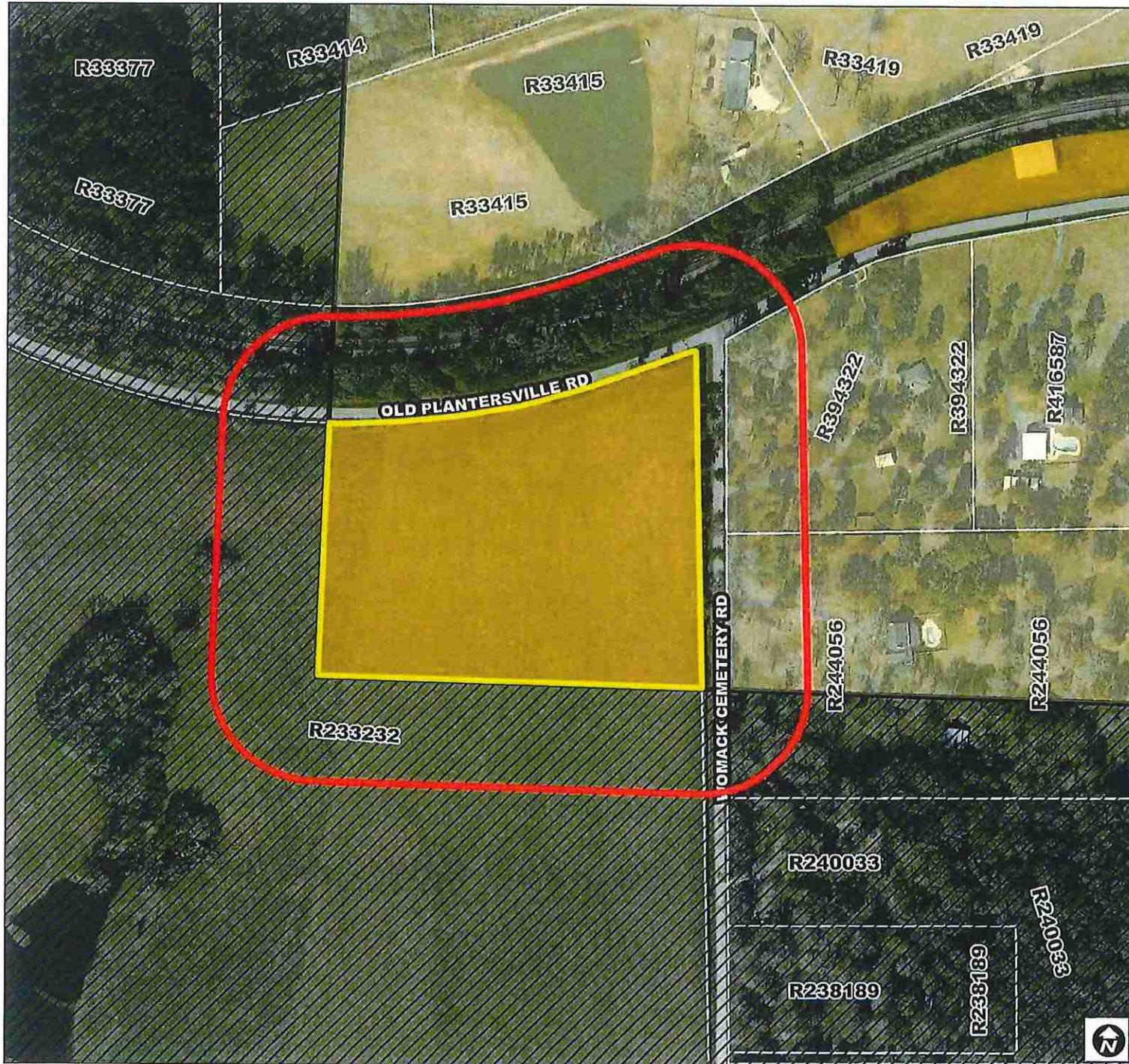
It is currently zoned industrial. With homes across the street and in the surrounding area, together with a residential development forecast for the future, we respectfully request the change in zoning classification from industrial to residential.

Enclosed is my check for \$500.00 for the city's zoning revision process and landowner's request fee. Thank you for your consideration.

Respectfully,

Michael J. & Judith L. Kammerer

Cc: Webb K. Melder – agent
713-824-8764



LEGEND

Zoning

- Industrial (ID)
- Residential (R-1)

- City Limit
- City ETJ
- MCAD Property Info
- Tract Boundary
- 200-ft Notification Boundary

Date:



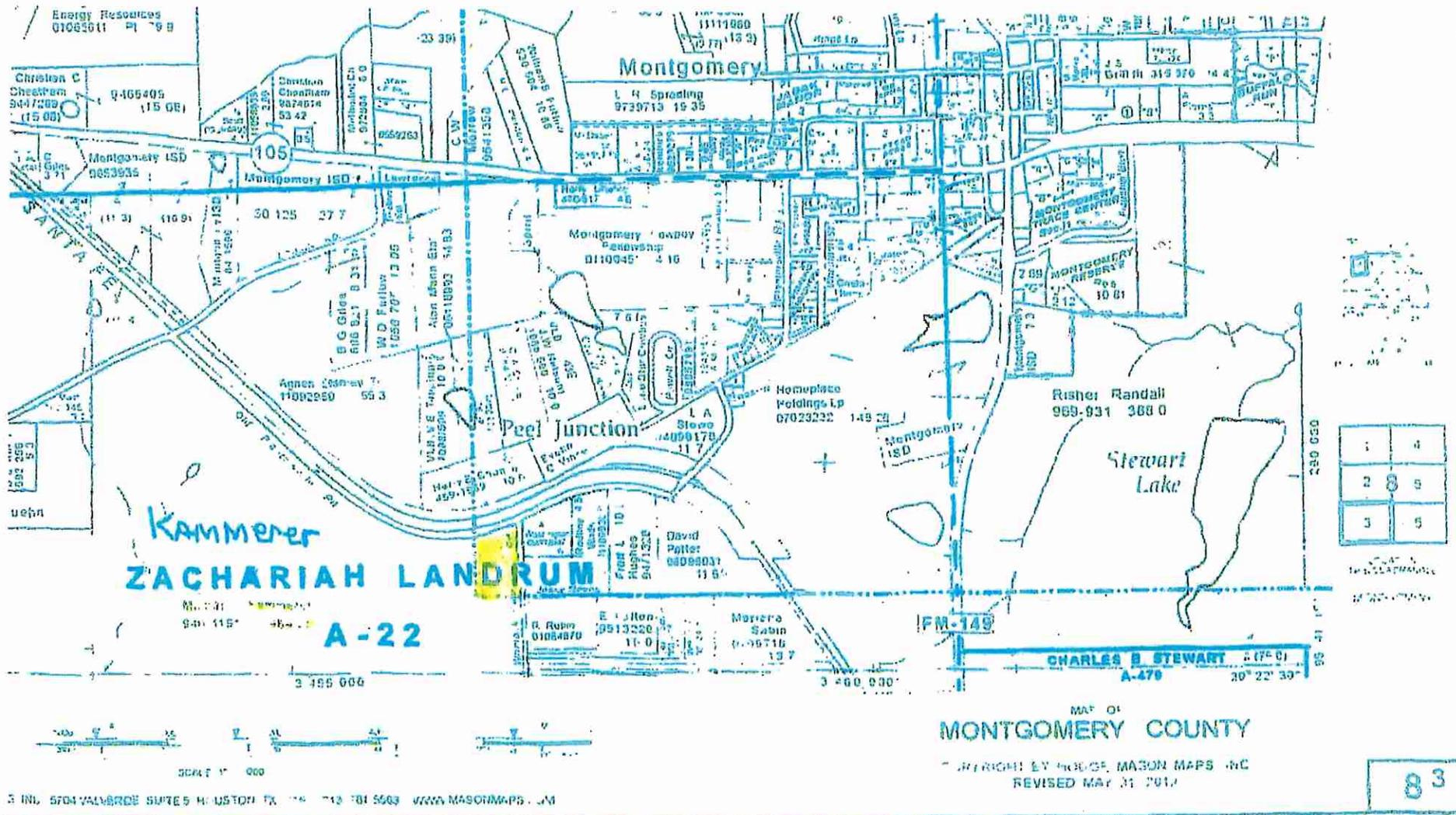
Kammerer Tract Rezoning

SW Corner of Old Plantersville Road & Womack Cemetery Road

1 inch equals 300 Feet

PLAT EXHIBIT

7.710 +/- Acres inside the city limits



Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Letter of Request Survey of Property Parcel map from Staff
Date Prepared: January 10, 2019	

Subject
Public Hearing regarding rezoning a 2.187-acre tract and an adjoining 0.475-acre tract of land located at 1062 Clepper Street, Montgomery from R1-Single Family Residential to B-Commercial.

Description
This is the second of two public hearings.

Recommendation
Listen to any comments received from the public.

Approved By		
Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19

**JIM'S HARDWARE, INC.
14460 LIBERTY ST.
MONTGOMERY, TEXAS 77356
936-597-8922**

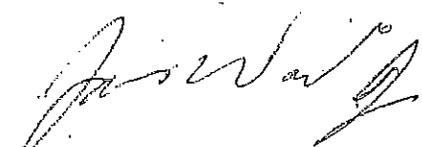
**City of Montgomery
Jack Yates
Montgomery, Texas 77356
August 31, 2018**

Dear Mr. Yates,

I am the owner of the attached described property. I request that the 2.187 acres of land and the 0.475 acres of land located at 1062 Clepper Street be re-zoned from R-1 Residential to B-Commercial.

Please let me know when the next Planning and Zoning meeting might be so I can discuss this property with them. If you have any other questions, please feel free to contact me.

Sincerely,


James (Jim) Ward, Jr.

**Owner
281-703-1628 OR 936-276-8000**

**Attached:
Check
Surveys and maps**



November 23, 2015

BEING 2.187 ACRES OF LAND IN THE JOHN CORNER SURVEY, A-8, MONTGOMERY COUNTY, TEXAS, SAID 2.187 ACRES BEING OUT OF THE N.D. BRANCH 2.72 ACRE TRACT OF LAND DEED OF WHICH IS RECORDED IN VOLUME 226, PAGE 318 MONTGOMERY COUNTY DEED RECORDS, SAID 2.187 ACRES BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING at a 5/8" iron rod found for the Southeast corner of Restricted Reserve "A", Ward Investment Section 1, a subdivision map recorded in Cabinet Z, Sheet 606 of the Montgomery County Map Records, the Southwest corner of the said 2.72 acre tract, in the North line of Clepper Street, (60' Vol. 10, Pg. 56, M.C.D.R.) and being the Southwest corner of the herein described tract of land;

THENCE N. 00° 57' 09" E., along the East line of said Reserve A, the West line of the 2.72 acre tract for a distance of 541.11 feet, (2.72 acre call 552.95 feet) to a 5/8" iron rod found for the Northeast corner of Reserve " A ", in the South line of Lot 12, Block 5 of Buffalo Springs, Section 1, Amending Plat, a subdivision map recorded in Cabinet Z, Sheet 94 of the Montgomery County Map Records, for the Northwest corner of the 2.72 acre tract, the Northwest corner of the herein described tract of land;

THENCE N. 85° 44' 52" E., along the South line of Lot 12, the North line of the 2.72 acre tract for a distance of 229.12 feet, (call 236.11 feet) to an 8" Cedar Fence Corner found for the Southeast corner of Lot 12, the Northeast corner of the 2.72 acre tract, in the West line of Betty Ann Cluxton 7.2 acre tract of land deed of which is recorded under County Clerk File Number 8005417 of the Montgomery County Real Property Records, being the Northeast corner of the herein described tract of land;

THENCE S. 00° 00' 01" E., along Cluxton's West line, the East line of the 2.72 acre tract for a distance of 298.60 feet to a Railroad Tie for an angle point;

THENCE S. 00° 08' 15" W., continuing along said line for a distance of 51.40 feet to a 1/2 iron rod set with cap (Jeff Moon RPLS 4639) for the Northeast corner of the Robert G. Berkley 0.38 acre tract of land deed of which is recorded under County Clerk File Number 2008-032938 of the Montgomery County Real Property Records;

THENCE N. 89° 56' 08" W., along Berkley's North line for a distance of 59.30 feet to a 1/2 iron rod set with cap (Jeff Moon RPLS 4639) to the Berkley's Northwest corner, in the East line of the Norman D. Branch 0.47 acre tract of land deed of which is recorded in Volume 352, Page 526, Montgomery County Deed Records;

