

MINUTES OF PUBLIC HEARING and REGULAR MEETING

October 22, 2018

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the meeting to order at 6:05 p.m.

Present: Nelson Cox, William Simpson and Carol Langley

Absent: Jeffrey Waddell
Arnette Easley

Also Present: Jack Yates, City Administrator
Susan Hensley, City Secretary
Chris Roznovsky, City Engineer
Dave McCorquodale, Assistant to the City Administrator

PUBLIC HEARING(S):

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

1. Second Public Hearing for the purpose of giving all interested persons the right to appear and be heard regarding the Preliminary Report and preparation of the Final Report on the following:
 - a) A request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R-2 MultiFamily, by owner Larry Jacobs; and
 - b) A request to rezone the property located at 2560 Lone Star Parkway from ID-Industrial to B-Commercial, by owner Larry Jacobs.

Chairman Cox convened the Public Hearing at 6:06 p.m.

Mr. Larry Jacobs stated that he appreciated the Commission taking his project into consideration this evening. Mr. Jacobs said there has been a lot of conversation in the last couple of weeks regarding Lone Star Parkway, cumulative rezoning and a lot of other stuff that affects that area. Mr. Jacobs said that he would like to go ahead and get the Commission to approve him, but to hold off on writing the Final Report until they have more information in the next couple of weeks before it would go to City Council for final adoption.

Adjourn Public Hearing

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

Reconvene into Regular Session

Chairman Cox reconvened into Regular Session at 6:08 p.m.

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.

There were no comments made.

CONSIDERATION AND POSSIBLE ACTION:

2. Consideration and possible action regarding approval of the minutes of the Special Meeting held on September 10, 2018, and Public Hearing and Regular Meeting held on September 24, 2018.

William Simpson moved to approve the minutes as presented. Carol Langley seconded the motion, the motion carried unanimously. (3-0)

3. Consideration and possible action regarding the Final Report for submittal to City Council on the following:

- a) A request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R-2 MultiFamily, by owner Larry Jacobs; and
- b) A request to rezone the property located at 2560 Lone Star Parkway from ID-Industrial to B-Commercial, by owner Larry Jacobs.

Mr. Yates stated that Mr. Jacobs' request to hold off on the Final Report will prevent the City Council from conducting their Public Hearing tomorrow night without receiving the Final Report. Mr. Yates said that Mr. Jacobs realizes that by the Commission conducting their Public Hearing, they have covered their bases, but if the City Council does not conduct their Public Hearing tomorrow night it will cost Mr. Jacobs about two months because they would have to conduct a Public Hearing on the item. Mr. Yates said if City Council does not receive the Final Report they will have to cancel their Public Hearing tomorrow night, and then at the November meeting they could call a Public Hearing to be held at the December meeting. Mr. Yates said if Mr. Jacobs changes anything about his request, other than what is being considered tonight, he would have to start all over again and he understands that he would have to pay his fee and start the entire process again. Mr. Yates said that Mr. Jacobs wants to get together with some other property owners in this large industrial area that is north of Lone Star Parkway and work out something with them. Mr. Yates said if they do not pass the Final Report, City Council cannot conduct their Public Hearing or act on the matter. Mr. Yates said if the Commission does act, Mr. Jacobs could ask the City Council to have their Public Hearing but just not make a decision on the matter.

Mr. Jacobs asked if the Commission could just table action on this item until next month. Mr. Yates said yes they could do that. Mr. Jacobs stated that he was asking the Commission to table his Final Report until next month, that way he is not on the Public Hearing at City Council. Mr. Jacobs said that will give him some more time to look at that area. Mr. Jacobs said he felt that he has two good uses for the property, but he is in a position where he would rather do it right and everyone be happy with the end result.

Mr. Yates said while there is no magic time in the statute, if they were to delaying the decision two or three months might cause a problem for the Public Hearing aspect, but one month would be fine. Mr. Yates said the same issue happened with Mrs. Fisher's case, where she waited a couple of months and the attorney's advice was for her to start the process all over again. Mr.

Yates stated that by tabling this item City Council will not be able to conduct their Public Hearing tomorrow night. Mr. Yates also stated that City Council will only meet once in November and once in December.

Carol Langley asked if when the item comes back to them at their November meeting, that would be when they would make the decision as to whether they are for or against the rezoning, or the owner would know more by that time on what he was going to do. Carol Langley confirmed that they were only tabling their decision on the rezoning. Mr. Yates said that was correct.

William Simpson moved to table action regarding the Final Report on a request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R-2 MultiFamily, and the property located at 2560 Lone Star Parkway from ID-Industrial to B-Commercial. Carol Langley seconded the motion, the motion carried unanimously. (3-0)

4. Consideration and possible action regarding a sign permit for the Montgomery Barber Shop located at 312 John A. Butler, as submitted by Lance DeLoach.