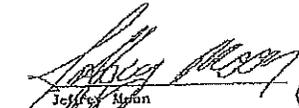
THENCE N. 00° 06' 56" E., along the above mentioned East line for a distance of 64.57 feet to a 1/2 iron rod set with cap (Jeff Moon RPLS 4639) for the Northeast corner of the 0.47 acre tract;

THENCE N. 89° 56' 08" W., along the North line of the 0.47 acre tract for a distance of 75.00 feet to a ½ iron rod set with cap (Jeff Moon RPLS 4639) for it's Northwest corner;

THENCE S. 00° 03' 52" W., along the West line of the 0.47 acre tract for a distance of 275.00 feet to a ½ iron rod set with cap (Jeff Moon RPLS 4639) for it's Southwest corner, in the North line of Clepper Street for the Southeast corner of the herein described tract;

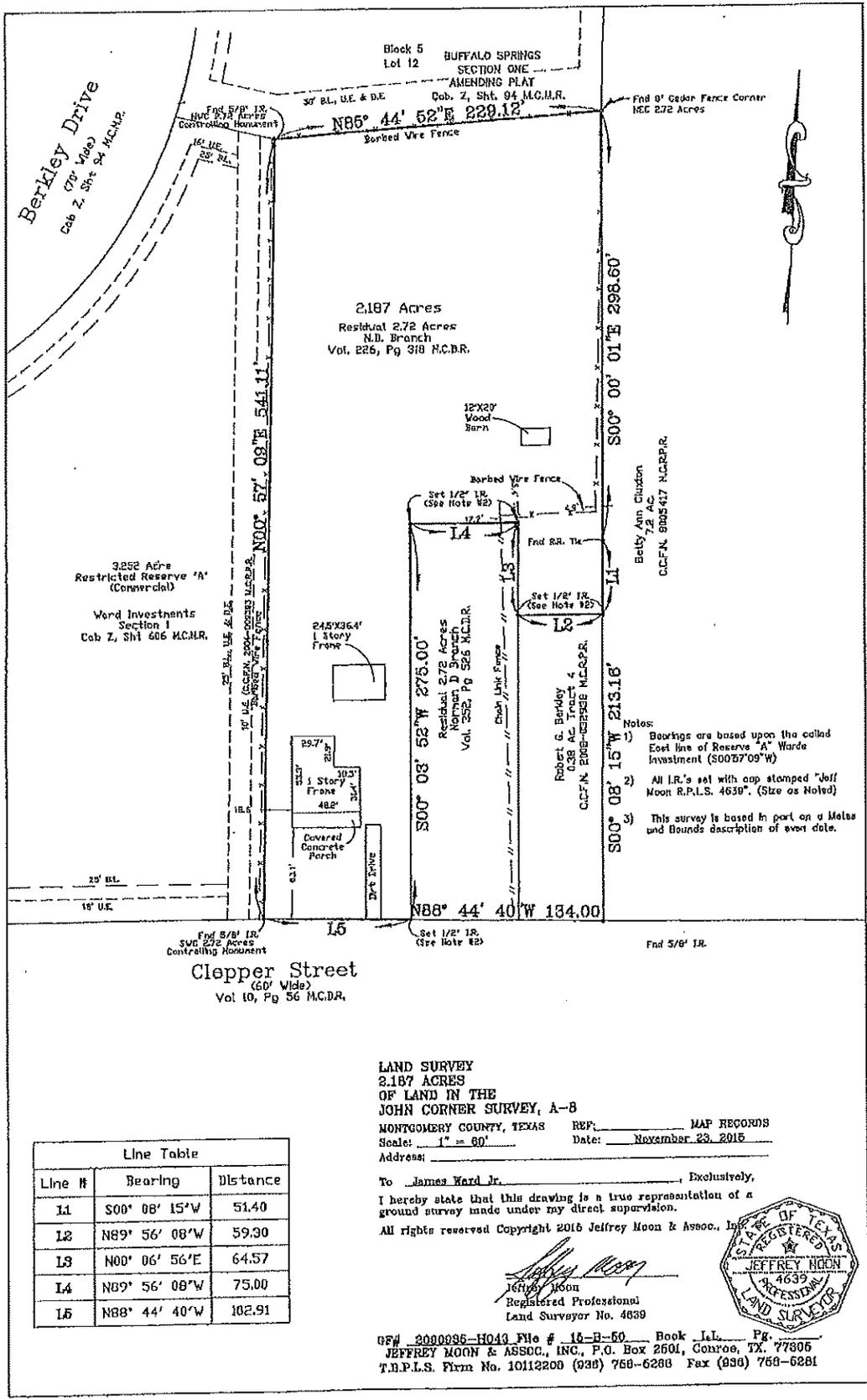
THENCE N. 88° 44' 40" W., along the North line of Clepper Street for a distance of 102.91 feet to the POINT OF BEGINNING in all containing in all 2.187 acres of land.

This description is based upon a Land Survey and drawing as prepared by Jeffrey Moon and Associates, Inc; dated November 23, 2105. Bearings are based upon the East line of Ward Investments per plat.


Jeffrey Moon
Registered Professional
Land Surveyor No. 4639



2.187 Ac M&B



3252 Acres
Restricted Reserve 'A'
(Commercial)
Ward Investments
Section 1
Cob Z, Sht 506 M.C.D.R.

2.187 Acres
Residual 2.72 Acres
N.D. Branch
Vol. 226, Pg 318 M.C.D.R.

245X364'
1 Story
Frame

29'7\"
1 Story
Frame
482'
Covered
Concrete
Porch

12X20'
Wood
Barn

Robert C. Berkley
C.C.F.N. 2008-2009 M.C.D.R.
C.C.F.N. 2008-2009 M.C.D.R.

Betty Ann Clifton
C.C.F.N. 980547 M.C.D.R.

- Notes:
- 1) Bearings are based upon the called East line of Reserve 'A' Ward Investment (S00B709'W)
 - 2) All I.R.'s set with cap stamped "Jeff Moon R.P.L.S. 4639". (Size as Noted)
 - 3) This survey is based in part on a Metes and Bounds description of exact date.

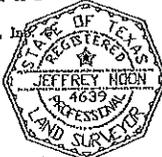
Clepper Street
(60' Wide)
Vol 10, Pg 56 M.C.D.R.

LAND SURVEY
2.187 ACRES
OF LAND IN THE
JOHN CORNER SURVEY, A-B
MONTGOMERY COUNTY, TEXAS
Scale: 1" = 60'
Address: _____

Line Table		
Line #	Bearing	Distance
L1	S00° 08' 15"W	51.40
L2	N89° 56' 08"W	59.30
L3	N00° 06' 56"E	64.57
L4	N89° 56' 08"W	75.00
L6	N88° 44' 40"W	102.91

To James Ward Jr. Exclusively,
I hereby state that this drawing is a true representation of a ground survey made under my direct supervision.
All rights reserved Copyright 2016 Jeffrey Moon & Assoc. Inc.

Jeffrey Moon
Jeffrey Moon
Registered Professional
Land Surveyor No. 4639



GFN 2000096-H049 File # 16-B-50 Book 14L Pg. _____
JEFFREY MOON & ASSOC., INC., P.O. Box 2601, Conroe, TX. 77306
T.R.P.L.S. Firm No. 1011200 (936) 768-6288 Fax (936) 768-6281

** James Ward*

Jeffrey Moon



JEFFREY MOON & ASSOCIATES, INC.

LAND SURVEYORS

www.moonsurveying.com

TBPLS FIRM No 10112200
P.O. Box 2501, Conroe, Texas
(936) 756-5266
Fax (936) 756-5281

July 6, 2016

BEING 0.475 ACRES OF LAND IN THE JOHN CORNER SURVEY, A-8, MONTGOMERY COUNTY, TEXAS, SAID 0.475 ACRE BEING THE RESIDUAL OF THE NORMAN D. BRANCH 2.72 ACRE TRACT OF LAND DEED OF WHICH IS RECORDED IN VOLUME 352, PAGE 526, MONTGOMERY COUNTY DEED RECORDS, SAID 0.475 ACRE BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING at a ½" iron rod set in the North line of Clepper Street, (60' Vol. 10, Pg. 56, M.C.D.R.) for the Southwest corner of the Robert G. Berkley 0.38 acre tract of land deed of which is recorded under County Clerk's File Number 2008-032938, Montgomery County Real Property Records and being the Southeast corner of the herein described tract;

THENCE N. 88° 44' 40" W., along the North line of Clepper Street for a distance of 75.00 feet to a ½" iron rod found with a cap stamped " Jeff Moon RPLS 4639 " for the Southeast corner of the James Ward, Jr; 2.187 acre tract of land deed of which is recorded under County Clerk's File Number 2016-001138, Montgomery County Real Property Records, same being the Southwest corner of the herein described tract;

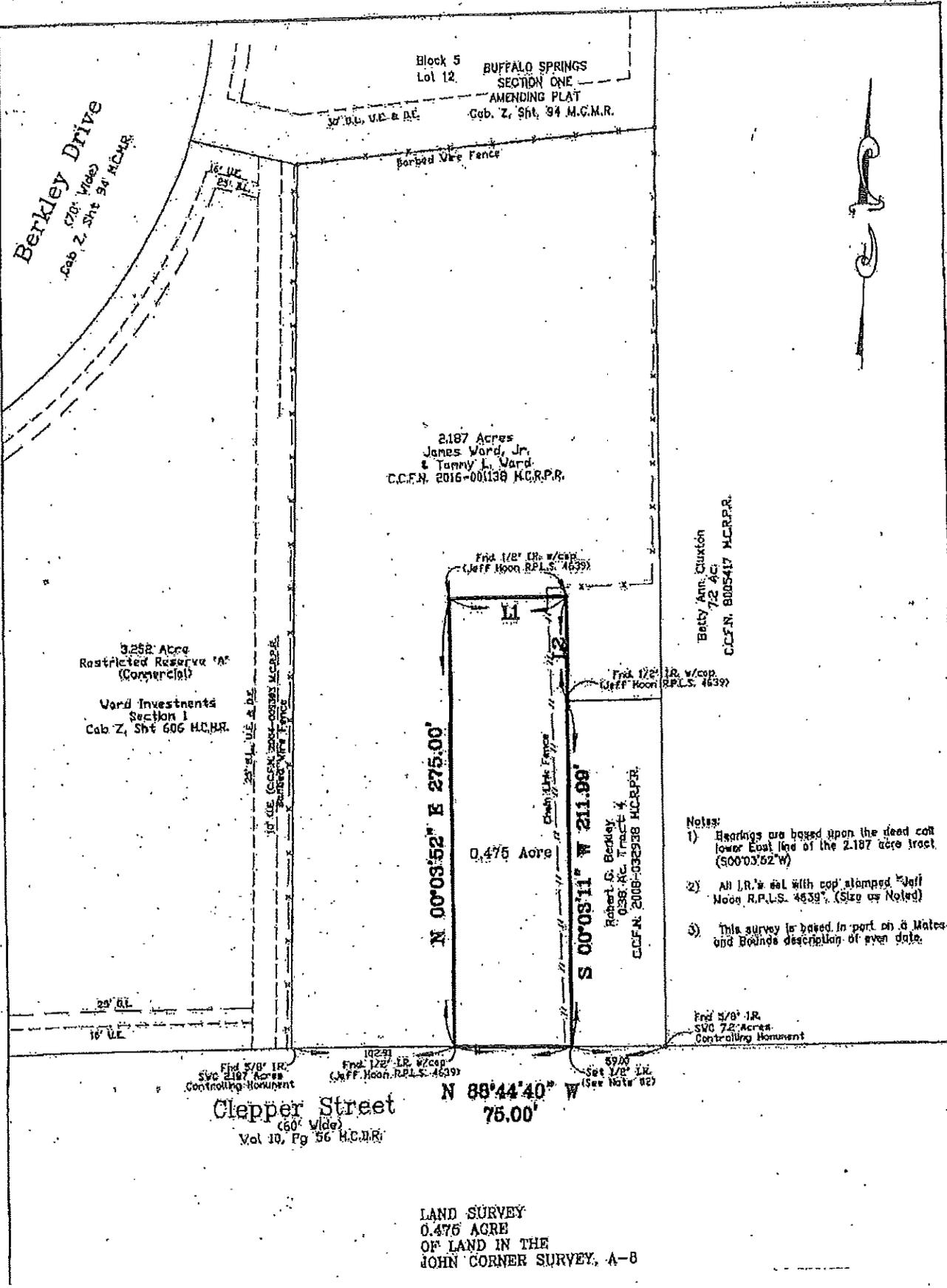
THENCE N. 00° 03' 52" E., leaving the North line of Clepper Street, along an inside line of Ward for a distance of 275.00 feet to a ½" iron rod found with a cap stamped " Jeff Moon RPLS 4639 " for an inside corner of Ward, the Northwest corner of the herein described tract;

THENCE S. 89° 56' 08" E., along a line of Ward for a distance of 75.00 feet to a ½" iron rod found with a cap stamped " Jeff Moon RPLS 4639 " for a corner of Ward, the Northeast corner of the herein described tract;

THENCE S. 00° 06' 56" W., along an inside line of Ward for a distance of 64.57 feet to a ½" iron rod set with a cap stamped " Jeff Moon RPLS 4639 " for a corner of Ward, the Berkley's Northwest corner;

THENCE S. 00° 03' 11" W., along Berkley's West line for a distance of 211.99 feet to the POINT OF BEGINNING and containing in all 0.475 acre of land.

This description is based upon a Land Survey and drawing as prepared by Jeffrey Moon and Associates, Inc., dated July 6, 2016. Bearings are based upon the deed call lower east line of the 2.187 acre tract of land, S. 00° 03' 52" W.



Block 5
Lot 12
BUFFALO SPRINGS
SECTION ONE
AMENDING PLAT
Geb. Z, Sht. 94 M.C.M.R.

Berkley Drive
170' Wide
Geb. Z, Sht 94 M.C.M.R.

2.187 Acres
James Ward, Jr.
& Tammy L. Ward
C.C.F.N. 2016-00138 M.C.R.P.R.

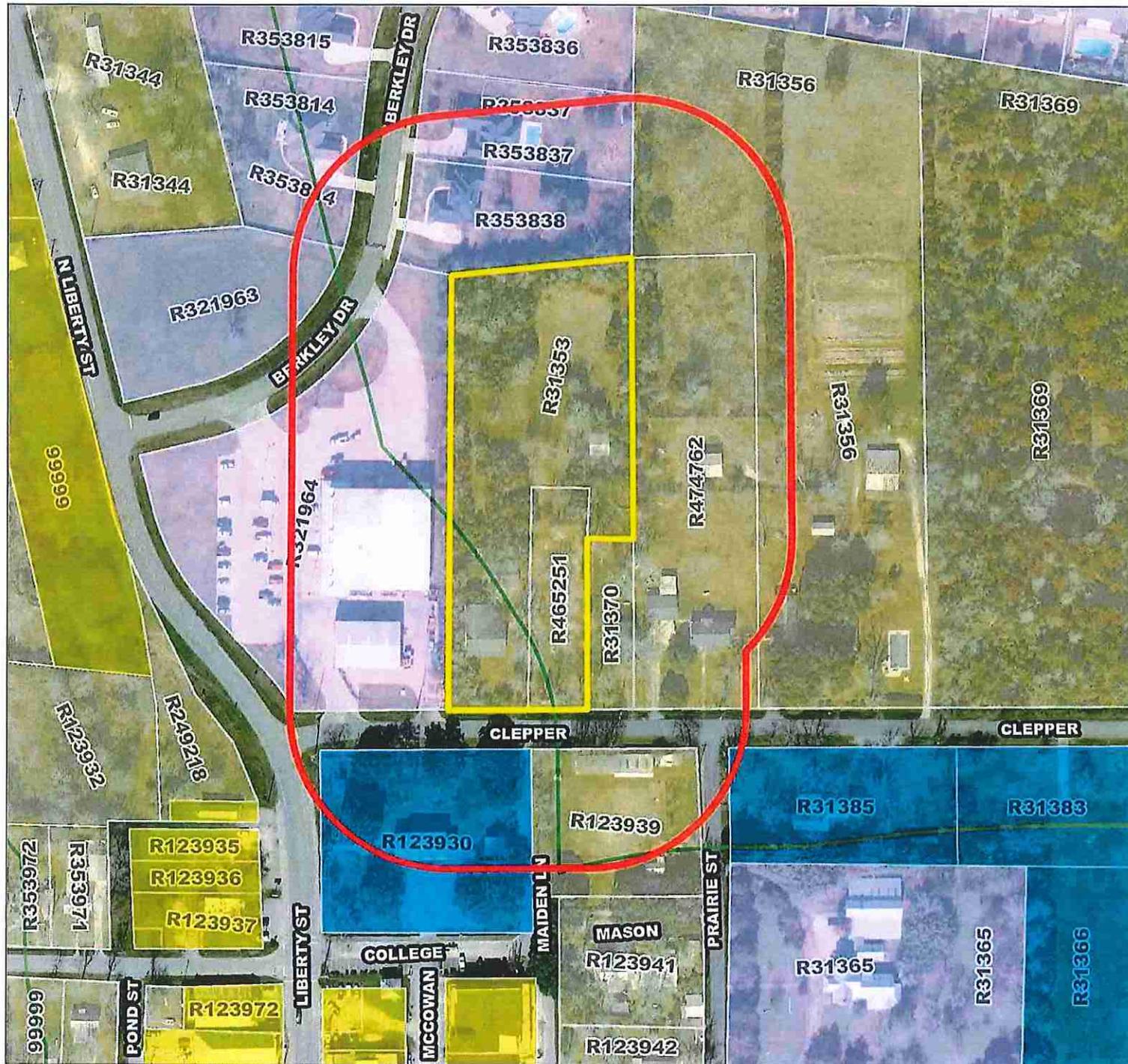
3.252 Acres
Restricted Reserve 'A'
(Commercial)
Ward Investments
Section 1
Geb. Z, Sht 606 M.C.M.R.

Betty Ann Chuxton
7/2 AC
C.C.F.N. 8005417 M.C.R.P.R.

- Notes:
- 1) Bearings are based upon the deed call lower East line of the 2.187 acre tract (S00°03'52"W)
 - 2) All I.R.'s are with copy stamped "Jeff Moon R.P.L.S. 4639". (Size as Noted)
 - 3) This survey is based in part on a Mate-and-Bounds description of even date.

Clepper Street
60' Wide
Vol 10, Pg 56 M.C.M.R.

LAND SURVEY
0.476 ACRE
OF LAND IN THE
JOHN CORNER SURVEY, A-8



LEGEND

Zoning

-  Corridor Enhancement
-  Commercial (B)
-  Institutional (I)
-  Planned Development (PD)
-  Residential (R1)
-  Tract Boundary
-  200-ft Notification Boundary

Date:



Ward Tract Rezoning

1062 Clepper Street
 North of Community Building,
 East of Jim's Hardware

1 inch equals 200 Feet

MINUTES OF REGULAR MEETING

November 26, 2018

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

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

Present: Nelson Cox, William Simpson, Jeffrey Waddell

Absent: Arnette Easley and Carol Langley

Also Present: Jack Yates, City Administrator

Susan Hensley, City Secretary

Dave McCorquodale, Assistant to the 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. Consideration and possible action regarding Meeting Minutes of October 22, 2018 Public Hearing and Regular Meeting.

Jeffrey Waddell advised Item 4 on the minutes, which stated car wash and should read washateria.

Jeffrey Waddell moved to approve the minutes for the October 22, 2018 meeting as read. William Simpson seconded the motion, the motion carried unanimously. (3-0)

Arnette Easley arrived at 6:04 p.m.

2. Consideration and possible action regarding the Final Report for the Larry Jacobs tract.

Mr. Yates said last month the Commission had the Public Hearing and Mr. Jacobs asked for a delay regarding the Final Report until this meeting. Mr. Yates said Mr. Jacobs is asking for the five acres to the north be rezoned from ID-Industrial to R2-Multifamily, and the southern property to be rezoned from ID-Industrial to B-Commercial. Mr. Yates said this is where the Commission would make their recommendation to City Council. Mr. Yates said they have not received any comments from the public regarding this information. Mr. Jacobs was present at the meeting.

William Simpson asked if they needed to make two separate motions, since there was two different pieces of property. Mr. Yates said he would recommend doing that.

William Simpson moved to approve the Final Report to recommend to the City Council for the approval of rezoning the property marked R2 located at 2580 Lone Star Parkway, from ID-Industrial to R2-Multifamily. Jeffrey Waddell seconded the motion, the motion carried unanimously. (4-0)

Williams Simpson moved to approve the Final Report to recommend to the City Council for approval of the rezoning of the property located at 2560 Lone Star Parkway, from ID-Industrial to B-Commercial. Jeffrey Waddell seconded the motion, the motion carried unanimously. (4-0)

Mr. Jacobs thanked the Commission, and said this is the second time they have gone through this exercise. Mr. Jacobs said he was trying to figure out what happened. Mr. Jacobs said one of the things that he heard from either a City Council member or the Mayor, was that they felt like the City was not in a position to pay for all the utility extensions. Mr. Jacobs said it was quite clear in the Final Report from the City's Engineer that was going to be their responsibility

to get those utilities to the sites, so he would just like to note that would be really clear in the Final Report that goes to City Council. Mr. Yates said he would take care of that information.

Jeffrey Waddell said he was to a point, as they probably all were as a group, where they wanted an explanation as to why this took so long. Jeffrey Waddell said he went back to January 23, 2018 when City Council gave support to both senior citizen projects, so he is hoping they learned a lesson from this because you want to have confidence when you do something that it gets looked at, and they looked at it numerous times, to have a facility next to a Community Center that caters to seniors. Jeffrey Waddell said they need to avoid this happening again in the future, and he knew that they were working on that issue.

3. Consideration and possible action regarding scheduling a Public Hearing for rezoning of a 7.710 acre tract of land located at tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R-1 Single Family as requested by Michael and Judith Kammerer.

Mr. Yates said since there are two public hearings required. Mr. Yates said the City Attorney recently changed his opinion about conducting two public hearings. Mr. Yates said he is suggesting they conduct the public hearings on January 7 and 14, 2019 so they can have the Final Report ready for the City Council Meeting on January 22, 2019.

Mr. Yates said each time they get a zoning request, they will need to have one or two special meetings so there can be one notice and to shorten the time for the applicant. Mr. Yates said one of the special meetings in January could take the place of their regular meeting. Mr. Yates said they could have the regular meeting at the special meeting on January 14, 2019. Dave McCorquodale said they were trying to get those two dates as the public hearing dates.

William Simpson moved to call for two public hearings for the rezoning of a 7.710 acre tract of land located at tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R-1 Single Family as requested by Michael and Judith Kammerer to be held on January 7 and 14, 2019 at 6 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

4. Consideration and possible action regarding scheduling a Public Hearing for rezoning of a 2.187 acre tract and a 0.475 acre tract located at 1062 Clepper Street, Montgomery from R-1 Single Family to B-Commercial to be held as requested by James Ward.

Mr. Yates advised this item has the same issue as far as the dates for the public hearings.

Jeffrey Waddell moved to call for two public hearings for the rezoning of a 2.187 acre tract and a 0.475 acre tract located at 1062 Clepper Street, Montgomery from R-1 Single Family to B-Commercial to be held on January 7 and 14, 2019 at 6 p.m. William Simpson seconded the motion, the motion carried unanimously. (4-0)

Jeffrey Waddell asked if they could have an informal discussion about any possible questions that would come up about that property or should they just wait for the public hearings. Mr. Yates said they could go ahead and have the discussion now. Jeffrey Waddell said there is a huge difference between commercial, possible boutique and that type of business, compared to industrial, and he knew they are going to get people that are wondering because they are surrounded by this property. Jeffrey Waddell said clearly there are three sides if you look at the part that is closest to Jim's Hardware and as you get to Maiden Street and look at it from the front; it even has some residential across the street, from that part. Jeffrey Waddell said he just wanted to understand the whole scenario. Jeffrey Waddell said he had a couple of questions, and said he wanted to know if anyone has talked to the people that surround this property. Jeffrey Waddell said he did not see a problem with a boutique type business in that area.

Jeffrey Waddell said the other question is whether they are selling the property or is it going to be sold to someone else. Mr. Ward said if it is commercial and they can get the price that they want they would sell. Mr. Ward said there has been interest already, with one wanting a small wedding venue operation, another expressed interest in a restaurant type operation that would be like a sit down kitchen type restaurant with pastries. Mr. Ward said they had originally thought about doing a small L-shaped office single story building, brick style from Clepper back, with two to three retail spots that they could have a small warehouse space that looks like retail. Mr. Ward said the problem is right now he has too many things going on and that is four or five years away. Mr. Ward said his original plan was a project for the old house, but then

they did not have a roof on half of the house and the floor was gone, so that ended that theory. Mr. Ward said he thought they could have a couple retail shops in the building; boutique type shops, like some of the shops that are already in Montgomery. Mr. Ward said they were thinking of the same type of theme with the old style. Jeffrey Waddell said when they get to that point, there will be approval of the plat.