Mr. Yates said this was basically the same sign that the Commission approved for the shop that he had on SH 105, but is about 2/3 the size of the other sign, but otherwise it looks almost the same as the old sign. Mr. Yates said it will be next to the washateria where there was a beauty salon located in the past. Mr. Yates said the sign is non-illuminated and is just a frame painted sign. Carol Langley asked if the colors are what is being presented, red, white and blue with a yellow star. Mr. Yates said that was correct. William Simpson said the sign is a 4' x 8'. Carol Langley asked if the other sign had been removed. Mr. Yates said yes, it had been removed.

Carol Langley moved to approve the sign permit for the Montgomery Barber Shop located at 312 John A. Butler. William Simpson seconded the motion, the motion carried unanimously. (3-0)

5. Consideration and possible action regarding proposed improvements to the Living Savior Lutheran Church located at 309 Pond Street, as submitted by Peter Hames, Church Board President.

Mr. Yates said this renovation has been planned for several years. Mr. Yates said the renovation includes removal of the present west end of the main building that would be rebuilt with very similar construction. Mr. Yates said there will be new hardy plank on the outside. Mr. Yates said a steeple is being planned that will be modeled after the original steeple as showing in the materials, and because of its height it will require approval by the Board of Adjustment. Mr. Yates said a parking area is also planned adjacent to the church in the back. Mr. Yates said he thought that they were going to work with the Montgomery EDC to make it into a public parking lot, and get some MEDC funds to help them. Mr. Yates said they had a letter from the Montgomery Historic Society stating that they have approved the plans and commend the church for maintaining the historic integrity of the building. Mr. Yates said this renovation is very expensive and speaks very well, in his mind, to the church staying in the City. Mr. Yates said this was to approve the exterior and the basic renovation of the building.

Carol Langley asked if they had seen plans a while back that this was all going to be remodeled and added on, and very large, and now they are down to just this section. William Simpson asked if this church was going to be larger.

Mr. Peter Hames advised that two years ago they had plans for a much larger building, and they were led astray by their contractors. Mr. Hames said the price for that building was much higher than their budget, so that is when they thought about moving somewhere else. Mr. Hames said they are growing and they need more space for their congregation, and this design maintains the footprint of the existing building, while giving them the ability to enlarge the seating area for their congregation with a very nice entry way, bathrooms, and nursery right in the building, which they don't have now. Mr. Hames said he was very excited with their designer who took a photograph of what the building was in 1908 and came up with this design.

William Simpson asked if they were able to enlarge the space without enlarging the building. Mr. Hames said that was correct. Mr. Hames said the only thing that they are doing that is different than the footprint that is there right now, is in the area west near the metal building that they have; it will be expanding out a little bit to the south and north to give them room for the bathrooms and nursery. William Simpson asked about the discussions that they had about the cemetery lines. Mr. Hames said they have the variances for that and it is all approved, and

as far as the parking lot, there was an issue where one gentleman wanted a spot for parking and that is in their design for the parking lot, which is about two weeks away from being finalized and then they can start the process for approval for that.

William Simpson said the rendition looks very nice. Carol Langley asked to confirm that they were not changing any colors. Mr. Hames said that was correct, the design of the windows and doors. Mr. Hames said they would take off the doors at the front entry way and make that an emergency exist, but it would be rebuilt to look like the original doors, so they can maintain the look of the 1908 building.

Arnette Easley arrived at 6:20 p.m.

Carol Langley asked if the required height for the church steeple is 45 feet. Mr. Yates said no, they are zoned residential so it is 32 feet. William Simpson asked if the height of the steeple needed to be made in the motion. Mr. Yates said no, he would make it a separate comment. Mr. Yates said the motion would be to approve the renovation plans presented because they have not applied for their building permit yet, and said that Mr. Hames has assured him that the building will be done according to code, and this is just a decision on the appearance of the church.

William Simpson moved to approve the renovation plans as presented. Carol Langley seconded the motion, the motion carried unanimously. (4-0)

Mr. Yates said if they wanted to make a comment about the steeple, now would be a good time; it would not be voted on, it would just be a comment to Mr. Yates to pass on to the Board of Adjustment. Carol Langley asked if the requirement was no more than 32 feet in height, and the church is asking for 57 feet. Mr. Yates said that was correct. Carol Langley said they have a few other things in the City that are 45 feet. Mr. Yates said 45 feet is the commercial zone height for steeples. Carol Langley asked about the height of some of the other churches in the area that have steeples, and what their height is. Mr. Yates said he did not have an answer to that question. Mr. Hames said when they talked to Mr. Yates about this he brought up the issue of the steeple, and they pointed out all they are doing is replacing the steeple that was there 110 years ago, so he would like to have it grandfathered so they don't have to go through the