Jeffrey Waddell said his other question was to Mr. Yates or Dave McCorquodale, and said he knew with industrial there is a greenspace buffer and said on commercial he did not know if there would be a requirement for a greenspace buffer of 20 plus feet or whatever it is between all the residential, because that lot is a long, deep lot and he knows this is going to come up, which is why he thought they should talk about it. Jeffrey Waddell said the property backs up to two back yards on Buffalo Springs and then the neighbors on the side, so his question is looking ahead, if it is commercial, is there a requirement, because there is already a very natural green growing buffer all the way down the side to behind the property. Mr. Yates said the only thing that it says is a buffer, it describes a fence, but it also allows a greenbelt, which is what happened at the dentist office off Lone Star Parkway, where they came up with a landscape plan and plants, which he has kept up. Mr. Yates said there is a requirement for a buffer between the commercial and residential area, but whether it is an 8-10 foot fence or a row of hedges is something that they can talk about during the rezoning. Jeffrey Waddell said he was wondering if there was a particular width or depth required for the buffer. Mr. Yates said there is no specific requirement. Mr. Yates said he received a call from the dentist who said he was considering a greenbelt. Mr. Yates said he checked the ordinance and saw there was no requirement for a fence, it just says a buffer. Mr. Yates said he asked them for a plan and they came up with a planting plan that seemed alright to him and he felt that it would get better as the plants grew, which is the way it has worked out. Mr. Yates said the buffer is pretty open as to what it can be, but there has to be some sort of buffer.

Mr. Ward said after they purchased that property they were approached by two of the other property owners on Clepper that wanted to know if they were going to try and make that property commercial because they were interested in having their property rezoned commercial. Mr. Ward said he did not know if the property owners were still interested in rezoning, but he knew that there were two that were interested at one time. Mr. Yates said he did not know what the Unofficial Land Use Plan that was adopted calls for, so he will check

on that, but he thought that it was to stay residential. Jeffrey Waddell said it was close to the Historic District and, before his time, The Oaks had to go through something similar, but he did not know if that was a Special Permit. Mr. Yates said The Oaks on Prairie Street obtained a Special Use Permit, which describes how many days they are going to be open and specifics for the business. Jeffrey Waddell thanked Mr. Ward for his information.

5. Report regarding City-initiated re-zoning of parcels of properties.

Dave McCorquodale reviewed the map that showed each one of the parcels being discussed, and previously discussed last month.

Dave McCorquodale said the first property that they are looking at is the Hills of Town Creek, which is zoned commercial and they are looking at changing only the portion where there is existing single family residential and where there is a subdivision basically in Section 3 that is under construction at this time. Dave McCorquodale said they are looking at rezoning those two Sections to R1-Residential. Dave McCorquodale said he met with the developer earlier this month and there is no definite plans on any of the other commercially zoned areas and the thinking is to leave it alone for now until there is a plan for the property. Dave McCorquodale said if there are single family homes in Section 2, and the homes about to be going up in Section 3, it makes sense to make it zoned single family residential as opposed to commercial, and is more of a reflection on the ground and what is being built.

Jeffrey Waddell said he had in his notes somewhere about Sections 2 and 3 something about them going to industrial, and it just did not sound right because it is all residential, so he did not know if it was a typo. Dave McCorquodale said in Section 2, the next area that they are going to talk about, will be moving from industrial to a different zoning classification, so maybe that was what Jeffrey Waddell was thinking about.

Dave McCorquodale spoke about area two, which is around Spirit Industries, and said these properties were zoned industrial and they would like to zone the two parcels that flank Spirit Industries as commercial. Dave McCorquodale said the rectangle on the right of Spirit Industries (to the east) is the Cowboy Church's land and there is an overlay of institutional that they would like to change the underlying zoning to commercial as opposed to industrial. Dave

McCorquodale said his initial hope was to look at the Spirit Industries parcel as well, and right now with the Table of Permitted Uses, toy and novelty manufacturers are only allowed in industrial, so rather than create any uncertainty right now for their business or even the perception of uncertainty, he would rather just leave it alone and find another way to address it. Dave McCorquodale said it would be better for the City to have a commercial tract on the main corridor rather than industrial. Dave McCorquodale said right now they are looking at the property immediately to the east and west of Spirit Industries.

Dave McCorquodale then discussed area three, which is located off Womack Cemetery Road and a very small fraction of the home site is inside the City limits; it is zoned industrial and they would like to change it to single family residential, which is what the rest of the parcel is being used for even though it is out of the City; it backs up to Mr. Potter's single family residential property. Mr. Yates said this just recently showed up, and asked if Dave McCorquodale and Mr. Roznovsky are sure that it is definitely zoned industrial and who it belongs to. Dave McCorquodale said according to the map that the City adopted it is, and the ownership he knows the current map says it is industrial and the few that he looked back on said it was industrial. Dave McCorquodale said anything earlier than 2016 the maps are really hard to discern. Mr. Yates said it is also the map the City just adopted as the Official Zoning Map.

Jeffrey Waddell said this is a different scenario than the property that was against the railroad tracks, and said he did go today just to visualize it and it is about 30-50 feet from the railroad tracks just up to the road. Jeffrey Waddell said it seems to be an ideal residential area for that size, but the setbacks would probably be important to the developer because of the train being close. Dave McCorquodale asked if Jeffrey Waddell was talking about the Kammerer tract. Jeffrey Waddell said that was correct. Jeffrey Waddell said he would think the developer will have to do a setback of some pretty good distance or something to soften the noise from the train. Mr. Yates said when they come in with the plat they can possibly look at that information. Mr. Yates said they can also look into the compensating greenspace to get slightly smaller lots.

Dave McCorquodale said area four is a parcel this is part of a parcel that Joe Shockley owns and sits east of the Cowboy Church grounds, south of the cemetery. Dave McCorquodale said in looking at the map he felt the zoning should have been single family residential and just

some confusion in where the parcel boundaries were has resulted in institutional zoning for the property.

Dave McCorquodale advised area five is part of the Randall tract, which is the large area in the southeast area of the City. Dave McCorquodale said right now for lack of a better description, it is a “candy cane strip” of R2 and commercial; after Mr. Yates and the Mayor met with the Randall’s earlier in the month, they had no issues with the type of zoning, just asked if there was a way to consolidate it with the R2 being closer along the northern portion of the end and the commercial being located in the southern portion. Dave McCorquodale said they might include a proposed zoning area to show how those two areas are being consolidated.

Dave McCorquodale then reviewed area six, which is all on one side of the City, just north of FM 1097 and FM 149. Dave McCorquodale said there is some R1 tracts right now that are along FM 149, and as the City grows on that side, a commercial zone would make sense and additionally there is an institutional parcel right now, with the proximity to the park; it got rolled into institutional zoning when it was not ever used for institutional use.

Arnette Easley said that particular tract is his and they did get it rezoned through the City and said he has the paperwork for that action. Dave McCorquodale asked if they did a commercial zone there. Arnette Easley said yes, and said it used to be a barbeque place, and when he bought it he had it rezoned commercial. Dave McCorquodale said he would look into that, because he felt like he recalled some discussion about it, but he could not find any information. Arnette Easley said he had the paperwork if they would like to look at it. Dave McCorquodale said he would like to see that information. Arnette Easley said his family’s homestead is there and everyone agreed to have that rezoned as well, so he just needs to get the paperwork for it. Arnette Easley said he did not know what T.J. Wilkerson’s zone is, which is located across the street from his property. Mr. Yates asked Arnette Easley if he was sure that he rezoned that property, because when he first came to the City one of the items on his desk was his paperwork, and said that he had asked him several times if he was officially going to follow through on the rezoning. Arnette Easley said he still has the paperwork and he will bring it in for the City to review. Arnette Easley said he was not talking about the homestead itself but a different piece of property that he owned. Mr. Yates said earlier they were talking about further south on FM 149, south of Lone Star Parkway.

Mr. Yates said if the Commission generally agrees then either Dave McCorquodale or he would be contacting the property owners within the next three or four weeks to confirm that they are not in conflict with the rezoning, and then they will start the formal process. Dave McCorquodale said one of the very first steps is to recommend to City Council a list of properties to obtain the green light or the signal to stop on any of the parcels that are being presented.

6. Report regarding Downtown Streetscape Plan.

Dave McCorquodale reviewed two drawings, one being from Lonnie Clover, showing some general ideas and diagrams showing different ways that they are looking at to enhance the downtown, either primarily through either a series of gathering spaces at the intersections, paving, whether it is stamped concrete or pavers to match what they have and landscaping enhancements. Dave McCorquodale said the parking lot to the south of Cozy Grape made a great place to start with some landscaping enhancements. Dave McCorquodale said the parking lot is about 24 to 30 inches above the level of the street, so using a dry limestone they could mimic what the Community Center has. Mr. Yates said there would be examples of this all through downtown, and said this is just an example of a portion of the project. Mr. Yates said this will still need to go through the HMBA and then through a couple of planning meetings. Mr. Yates said the first planning meeting would be in about two months.

Dave McCorquodale said that low maintenance and drought tolerant landscaping seems like a good idea, and said he thought they could do the landscaping in a way that would enhance the architecture that they have in downtown. William Simpson asked if this would all have to be run by the business owners and building owners' downtown. Dave McCorquodale said that was correct. William Simpson said one thing that he could see would be the pedestrian mall would take away the parking that could cause some issues. William Simpson said the overall plan looks great.

William Simpson asked if this was all part of the grant money from TxDOT or is this all City funded. Dave McCorquodale said this would all be City funded. Mr. Yates said MEDC has \$20,000 for planning of the project, which they will not even get close to using all of it, because

they are doing so much of the work in-house. Mr. Yates said they also have \$60,000 for physical improvements downtown. Mr. Yates said once they have the plan they will know what they are working toward.

William Simpson said he thought the little bit that was done to the parking lot of Cozy Grape and Mr. Jacobs' property and people saw how that kind of dressed up the town and it caught their eyes. Jeffrey Waddell said from the beginning they have really made a point of talking to the shop owners and the businesses too just to get their input. Jeffrey Waddell said it was great they were doing so much in-house. Jeffrey Waddell asked where they were on communicating with TxDOT as far as coordinating. Mr. Yates said for this area they are waiting on the plan itself because City Council had asked TxDOT to work from Caroline down to SH 105 and from Clepper up to FM 1097 as soon as they could, but to wait on these three blocks until they could come up with a plan. Mr. Yates said TxDOT would be part of the financing of this plan because of the work that they were doing, and they are required to put five or ten percent of the project toward streetscaping, so that will be a sizable amount. Jeffrey Waddell said that was very helpful, and asked Mr. Yates to try and keep good communications with TxDOT. Mr. Yates said he is trying to get TxDOT to answer as to when they are going to start the SH 105 to Caroline and FM 1097 to Clepper portions. Jeffrey Waddell said they used to put that information in the Impact Newspaper and now they are not putting it in the paper. Jeffrey Waddell asked if they were looking at two or three separate constructions from SH 105 to FM 1097. Mr. Yates said it would be two on Caroline to SH 105 and the other one will be Clepper Street to FM 1097. Mr. Yates said as soon as they give them a plan for what we want in the downtown area they will be ready to start on the Caroline to Clepper part. Mr. Yates said the City promised TxDOT that they would have the plan ready in close to 15 months and that was in September of this year. Jeffrey Waddell said the left and right turn lanes really threw a wrench into it for a while. Mr. Yates said the left and right turn lanes on FM 149 worked out pretty well. Jeffrey Waddell said at Clepper Street a left hand turn lane would help out Jim's Hardware a lot. Mr. Yates said he did not think there would be a left hand turn lane at that location. A comment was made from the audience that sometimes people have a hard time getting out of Buffalo Springs on Berkley, and he has seen three close calls in the last four weeks, with two being school busses and the amount of traffic in Montgomery.

7. Consideration and possible action regarding proposed amendments to the Zoning Table of Permitted Uses in the City of Montgomery Code of Ordinances, Section 98-88.

Dave McCorquodale said regarding the amendment to the Zoning Table of Permitted Uses, he wanted to review some of the ones addressed, such as, motorcycle service was its own use even though it was addressed under automobile or other motorized vehicle service, renovation, and/or repair and seemed redundant.

Dave McCorquodale stated that automobile sales was one use that he wanted to bring to the Commission, because with that there is usually a parking lot and lights and asked if that was something the Commission felt was okay in any commercially zoned area or was it something they would like to see in arterial areas like SH 105 and FM 149. Dave McCorquodale asked if something goes on SH 105 is anything in a commercially zoned area on SH 105 also good for downtown. Dave McCorquodale asked if they should have a handful of things that need to be located in a particular area of town, with Automobile Sales being one of them. Jeffrey Waddell said the other item was mini storage, and he felt that those items should be geared toward the main arteries or industrial.

Dave McCorquodale advised if the Commission has any questions on the amendment recommendations, he would be happy to answer them. Dave McCorquodale said the few that he felt were worthy of consideration of removal from the Table, are as follows:

- Felt manufacturer because he was not sure how that differs from textile manufacturing, which is already listed;
- Heliport because the surrounding land use is paramount for this use versus the zone, so they could either make it a City Council approval or if they want to remove it from the list, then by default they would need City Council approval. Jeffrey Waddell asked if Mr. Foerster had been asked about long term Special Use Permits. Dave McCorquodale said he would check on that information. Jeffrey Waddell said a lot of things that he has listed are required to go to City Council, which makes perfect sense on the ones that are out of the ordinary. Mr. Yates said Mr. Foerster did respond earlier in the process, advising that he thought the Special Use Permit was alright for generalizing that for the industrial classification to where virtually everything could

require a Special Use Permit, but the new wrinkle the Commission added last month was regarding a 30-40 year use, and so he is still having to check on the length of the term.

- Tobacco processing because he did not feel like it was relevant to this region so that could be removed.
- Ice Cream and Ice Milk because he did not know the distinction between other ice cream uses, since it did not change the zone where they are allowed.
- Newsstands because he did not know that they would be seeing a lot of them in this day and age.

Dave McCorquodale said there were a couple of items to add to the Table of Uses, which were:

- Antique Shop because it is not listed. Jeffrey Waddell said boutique shops would also need to be listed since they are seeing those more now.
- Banquet/Reception Hall because as the wedding industry is growing in this area, and asked if they leave it off would it have to go to City Council, so this is something that the Commission might want to consider the context of what is around it or adding it and prescribing a zone. Dave McCorquodale said he thought that they might add it under Commercial, but now he felt that it might be better to leave it off the list because then City Council has the leeway to look at the surrounding land use and types of constraints that they might want to place on the use of the property, such as screening, parking and hours of operation.

Arnette Easley asked about a Petroleum Warehouse. Dave McCorquodale said without being an expert on what that means, what it means to him is storage of simply that material and they are not able to do any type of other work to it. Dave McCorquodale said he did not know if they have ever had one in the City. Arnette Easley said they would have to consider contamination if they allowed the storage because they could have spillage. Dave McCorquodale said he would hope that the State would also license any use like that, but he could not say that with any certainty. Jeffrey Waddell said, as stated before, the “intensity” of the use is really something that they need to look at, because they are looking at Lone Star Parkway and the “intensity” gives them the leeway. Dave McCorquodale said, to him, the updating of this table is kind of the first

step in making certain that they are zoning things in a way that will result in a town that we want.

Dave McCorquodale said the Commission needs to think about whether anything in industrial use should have City Council approval. William Simpson said he thought that would be a good idea. Nelson Cox said he liked that idea. Mr. Yates said if the Commission is okay with the changes, and the Special Use Permits, then they can work with the City Attorney to prepare a draft ordinance for next meeting.

There was no action taken on this item.

8. Consideration and possible action regarding rescheduling the December, 2018 and January, 2019 Planning and Zoning Commission Meetings.

Mr. Yates said the December meeting is Christmas Eve, and the Monday before that meeting is the MEDC meeting, and asked if they wanted to conduct the meeting on another night. Chairman Cox asked if there was a specific reason for having a meeting. Mr. Yates said no as far as he knew right now, so one option would be to cancel the December meeting, unless it is needed. Chairman Cox said he thought that was a good idea. Mr. Yates said they have done that several years in the past.

Dave McCorquodale asked if they needed to take action regarding the Regular meeting in January. Mrs. Hensley, City Secretary, advised they could take action either on the 7th or the 14th of January, 2019. Chairman Cox said that would be good because by that time they would know if they needed that third meeting in January.

Jeffrey Waddell moved to cancel the December 2018 Planning and Zoning Commission Regular Meeting. William Simpson seconded the motion, the motion carried unanimously. (4-0)

Chairman Cox asked about the donut shop that was going in on SH 105. Mr. Yates advised the owner went back to China for a couple months, but is back now and the latest that he has heard is that they are rethinking their site plan. Chairman Cox asked if the project was on a

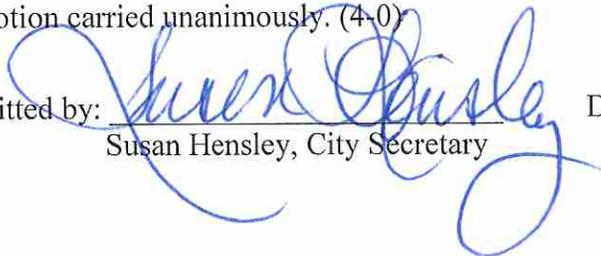
temporary hold. Mr. Yates said it is the property owner's decision to add or not add to the property. Mr. Yates said the property next door, the Ruthie Grace building, the person that bought that several months ago supposedly has that property back up for sale and they are getting close to closing the deal, and the new person wants to keep the building at that location. Mr. Yates said the reason that he says that was because there was a possibility of the City or the Historic Society getting that building given to them, which is still a possibility, but not looking quite as good as it was a week ago.

Jeffrey Waddell said the donut shop was a tight fit and they hoped that it would all work. Jeffrey Waddell said if the donut shop is not going to be built, they still need to do something to remove some of the debris that is still on the site, because that is the entrance to the City. Mr. Yates said he did mention the mowing, but he will add the debris to the next conversation that he has with the owner.

ADJOURNMENT

William Simpson moved to adjourn the meeting at 7:25 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved: _____

Chairman Nelson Cox

MINUTES OF SPECIAL MEETING

December 13, 2018

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

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

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

Absent:

Also Present: Jack Yates, City Administrator

Susan Hensley, City Secretary

Dave McCorquodale, Assistant to City Administrator

1. Consideration and possible action regarding sign permit for 208 McCown Street – Monte West.

Jeffrey Waddell thanked Mr. West for him being present. Jeffrey Waddell asked how tall the letters are on the sign. Mr. West said he thought they were eight inches in height, but they could be 12 inches. Mr. Yates said they are the height of two of the six inch boards, which would make them 12 inches.

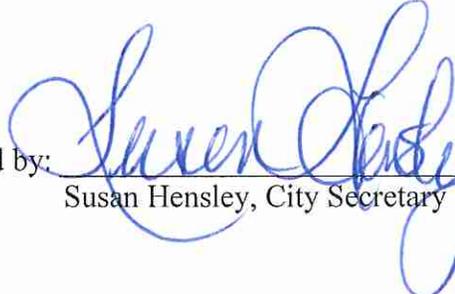
Jeffrey Waddell said the sign looks great, and his only question is was the sign comparable to what was there before. Jeffrey Waddell said they were four foot tall by almost 13 feet long, and he wanted to ask Carol Langley about the limitations. Mr. Yates said it can't be more than 60% of the size of the side of the building that it is located on. Mr. West said the letters are plastic molded lettering and placed directly on the building. Jeffrey Waddell asked if the sign would just be the letters without anything around them. Mr. West said that was correct, and they would be offset so they stand away from the building a small

amount to keep moisture from building up behind it. Mr. West said a sign company will be doing the installation. Jeffrey Waddell said the sign looks to be a little longer than the original sign. Mr. West said from everything that he has read the sign is in compliance and is not an advertisement of anything. Jeffrey Waddell said the square footage is 50 square feet. Mr. Yates said it would not be more than 60 percent, but is about 40 percent according to his calculations.

William Simpson moved to accept the sign permit at 208 McCown Street. Carol Langley seconded the motion, the motion carried unanimously. (5-0)

2. Adjournment

Carol Langley moved to adjourn the meeting at 6:07 p.m. William Simpson seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date approved: _____
Susan Hensley, City Secretary

Chairman Nelson Cox

MINUTES OF PUBLIC HEARING and SPECIAL MEETING

January 7, 2019

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the meeting to order at 6:08 p.m.

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

Absent: Arnette Easley

Also Present: Jack Yates, City Administrator

Susan Hensley, City Secretary

Dave McCorquodale, Assistant to City Administrator

2. Public Hearing for rezoning of a 7.710-acre tract of land located at tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R-1-Single-Family as requested by Michael and Judith Kammerer

Chairman Cox convened the Public Hearing at 6:08 p.m.

Mr. Yates advised the property was located on the southwest corner of Womack Cemetery Road and Old Plantersville Road and was currently zoned industrial use and the owner is requesting to rezone the property as R1 Single Family.

There were no other comments made.

Chairman Cox adjourned the Public Hearing at 6:11 p.m.

3. Public Hearing for rezoning of a 2.187-acre tract and a 0.475-acre tract located at 1062 Clepper Street, Montgomery from R-1 Single-family to B- Commercial to be held as requested by James Ward

Chairman Cox convened the Public Hearing at 6:11 p.m.

Mr. Yates said the property is located behind Jim's Hardware.

Mr. Ron Lobojacky, adjacent property owner, advised that he had a tract of land next to Jim's Hardware that when surveyed did not align up with Jim Ward's property lines, stating that Mr. Ward's shows 60 more feet to the north. Mr. Lobojacky asked if the property is rezoned and it includes some of his property, will it also be rezoned as commercial. Mr. Yates said no, zoning is done by applying for a specific piece of property.

Mr. Lobojacky said the Ward property encroaches over his property line.

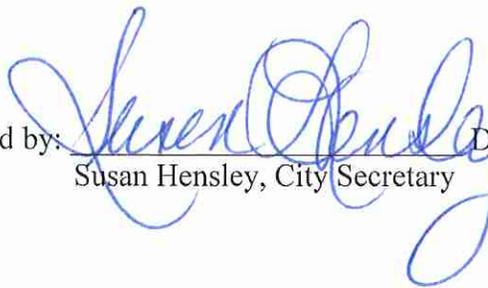
Mr. Yates said they will need to get both deeds and review them to tell where the property lines are exactly. Mr. Lobojacky said he will provide a copy of his deed to the City, and said his concern is the survey for Mr. Ward's property encroaches on to his property. Jeffrey Waddell said they will have to clarify where the property line is located. Mr. Yates said they will use the deeds and surveys to review and confirm the property lines.

Chairman Cox adjourned the Public Hearing at 6:18 p.m.

Mr. Yates advised the second Public Hearing would be held on January 14, 2019 at 6:00 p.m. and the Final Report would be prepared at that meeting following the Public Hearing.

4. Adjournment

Jeffrey Waddell moved to adjourn the meeting at 6:21 p.m. William Simpson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date approved: _____
Susan Hensley, City Secretary

Chairman Nelson Cox

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: N/A
Date Prepared: January 10, 2019	

Subject

Consideration and possible action on Final Report regarding rezoning a 7.710-acre tract of land located at Tracts 23-A & 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R1-Single Family Residential as requested by Michael and Judith Kammerer.

Description

This is to consider making a recommendation to City Council regarding a recommendation for the rezoning of the property in the form of a Final Report.

Recommendation

Discuss the matter and approve sending a final report to the City Council that includes the Commission's recommendation for rezoning the property.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates <i>Jack Yates</i>	Date: 1/10/19

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: N/A
Date Prepared: January 10, 2019	

Subject

Consideration and possible action on Final Report regarding rezoning a 2.187-acre tract and an adjoining 0.475-acre tract of land located at 1062 Clepper Street, Montgomery from R1-Single Family Residential to B-Commercial.

Description

This is to consider making a recommendation to City Council regarding a recommendation for the rezoning of the property in the form of a Final Report.

Recommendation

Discuss the matter and approve sending a final report to the City Council that includes the Commission's recommendation for rezoning the property.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: N/A
Date Prepared: January 10, 2019	

Subject

Report regarding Zoning Table of Uses

Discussion

Staff is working out the details of how to implement the proposed changes.

Recommendation

Consider the report and provide comments as you see fit.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Summary of tree ordinance revisions, existing ordinance with markups
Date Prepared: January 10, 2019	

Subject

Report regarding tree ordinance revisions.

Description

Staff has worked through revisions for the tree ordinance and provided a summary of the updated ordinance. Staff plans to meet with local developers to discuss the changes and answer questions they may have and consider their feedback.