Board of Adjustment. Mr. Yates said he can talk to the City Attorney about that, but he doubted whether that would be approved. William Simpson asked if that had to go to the Board of Adjustment if the Commission approves it. Mr. Yates said the Commission has not been asked anything about the steeple. Chairman Cox said he would be interested in hearing what the surrounding area has to say and whether there is anybody that is concerned about it; they will surely be at that Public Hearing that they called today for December 12, 2018. Mr. Hames asked if they would disapprove the steeple if they had one person that was concerned about the steeple. Chairman Cox said no, they just want to hear from them, and said everybody has a right to be heard, but he could not see it being disapproved just because of one person. Mr. Hames said his problem is they are ready to start construction, but he is not going to start construction if they can't build the steeple. Mr. Hames said now instead of starting construction in November they are talking December. Chairman Cox said that was when the meeting was called, and there are certain protocols that have to be followed to have a Public Hearing and they are just following the rules. Mr. Hames said he would still like to hear what the City Attorney has to say.

Arnette Easley asked about the height of the existing steeple. Mr. Hames said in 1908 the height was over 57 feet because their design to make it look better than the original makes it a little bit shorter. Mr. Hames said all they are doing is replacing a steeple that was already there. Arnette Easley said he did not know why they would hold up construction if the steeple was already there, and asked if when they got the new guidelines they considered that steeple being the tallest one in the City. Mr. Yates said there is a non-conforming or grandfather clause, but that is for a year, and means if you kept the same use or the structure was not used for a year, then the non-conforming use would allow them to build the structure back, but they are talking about a steeple that blew down in 1918. Mr. Hames said the pictures show they do not have a steeple on the church right now. Mr. Yates said that would be like someone saying they used to have an industrial site down at the shopping center next to Brookshire Bros. back in 1918, and they want to rebuild that same steel foundry. Mr. Yates said he is not saying he is against the steeple, he is just stating the zoning rules. Chairman Cox asked if Mr. Yates thought he would get feedback from Mr. Foerster before the December 12, 2018 Public Hearing. Mr. Yates said he would probably hear from Mr. Foerster by the end of the week. Chairman Cox said Mr. Foerster could make a suggestion to see if they could expedite the process in any way. Mr. Hames thanked the Commission and said he appreciated it very much.

6. Consideration and possible action regarding the revised Final Plat for The Shoppes at Montgomery, Section 2.

Mr. Roznovsky said the developer has requested to record the buffer zone easement that goes around the boundary of the waste water treatment plant by separate instrument instead of by plat, because he felt it was in his best interest to show potential buyers in separate legal document the restrictions of that area. Mr. Roznovsky said the signed separate buffer zone document should be received by the City in a couple of days. Mr. Roznovsky said the buffer zone can't be used for residential purposes, and their concern was if there is a hotel in the area, if there is a document that states exactly what is allowed.

Arnette Easley moved to approve the revised Final Plat for The Shoppes at Montgomery, Section 2. Carol Langley seconded the motion, the motion carried unanimously. (4-0)

7. Report regarding the Zoning Table of Permitted Uses in the City of Montgomery Code of Ordinances, Section 98 – 88.

Mr. Yates said during the Fisher property discussion at City Council, it came up about changing the Table of Uses for what is allowed in the Industrial Zone. Mr. Yates said the table of uses is in the Zoning Ordinance and says what type of use can be used in the Industrial Zone, and shows "CC" which means City Council Special Use Permit. Mr. Yates said what occurred to them was one way of doing this rather than getting into so much the Table of Permitted Uses, is just to require a Special Use Permit for each industrial development and because of the radical uses that are possible in industrial, you can get very site specific with a Special Use Permit. Mr. Yates said the only Special Use Permits they have right now are fire wood sales, and they were a special use permitted in a residential area with specific requirements, that became an agreement that they signed.

Mr. McCorquodale stated that when they consider a Special Use Permit for each of the Industrial Zones, this zone requires that all activity must take place in a completely enclosed space, but when you look at a special use permit in the same way that you looked at the last item regarding the steeple, there is a time frame that needs to be followed in terms of hearings.

Mr. McCorquodale said one of the things that you have to consider is how does that time impact the property owner and the business.

Mr. McCorquodale said another thing to discuss is that it also allows you to take into context what is around any particular parcel relative to any particular industrial use. Mr. McCorquodale said in the past they had a light industrial zone and a regular industrial zone, and one of the things those zoning classifications attempted to do was to speak to the intensity of the use, but when they changed to just industrial use, they used a broader brush and there was no "light" or "regular" industrial. Mr. McCorquodale said this mechanism might allow the City to gauge what is the particular use and what are the particular parcels around that individual piece of land.