Recommendation

Consider the report and provide feedback for the ordinance changes as you see fit.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19

Montgomery Tree Ordinance Revisions Summary

- **Individual property owners in R1 are exempt from requirements**
- **Calculations are based on canopy coverage** of the property (instead of caliper inches)
- Protected trees are **select species >12" DBH**
- Tree canopy coverage requirements are based on land use district:
 - **20%** in District B-Commercial
 - **20%** in District ID-Industrial
 - **20%** in District I-Institutional (excluding sports fields)
 - **20%** of open space & reserves in R1 & R2-Residential
- Each **one or two family dwelling requires 3 trees** w/ at least one in front yard
- Requires a **residential buffer zone** on non-residential that abuts residential
- **Requires parking lot trees**
- Allows for pre-development & partial clearing
- Provides incentive for preserving trees adjacent to streets
- Requires tree preservation plan with development
- Requires trees to be spread out over property

ARTICLE VII. - TREE PRESERVATION AND REPLACEMENT

Sec. 78-171. Findings and intent.

- (a) The city council finds that trees are important public resources that contribute to the unique character of the city and its physical, historical, cultural, aesthetic, ecological and economic environment. Trees reduce the effects of pollutants, provide wildlife habitat, shade and cooling, and add value to real property. It is the goal of the city council to secure these benefits by maintaining the tree canopy over a significant area of the city.
- (b) This article is intended to prevent the indiscriminate cutting of trees in advance of development; to preserve existing trees of certain species; to provide for the replacement of trees that are necessarily removed during construction or development; to require the consideration of trees as a component of site design; and to allow for the commercially reasonable development of private property subject to minimum standards for the preservation and planting of trees. No clear cutting of land is allowed in the city or on land under the city's jurisdiction.

Sec. 78-172. Applicability and exceptions.

~~This article applies to all tracts of land within the city as well as any area subsequently annexed by the city with the following exceptions:~~

- ~~(1) Previously platted residential lots;~~
- ~~(2) Any unplatted parcel, less than five acres, that contains an occupied building which has a valid certificate of occupancy;~~
- ~~(3) All licensed tree nurseries only in relation to those trees planted and growing on the premises that are for sale or intended sale to the general public in the ordinary course of such licensed business; and~~
- ~~(4) All easements and rights of way, other than drainage easements, that are on a recorded plat approved by the city and filed in the plat records of Montgomery County, Texas.~~

~~(a) Except as otherwise provided by this section the requirements of this article are applicable throughout the corporate limits of the city and apply to all types of development or development activity by both public and private entities, including but not limited to:~~

- ~~(1) The removal of any protected tree;~~
- ~~(2) Clearing of all or a portion of property;~~
- ~~(3) Subdivisions of land for any purpose;~~
- ~~(4) Additions to non-residential buildings or parking lots that expand the footprint of the structure by thirty percent (30%) or more, or that add at least three thousand (3,000) square feet of area to the existing structure;~~
- ~~(5) Construction of new non-residential structures for which a building permit is required; and~~
- ~~(6) Construction of new one or two family residential structures.~~

(b) This article does not apply to:

- (1) A tree removed from a residential lot by or at the direction of the homeowner residing on the property
 - (2) Changes in the use or configuration of existing non-residential buildings or parking lots that does not expand the structure beyond the limits provided in (a)(4) of this section;
 - (3) Clearing, maintenance or tree trimming within an easement or right-of-way by a railroad or utility company;
 - (4) The construction of streets or highways by or on behalf of a state or local government entity; and
 - (5) The removal or trimming of trees or other vegetation within or adjacent to street rights-of-way to conform to traffic safety rules requiring unobstructed views.
- (c) Infill construction of single family residences on lots in residential subdivisions vested in regulations in effect prior to September 27, 2016 are subject to the requirements of Section 78-178 but are otherwise exempt from the requirements of this article.

Sec. 78-173. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper means the ~~average diameter of the trunk of the tree as measured at DBH. On multi-trunk trees, the caliper of the largest trunk, plus 50 percent of each additional trunk's caliper shall be added to determine the caliper. On irregular trees caliper is measured immediately below the irregularity.~~ trunk diameter of nursery stock trees planted to satisfy a requirement of this article. Caliper is measured 6 inches above the root ball for trees that are four inches in diameter or smaller, and twelve inches above the root ball for larger nursery stock.

Canopy area means the extent of the uppermost crown of a tree or trees formed by the outer layer of leaves of an individual tree or group of trees.

City administrator means the person holding the office of city administrator or his designee acting in behalf of the city, with authority over the tree protection and preservation ordinance.

City engineer means the person or firm designated by the city council or the city administrator as the city engineer.

Clear cutting means the indiscriminate removal of protected trees from a parcel or tract of land.

Critical root zone means ~~an area extending five feet beyond the outermost drip line of the tree.~~ the area within a radius extending out from the trunk of the tree one foot per each diameter inch of the trunk measured at breast height.

Diameter breast height (DBH) means the diameter of trunk measured at 42 inches above natural grade.

Director means the person designated by the city administrator to administer the provisions of this article.

~~Identifying number. Each tree surveyed shall be marked with a permanently stamped uniquely numbered metal tag which cross references or identifies the tree in the tree inventory.~~

~~Irregular tree means a tree having swelling, bumps, fork, etc. at DBH.~~

~~Multi-trunk tree means a tree having two or more trunks arising from the root collar or natural grade.~~

Principal building means, for the purposes of this article, any building which is the first building permitted for construction on a lot or tract of land, or any subsequent building which shall serve as the primary residence or occupied building on the lot or tract of land.

Protected tree means:

(1) Any tree with a caliper of twelve (12) inches or greater ~~of any species, or that is not one of the following species: bois d'arc, thorny honey locust, hackberry, cottonwood, chinaberry, native black willow, native red or white mulberry, or Chinese tallow.~~

(2) ~~Any tree with a caliper of six inches or greater of any species that is not one of the following: mesquite, bois d'arc, thorny honey locust, hackberry, cottonwood, cedar, chinaberry (common), native black willow, native red or white mulberry.~~

~~Tree inventory means a summary table indicating the identifying number, caliper, species, and condition of each tree surveyed; and whether it will be preserved or removed.~~

Tree preservation plan means a plan submitted by the owner in a form or manner specified by the city administrator or designee providing the method of protecting trees during construction that shall include protection details, standards, notes, and construction plans in accordance with generally accepted practices such as those provided in the Urban Forest Technical Manual, on file in the office of the city secretary. ~~The plan shall also identify each tree to be protected by surveyed location, tag number, and shall include a table listing the canopy area of each tree to be preserved.~~ Total site area canopy area calculation shall also be included on the plan.

~~Tree survey date means, for purposes of establishing the age of the tree survey, the first date that field observations were made by the preparer of the tree survey.~~

Urban Forest Technical Manual means the standards and specifications based on generally accepted practices developed by the city administrator or designee for sound arboricultural practices, techniques and procedures which shall serve as guidelines for trees regulated by this article, including, but not limited to, tree selection, planting, alteration, treatment, protection, and removal as approved by the city council, maintained by the city secretary and available through the city administrator.

Woodland Tree Stand means an area of contiguous wooded vegetation covering at least two thousand five hundred (2,500) square feet where the branches and leaves of the trees form a canopy over substantially all the area.

Sec. 78-174. Technical standards and specifications.

The City administrator is authorized to prepare technical standards and specifications to ensure the proper implementation of the provisions of this article. These can be found in the Urban Forest Technical Manual. In the event of any conflict between the provisions of this article and the provisions of the Urban Forest Technical Manual, the provisions of this article shall control.

Sec. 78-175. Permit required for removal of protected tree.

(a) A person shall not cut down, harvest, or remove any protected tree unless authorized to do so under a permit issued as provided by this article. Only the following permits may be issued to authorize removal of a protected tree:

(1) A protected tree removal permit;

(2) A clearing permit issued in conjunction with a subdivision plat, building permit, or other form of development permit that incorporates a tree preservation plan approved under this article.

Sec. 78-176. Protected tree removal permit.

(a) A protected tree removal permit shall be issued to authorize the removal of:

(1) Any protected tree that is dying or has become a hazard tree;

(2) Any protected tree that obstructs the only practicable means of ingress or egress to or from property; or

(3) Any other protected tree located on previously developed property provided that removal of the protected tree does not reduce the tree canopy below the required minimum tree canopy applicable to the property under Section 78-177.

(b) A protected tree removed from previously developed property under a permit issued in accordance with this section must be replaced elsewhere upon the property unless the minimum canopy requirements of this article are satisfied without the necessity of replacement.

(c) A protected tree removal permit may authorize the removal of up to ten (10) specific trees identified in the application and the permit expires thirty (30) days following the date of issuance. The city administrator shall prescribe the form of application for a tree removal permit. An application fee set forth in Appendix B must accompany each application.

Sec. 78-177. Minimum tree canopy required for development.

- (a) Property developed for any purpose must meet the minimum tree canopy requirements of this section. Where the canopy of preserved trees is insufficient to meet the required minimum, then additional canopy shall be provided by new planting.
- (b) Tree canopy coverage requirements are based on zoning classification. The minimum required tree canopy for development is:

 - (1) 20% of the gross property area in District “B” Commercial;
 - (2) 20% of the gross property area in District “ID” Industrial;
 - (3) 20% of the gross property area excluding sports fields in District “T” Institutional;
 - (4) 20% of the gross property area for reserves and open space excluding rights-of-way and utility easements in District “R1” single family residential and District “R2” multi-family residential;

Sec. 78-178. Additional requirements for residential development.

- (a) Each building permit for a new one or two family dwelling shall require the preservation or planting of at least three trees. At least one tree must be located in the front yard of the dwelling and must have a minimum caliper of four inches. The remaining required trees must have a minimum caliper of three inches and shall be placed in either the front or rear of the lot. No certificate of occupancy shall be issued for any new one or two family dwelling until this requirement has been satisfied.

Sec. 78-179. Tree preservation adjoining residential property.

- (a) Where non-residential property is developed adjacent to residential land use districts, a residential buffer zone is required on the non-residential property along the common boundary. The buffer zone shall be a strip not less than twenty (20) feet deep running parallel and adjacent to the common boundary and not less than fifteen (15) feet deep behind the back line of any easement or series of abutting parallel easements along the common boundary.
- (b) Protected trees located within a residential buffer zone are subject to mandatory preservation and no permit shall be issued to authorize the removal of any healthy protected tree except where removal is necessary for the construction of infrastructure, driveways, or on-premise advertising signs.

Sec. 78-180. Parking lot trees.

In the case of new parking lots or additions to existing parking lots sixty (60) square feet of tree canopy must be preserved or planted for each additional parking space. Parking lot trees must be located in the interior of the parking lot or in an area immediately adjacent to the parking lot. For parking lots of 250 spaces or more, at least fifty percent (50%) of the parking lot canopy must be located within the interior of the parking lot. Only trees of the preferred species listed in Table 2 of Section 78-183 may be used to satisfy the planting requirements of this section and all such trees must be at least three inch caliper and a minimum of six (6) feet in height. Additionally, no parking space shall be further than 125 feet away from the trunk of a tree.

Sec. 78-181. Pre-development planning and clearing permits.

- (a) Except as expressly provided by this chapter, no development shall occur unless the site of the proposed work is covered by an approved tree preservation plan. The location of all proposed buildings and improvements shall be oriented by the applicant, at the applicant's sole discretion, taking into consideration the existing tree stock and other relevant site characteristics.
- (b) The applicant shall propose the location of woodland tree stands or individual trees for which preservation credits are requested. A tree located outside a woodland tree stand shall not receive credit unless the tree has a diameter at breast height (DBH) of at least three (3) inches. The applicant shall consider the preservation of trees in areas visible from abutting streets and public spaces. Preservation credits shall be denied for trees located in existing or proposed easements or rights-of-way where there is a reasonable possibility that removal of the tree will be required for utility operations. New tree stock shall be planted where the minimum canopy is not met through preservation alone.

Sec. 78-182. Canopy measurement.

- (a) The canopy area of a woodland tree stand is the ground area within the smallest perimeter that contains all trees in the tree stand. The tree stand area may be surveyed on the ground or estimated from an aerial photograph depicting existing conditions.
- (b) Individual trees not located within a woodland tree stand are classified by diameter at breast height (DBH) and receive the canopy area credit applicable to their trunk size classification as provided in Table 1. Only healthy trees of a species on the Texas Forest Service list of native and naturalized trees of Texas, excluding those classified as shrubs, shall receive preservation credits.
- (c) The preservation of trees that are visible from the adjoining street is preferred. As a bonus to encourage preservation, any preserved tree that is visible from the public street and located within 150 feet of the right of way shall receive a credit equal to 125% of the value in Table 1.

TABLE 1. CANOPY AREA CREDITS FOR INDIVIDUAL TREES

<u>DIAMETER AT BREAST HEIGHT (DBH)</u>	<u>CANOPY CREDIT</u>
<u>At least 3", but less than 8" DBH</u>	<u>1200 square feet</u>
<u>At least 8", but less than 16" DBH</u>	<u>1400 square feet</u>
<u>At least 16", but less than 24" DBH</u>	<u>1700 square feet</u>
<u>Greater than 24" DBH</u>	<u>2000 square feet</u>

Sec. 78-183. New and replacement trees.

- (a) Only trees of the preferred species listed in Table 2 of this section are considered acceptable for new and replacement tree planting. Additional tree species may be considered and approved on a case by case basis by the director and such trees will receive a canopy credit applicable to the species class height. New trees must be a minimum of three inches in caliper at planting and receive the canopy credit listed in Table 2.
- (b) Not less than twenty-five percent (25%) of new trees planted shall be evergreen.
- (c) Trees planted under or near overhead power lines must be chosen from the Small Tree category of Table 2. Large tree species shall not be planted within thirty (30) feet of overhead power lines. Medium tree species shall not be planted within twenty (20) feet of overhead power lines.

TABLE 2. PREFERRED SPECIES LIST

<u>Tree Species & Height at Maturity</u>		<u>Leaf Type</u>	<u>Canopy Credit</u>
<u>Large</u> <u>Over 40' tall</u>	<u>Loblolly Pine</u>	<u>evergreen</u>	<u>800 square feet</u>
	<u>Slash Pine</u>	<u>evergreen</u>	
	<u>Water Oak</u>	<u>deciduous</u>	
	<u>Live Oak</u>	<u>evergreen</u>	
	<u>Shumard Red Oak</u>	<u>deciduous</u>	
	<u>Southern Red Oak</u>	<u>deciduous</u>	
	<u>Chinquapin Oak</u>	<u>deciduous</u>	
	<u>Cedar Elm</u>	<u>deciduous</u>	

	<u>Green Ash</u>	<u>deciduous</u>	
	<u>Sweetgum</u>	<u>deciduous</u>	
	<u>American Elm</u>	<u>deciduous</u>	
	<u>Montezuma Cypress</u>	<u>deciduous</u>	
	<u>Bald Cypress</u>	<u>deciduous</u>	
	<u>Sycamore</u>	<u>deciduous</u>	
<u>Medium</u> <u>25' to 40' tall</u>	<u>Winged Elm</u>	<u>deciduous</u>	<u>600 square feet</u>
	<u>Chinese Pistache</u>	<u>deciduous</u>	
	<u>Lacebark Elm</u>	<u>deciduous</u>	
	<u>River Birch</u>	<u>deciduous</u>	
	<u>Eastern Red Cedar</u>	<u>evergreen</u>	
<u>Small</u> <u>Less than 25'</u>	<u>Little Gem Magnolia*</u>	<u>evergreen</u>	<u>300 square feet</u>
	<u>Rusty Blackhaw*</u>	<u>deciduous</u>	
	<u>Fringetree*</u>	<u>deciduous</u>	
	<u>Redbud*</u>	<u>deciduous</u>	
	<u>Hophornbeam*</u>	<u>deciduous</u>	

*Denotes only trees suitable for planting under or adjacent to power lines

Sec. 78-184. - Tree preservation and protection.

~~(a) No person, or company directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree regardless of whether the protected tree is on private property or the abutting public right of way, as described in section 78-172, with the following exceptions:~~

- ~~(1) During a period of emergency, such as a tornado, storm, flood or other act of God, the requirements of this article may be waived as may be deemed necessary by the city's designated emergency management coordinator (EMC) or, if unavailable, by the EMC equivalent from the federal, state or county emergency management agencies.~~
- ~~(2) If any protected tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate remove without delay, authorization for removal may be given by the city emergency management coordinator or other~~

~~designee of the city, and such a protected tree may then be removed without obtaining a written permit as required in this chapter and the fees, restitution, and penalties will not apply.~~

~~(3) Utility service providers may do routine maintenance that is necessary for insuring reliable transmission and delivery service within their approved easements, and, or right-of ways.~~

~~(4) A guideline for implementation of the tree preservation plan is the Urban Forest Technical Manual, as hereby adopted by the city and on file in the office of the city secretary.~~

~~(b) No clear cutting of land is allowed.~~

(a) A tree preservation plan must be included with all preliminary plat submittals to plat new subdivisions or developments, and again with all requests for permits for any type of construction. If the site of development or construction does not contain any protected trees, a verification letter of no protected trees shall be submitted to the city that attests that protected trees are not on the property and that the person making this determination is qualified to do so. Persons who may prepare the tree preservation plan or verification letter include registered surveyors, professional engineers, architects, landscape architects, arborists, or other qualified licensed professional. The letter must contain a statement affirming the author is qualified to prepare such document and listing his state license number or other certificates of documentation. The tree preservation plan or verification letter of no protected trees must be submitted to and approved by the city prior to the removal of any trees on the site. If there are no trees present of any type in the area of construction on previously platted residential lots, making no expertise necessary for determining the type and size of trees, landowners may submit a verification letter of no protected trees on their own behalf.

~~(b) The tree preservation plan must include a tree inventory and a site map including, but not limited to, the following information: shall be a scaled diagram overlaying the site plan and drawn to the same scale. Two copies of the plan shall be provided. The plan must include all details required for the preservation of existing trees during construction and for the installation of any new trees necessary to meet canopy area coverage required by this article. The tree preservation plan must include:~~

~~(1) Delineation of site boundaries; the proposed location of all utility easements necessary to serve the property;~~

~~(2) Location of all existing or proposed structures, construction activities and improvements (e.g., streets, alleys, easements, building lines, drainageways, major grade changes, etc.); the footprint of all proposed buildings, parking lots, and detention ponds;~~

~~(3) Trees proposed for preservation; the outline of each woodland tree stand to be preserved;~~

~~(4) Trees proposed for removal; the location, size, and variety of each additional tree that will be preserved for credits;~~

~~(5) Tree replacement proposal; the location and variety of each tree to be planted to achieve the required minimum canopy; and~~

~~(6) Location of any existing or proposed utility lines; any other information required by the director to calculate the required canopy or amount of earned credits.~~

~~(7) Location of any naturally occurring watercourses.~~

~~(8) Location of any designated floodways.~~

~~(9) Extent to which, if any, the 100-year floodplain encroaches within the platted boundary.~~

~~The tree preservation plan must be based upon a tree survey, which is not less than two years old at the time of submittal for platting and subdividing permits. Requests for building permits may use an existing~~

~~city approved tree survey, which is up to 24 months old at the time of the building permit application submittal, if available.~~

- ~~(d) Trees may be planted or preserved within storm water detention areas provided that the trees do not interfere with the drainage or substantially impair the storm water detention function.~~

Sec. 78-185 Clearing permits.

- ~~(a) A clearing permit may be issued to authorize the removal of protected trees in conformity with a tree preservation plan that has been approved in conjunction with the approval or issuance of a subdivision plat, building permit or other form of development permit. A clearing permit is valid for ninety (90) days from the date the permit is issued. A fee in the amount set forth in Appendix A based on the class of development must be paid prior to the issuance of a clearing permit. Compliance with the tree preservation plan is a condition of the clearing permit and no related development permit and no certificate of occupancy may be issued until the director confirms that the development has been completed in conformity with the tree preservation plan.~~
- ~~(b) A partial clearing permit may be issued prior to the approval of any subdivision plat, building or development permit application in order to allow pre-development clearing of a portion of the land. An application to obtain a partial clearing permit prior to approval of a subdivision plat or building or development permit must include a map or drawing of the property on which the applicant designates tree bearing areas that include at least 30% of the property that will be set aside as a preservation bank for future preservation planning. No clearing or tree removal within the preservation bank is permitted without an approved tree preservation plan for the property. Not later than 180 days after issuance of a partial clearing permit the developer must submit a proposed tree preservation plan for the property. When a tree preservation plan is approved the developer may remove any excess trees in the preservation bank that are not required to conform to the approved preservation plan. A surety bond in the amount of \$50,000 shall be required to secure the developer's obligation to submit a tree preservation plan and to preserve trees in the preservation bank pending the subsequent approval of a tree preservation plan for the property.~~

Sec. 78-186. Accommodations of Development Standards.

- ~~(a) The City Council recognizes that in certain instances the goal of this article must be balanced against potentially conflicting objectives arising from other development regulations. The director may modify or waive the application of development standards as provided in this section when the director determines that modification will facilitate the tree preservation requirements of this article and will not substantially increase the risk of unsafe traffic conditions or congestion, inconvenience to pedestrians, or flooding.~~
- ~~(b) Up to fifteen percent (15%) of required parking spaces may be waived if compliance with the canopy requirements cannot otherwise be achieved through preservation and if the reduction in parking area results in an equivalent increase in the area of preserved canopy.~~

- (c) Sidewalks may be relocated, reduced in width or otherwise modified, where the application of sidewalk standards would otherwise conflict with tree preservation and canopy objections.
- (d) The director shall consider the effect on site drainage of low impact development strategies incorporating tree preservation and tree planting and, guided by generally accepted engineering standards and practices, may approve offsetting reductions to the size of onsite stormwater detention facilities.

Sec. 78-187. Protection of critical root zone during construction.

- (a) A maximum of 30% of the area within the critical root zone of a protected tree shall be encroached with temporary or permanent improvements and the remaining area shall be kept free of improvements and be protected during construction.
- (b) For individual trees or woodland tree stands within 50 feet of a construction area, the contractor shall construct a protective fence with a minimum height of four (4) feet that encircles the critical root zone area prior to development activities. Protective fencing must be made of orange plastic mesh net with t-posts, including a top rail or other type of support. Protective fencing shall remain in place through the completion of development activities.
- (c) The following activities within the critical root zone are prohibited:
 - (1) No cutting, filling, trenching, or other disturbance of the soil is permitted unless otherwise authorized by this article and the zone shall be maintained at natural grade;
 - (2) No construction or waste materials shall be placed or stored within the zone;
 - (3) No harmful liquids shall be allowed to flow into the zone, including without limitation, vehicle or equipment wash water, paint, oil, solvents, asphalt, concrete, mortar or other materials;
 - (4) No vehicle or equipment traffic parking shall be allowed within the zone; and
 - (5) No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree.
 - (6) Irrigation trenching within the critical root zone shall be minimized and place radially to the tree trunk in a manner that minimizes damage to the roots. All irrigation trenching within the critical root zone shall be hand work with no roots over one inch diameter being cut.

Sec. 78-188. Post development maintenance and replacement.

- (a) Protected trees, parking lot trees, and replacement or mitigation trees must be maintained in a healthy condition for at least one year following the issue of a certificate of occupancy. The property owner is responsible for irrigating, fertilizing, pruning, and other maintenance of such trees as needed. Preserved or planted trees that die within the maintenance period must be

replaced within 90 days with new trees meeting the requirements of Section 78-183. Planted trees that die during the maintenance period must be replaced with new trees having the total canopy value that is not less than the canopy of the tree to be replaced. Replacement trees planted to satisfy the requirements of this section are subject to a one year maintenance period and must be replaced if they fail to survive the extended maintenance period.

(b) Trees on residential lots are not subject to the one year maintenance period established by this section. A homeowner is not required to replace a lot tree that dies or is removed by or with the consent of the homeowner.

~~(e) Trees to be preserved must be protected during construction activities by the following measures:~~

- ~~(1) No grade changes, or trenching, shall be allowed within the critical root zone without prior city approval.~~
- ~~(2) For trees within 50 feet of a construction area, temporary barriers shall be erected to protect the critical root zone.~~
- ~~(3) No construction or waste materials shall be stored, placed or disposed of within the critical root zone. This includes, without limitation, paints, oils, solvents, asphalt, concrete, mortar, lumber or other similar materials.~~
- ~~(4) No asphalt, concrete or other impervious material shall encroach within the critical root zone, except, when necessary, and with prior city approval, these materials may be placed within five feet of the trunk so long as at least two thirds of the critical root zone remains undisturbed.~~
- ~~(5) No parking or vehicular traffic shall be allowed within the critical root zone. This restriction does not apply to the clearing of underbrush or of approved construction activities within the critical root zone.~~

(c) No person, or company directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree regardless of whether the protected tree is on private property or the abutting public right-of-way, as described in section 78-172, with the following exceptions:

- (1) During a period of emergency, such as a tornado, storm, flood or other act of God, the requirements of this article may be waived as may be deemed necessary by the city's designated emergency management coordinator (EMC) or, if unavailable, by the EMC equivalent from the federal, state or county emergency management agencies.
- (2) If any protected tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate remove without delay, authorization for removal may be given by the city emergency management coordinator or other designee of the city, and such a protected tree may then be removed without obtaining a written permit as required in this chapter and the fees, restitution, and penalties will not apply. Canopy coverage requirements will not be waived or altered as a result of this provision, and tree replacement shall be required if applicable.

(d) Dead trees may be removed at any time, and shall be considered in the tree preservation plan. This shall not require city approval under this article.

(e) Any tree may be reasonably pruned for aesthetic, maintenance, disease control, or safety reasons. This shall not require city approval.

- (f) No protected tree shall be pruned in a manner that significantly disfigures the tree or in a manner that would reasonably lead to the death of the tree.
- (g) Trees which are to be removed for disease or safety reasons shall be approved by the city prior to cutting. Factors to be considered include, but are not limited to, the overall health of the tree, the potential for adverse impacts of both leaving and removing the tree, and aesthetic value. This requirement shall not apply to any trees included in the percentage of trees allowed to be removed in accordance with subsections (e) and (f) of this section.
- ~~(e) Up to 20 percent of the total caliper inches of existing, protected trees may be proposed for removal during the development process (i.e., the grading, road, drainage and utility construction of the subdivision) without replacing any trees. Any tree with a 12-inch caliper or greater may not be included in the 20 percent exemption.~~
- ~~(f) Up to 20 percent of the total caliper inches of existing, protected trees on each lot or tract may be proposed for removal during the construction of a new dwelling or other building without replacing any trees. Any tree with a 12-inch caliper or greater may not be included in the 20 percent exemption.~~
- ~~(g) Removal of a greater percentage of trees than that allowed above shall require the planting of new trees on a 100 percent replacement rate. That is, for each caliper inch of protected trees removed in excess of the allowed percentages, new trees with an equivalent aggregate total number of caliper inches must be replanted. Multiple trees may be used to achieve the required total number of caliper inches, but replacement trees must be at least two inches each in caliper, except when replacing a protected tree which had a caliper greater than 16 inches, at least two five-inch caliper trees shall be included in the total. New trees must be chosen from the list of protected species in the acceptable replacement tree list in section 78-179(a).~~
- ~~(h) For the purpose of replacement trees, existing non-protected trees which meet minimum size requirements may be preserved instead of planting replacement trees. Species protected by this chapter which are between three inches and six inches shall count 100 percent (i.e., inch for inch). Unprotected species shall be a minimum of six-inch caliper and count only 50 percent (i.e., a six-inch unprotected tree will count as a three-inch replacement tree).~~
- ~~(i) At the request of the applicant, replacement trees may be planted on city property in lieu of the property under construction/development, with prior city approval. In the alternative, the applicant may contribute to the city tree fund in a sum equivalent to the reasonable value of the replacement tree(s) determined by the city administrator or his designee.~~
- ~~(j) A tree identified on the tree preservation plan that is replaced but dies within one year of the date it was planted must be replaced in accordance with the provisions of this article as determined by the city.~~
- ~~(k) All replacement trees must be of a species included in the acceptable replacement tree list in section 78-179(a).~~

Sec. 78-189. Variance procedure.

- (a) The director may grant a variance to the requirements of this article where literal enforcement will result in unnecessary hardship. A variance shall not be granted unless:
 - (1) The variance is not contrary to public interest;
 - (2) The variance will be in harmony with the spirit and purpose of this article;

(3) The variance will not substantially weaken the general purposes of the regulations herein established for the protection of trees and the promotion of tree canopy; and

(4) The variance granted is limited in scope to that relief which is necessary to relieve the hardship condition.

(b) All variance requests must be made in writing to the director and must include the subject of the requested variance and the justification for granting the variance, including a description of the hardship condition that will result if the requested relief is not granted. The applicant has the burden of demonstrating that sufficient evidence exists for granting the variance. The director may deny or grant the variance as requested, or may allow an alternate form of relief. The director shall issue a decision in writing not later than ten (10) business days following the date the variance request is received.

(c) An applicant who disputes the decision of the director may appeal the variance decision to the municipal planning and zoning commission. Any appeal must be made in writing and must be filed with the director within ten (10) days following the date of the initial written decision. The director shall refer the appeal to the planning commission and the decision of the planning commission shall be final.

Sec. 78-190. Mitigation payments in lieu of preservation or planting.

(a) An applicant may seek a variance as to all or a portion of the tree preservation or planting requirements upon the condition that the applicant pay mitigation fees in lieu of preservation or planting. An applicant for a variance bears the burden of demonstrating that application of the preservation or planting requirement will result in unnecessary hardship.

(b) Mitigation fees authorized by this section shall be payable at the rate of \$1.50 per square foot of additional canopy necessary to achieve the coverage applicable to the property after allowance for all other credits.

Sec. 78-191. Tree mitigation fund.

(a) The director of finance shall establish a dedicated account to be known as the Tree Mitigation Fund. Mitigation fees paid as provided by section 78-189 of this article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city. The balance of such fund remaining at the each of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section and for no other purpose.

(b) The assets of the fund shall be expended under the direction of the city administrator and may be used to purchase and plant new trees in public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. Planting costs payable from the fund include the installation of related irrigation equipment and other measures

necessary to the protection and subsequent maintenance of new trees for a period of up to three years following planting. An amount not to exceed 20% of the fund balance at the beginning of each fiscal year may be expended to promote public awareness of the objectives of this article, including Earth Day or Arbor Day programs for the distribution of sapling trees to the general public.

Sec. 78-192. Penalties for violation.

- (a) Any person, firm or corporation that violates a provision of this article shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars (\$500). In cases of offenses involving the illegal removal of trees, the removal of each tree constitutes a separate offense. In cases of continuing violation, each separate day that a violation continues constitutes a separate offense.
- (b) Any person, firm or corporation that removes a protected tree without having secured a permit to authorize such removal shall be subject to a civil penalty in the amount of two hundred dollars (\$200) times the total diameter inches of all unlawfully removed protected trees. The civil penalty authorized by this paragraph may be imposed by the director in addition to the misdemeanor penalty in paragraph (a) of this section. The imposition of a civil penalty may be appealed to the municipal planning commission. Any appeal must be made in writing and must be filed with the director within ten (10) days following the date of the initial written decision. The director shall refer the appeal to the planning commission and the decision of the planning commission shall be final.
- (c) Where illegal tree removal has occurred and the physical evidence has been removed from the site the civil penalty may be assessed based on the estimated diameter of removed trees. For purposes of such estimation the aggregate diameter of trees per acre is assumed to be 200 diameter inches per acre.
- (d) The imposition of a civil penalty under this section suspends all permits or permit applications issued to or for the benefit of the party responsible for payment of the civil penalty and all work under any such permits shall cease until the civil penalty is fully paid.

Sec. 78-193. Bond.

Prior to issuance of any permit requiring approval of a tree preservation plan under section 78-171 of this article the permit applicant shall submit a surety bond or other form of financial guarantee payable to the City to secure the applicant's compliance with this article. The bond shall be in a form acceptable to the City and in an amount equal to \$1.50 times the total canopy area applicable to the project, but in no event shall exceed \$50,000. The bond or other financial security shall be maintained in effect until the expiration of the one year maintenance period required by Section 78-187.

Sec. 78-176. — Fees and implementation.

- (a) ~~*New development.* Review and verification of tree preservation plans for new development shall be performed by the city engineer in conjunction with other portions of the application. Fees shall be billed to the applicant as per the fee schedule as currently established or as hereafter adopted by resolution of the city council from time to time in appendix B on file in the office of the city secretary. Any cost incurred by the city for review, oversight, and verification in excess of collected fees as established in the fee schedule will be the responsibility of the applicant and must be reimbursed to the city. Final plat approval shall not be granted until all fees have been paid in full by the applicant and, if applicable, all penalties and any required restitution has been satisfied as well. The city may also withhold construction permits and occupancy permits if necessary until payment is made in full.~~
- (b) ~~*Residential building permits.* A fee, as prescribed in the fee schedule as currently established or as hereafter adopted by resolution of the city council from time to time in appendix B on file in the office of the city secretary shall be assessed per individual platted lot for the city's costs incurred including the initial review and field verification of tree preservation plans required for the issuance of a residential building permit. Each subsequent revised submittal shall be charged a reduced fee equivalent to the re-inspection fee. Fees are due at time of submittal. If no trees are going to be affected by construction as described in section 78-174, a letter certifying no trees will be affected may be submitted with the accompanied reduced fee equal to the re-inspection fee.~~
- (c) ~~*Nonresidential building permits.* A fee, as prescribed in the fee schedule as currently established or as hereafter adopted by resolution of the city council from time to time in appendix B on file in the office of the city secretary shall be assessed per acre for nonresidential building permits for the city's costs incurred, including the initial review and field verification of tree preservation plans required for the issuance of a nonresidential building permit. Each subsequent revised submittal shall be charged a reduced fee equivalent to the re-inspection fee. Fees are due at time of submittal. If no trees are going to be affected by construction as described in section 78-174, a letter certifying no trees will be affected may be submitted with the accompanied reduced fee.~~
- (d) ~~*Letters of no protected trees.* Fees shall be assessed at the reduced fee rate shown in the fee schedule as currently established or as hereafter adopted by resolution of the city council from time to time in appendix B on file in the office of the city secretary for review and field verification of no protected tree letters when submitted.~~

Sec. 78-177. — Tree fund.

- (a) ~~*Establishment of tree fund.* The city administrator or his designee shall establish a tree fund from fees generated as a result of the tree replacement requirements and general donations to the city for public tree plantings~~
- (b) ~~*Funds to be deposited.* Tree replacement fees in lieu of the installation and replacement of trees, as provided in section 78-175(i), shall be deposited in the tree fund.~~
- (c) ~~*Use of tree funds.* Expenditures from the tree fund shall be used for the purpose of purchasing and installing trees in public rights of ways, city park land, or any other city owned property. Expenditures may also be used for maintenance of trees on public land; for urban forester management services; and for the administration of the tree fund.~~

Sec. 78-178. — Enforcement and penalties.

- ~~(a) — *Certificate of occupancy subject to this article.* No plat for new developments or subdivisions of property shall be approved, nor any building or construction permit issued, without an approved tree preservation plan or a verification letter of no protected trees. A permanent certificate of occupancy shall not be issued nor valid without all submittals, fees, and approvals and, if applicable, all fees and penalties being satisfied.~~
- ~~(b) — *Criminal penalties for violations of this article.* Any person or company that violates the provisions of this tree preservation and replacement article shall be guilty of a criminal offense and shall be subject to the fines established in the general penalties of section 1-13.~~
- ~~(c) — *Criminal penalties for damage to trees.* Cutting down, destroying, removing, moving or pruning that significantly disfigures a tree, or severe pruning that significantly disfigures a tree in a manner that would reasonably lead to the death of any tree, shall be subject to fines as established in the general penalties of section 1-13.~~
- ~~(d) — *Civil injunctive relief.* In addition to any criminal penalties described above, the city reserves the right to seek injunctive relief in a district court to stop a person or company from damaging or removing any tree in violation of this article.~~

(b) Appendix ~~B~~A contains a list of fees relating to tree preservation plans as currently established or as hereafter adopted by resolution of the city council from time to time and is available for review in the office of the city secretary.

Secs. 78-180 — ~~78-184~~194. - Reserved.

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: N/A
Date Prepared: January 10, 2019	

Subject

Announcement of the Comprehensive Plan Community Meeting scheduled to be held on February 28, 2019.

Description

Walter Peacock of Texas A&M's Texas Target Communities has been working on a State of the Community Report that he will present at a community meeting. He would like to make a brief presentation to City Council and Planning & Zoning prior to the community meeting. The dates are as follows:

Planning & Zoning presentation: February 25th

City Council presentation: February 26th

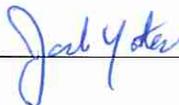
State of the Community Report Community Meeting: February 28th

The target audience for the community meeting is residents and business owners. Participation of the Planning & Zoning Commission and City Council is strongly encouraged, as the meeting will include an update of Mr. Peacock's work to date as well as feedback from the community.

Recommendation

Consider the report and provide feedback as you see fit.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19

Montgomery Planning and Zoning Commission
AGENDA REPORT

Meeting Date: January 14, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: N/A
Date Prepared: January 10, 2019	

Subject

Consideration and possible action regarding cancelling the Planning and Zoning Commission Regular Meeting scheduled to be held on January 28, 2019.

Description

When the Commission planned for the current timeline of the Ward and Kammerer rezoning process, and understanding the Commission would meet twice in early January for the public hearings, it was determined that the January 14th public hearing could also serve as the Commission's regular monthly meeting.

Recommendation

Cancel the regular meeting scheduled to be held on January 28, 2019.

Approved By

Asst. to City Admin.	Dave McCorquodale	Date: 1/10/19
City Administrator	Jack Yates 	Date: 1/10/19