Mr. McCorquodale said there is very little industrial development right now in the City, it can be counted on one hand the number of industrial businesses that have come on line in the past several years. Mr. McCorquodale said this is not something that is going to have a heavy impact, day in and day out. Mr. McCorquodale said this is to discuss and get feedback.

William Simpson said for example, on Lone Star Parkway where Mr. Jacobs and all that property is, if that starts becoming residential and commercial office buildings, they can make a decision if somebody wants to come in with a salvage yard, they could say no because that would not be consistent with what is going on out there now. Mr. McCorquodale said that is correct, it would give them the flexibility of looking at each individual piece on a case-by-case basis. William Simpson said it would not be such a dramatic shock to someone if they said it was not in line with that area. Mr. McCorquodale said none of the uses would be contemplated as changing, the table of uses would still be the table of uses. William Simpson said that would be less formal than having to rezone that whole area out of light industrial; it could be left as it is and they would have a Special Use Permit. Mr. Yates said it would be a separate ordinance for each business, and it allows you to fine tune an industrial use and be very specific about the use. Mr. Yates said one thing that it also does if someone is about to make a large investment on a piece of property and get a use, they may even agree to the terms of the Special Use Permit, but what is the literal term, can they do a 20 year or 40 year Special Use Permit, and said he thought they could do that, but he wanted to make sure with the City Attorney. Mr. Yates said this would not be like chopping wood where you can move in a two hour time frame, because

you would not want to buy a \$400,000 piece of property and put a \$2 million dollar building on it for a two-year Special Use Permit that would have to get renewed every two years.

Carol Langley asked if they would like to move all the industrial to the "CC" and then it would go to City Council, and they would have to hold the Public Hearings before the land owner would know they can do that use, even in industrial. Mr. Yates said City Council could designate the Commission to work out the terms of the Special Use Permit, which he has not worked on, that far ahead, but he could easily see City Council doing that and then City Council would have final approval. Carol Langley said as of right now, if someone bought a piece of property zoned industrial in the City of Montgomery, and they want to put in an air product manufacturing plant, all they have to do is submit plans. Mr. Yates said that is correct and they would have to follow the code. Carol Langley said if all their plans met every requirement, then that plant would be in the industrial area that has already been zoned for that use. Carol Langley said if they change it, then they have to come to City Council and hold the public hearings before they even know if they can do that business in the City of Montgomery. Mr. Yates said that is correct, and said the time could be shorter, but if someone came in with an industrial building permit he would look at it very closely before approving it, but if it did meet the standards, what he was thinking is that they would still have to be reviewed, whether it is by the City Council or staff. Carol Langley said they don't have that many pieces of property that are zoned industrial, and the ones that are, that is why those businesses were put in industrial, because you do not want them in a commercial area, and now you are telling them okay you have found your industrial piece of property, but they might not be able to put that business there unless City Council approves it. Mr. Yates said they probably need to hear this from the City Attorney, but he felt the City Attorney would say yes, but you can't make the Special Use Permit so restrictive that they can't develop their property. Carol Langley asked if they want the Special Use Permit in place so that, for example, if they put restrictions on Old Plantersville Road because it is next to the residential area, and asked if that was what they are after. Mr. Yates said that was one of the examples. Carol Langley said there are not that many pieces of property in the City that are located next to a residential area that would be a problem. Mr. Yates said that is true and maybe what they might want to do is, if the property is adjacent to a residential property, it would require a Special Use Permit, but if it is in the middle of an industrial zoned area and it met the table of uses, a Special Use Permit would not be required. Carol Langley asked if they were to change this item, all they would have to do is make an

agreement and change it; it would not have to have all the public hearings, because it is involved in the ordinance. Mr. Yates said he would need to make sure with the City Attorney, because they might have to do what they did for the Corridor Enhancement Ordinance, which was notifying property owners within 200 feet. Mr. McCorquodale said this speaks to the intensity of the use, and in a perfect world they would have “light industrial” and “industrial” zones, and if it is adjacent to a residential zone it does give you some flexibility to consider the intensity of the use, not necessarily the type of business. Carol Langley said she did not know if Montgomery is looked at as industrial as other places are, so she did not want too many restrictions put on it so that if somebody was wanting to come to Montgomery they would feel very comfortable coming here. Carol Langley said when zoning when in it was a real situation with the industrial area, and they have changed the ordinance once since then because they moved it from “light” to just “industrial.”

Mr. Jacobs said that he has talked with Mr. McCorquodale about this, and said at the City Council Meeting last time he did not have the benefit of this list of uses that are allowed in the industrial use, but he had written them down and read them to City Council. Mr. Jacobs said with those uses they will never have any growth in the industrial zone. Mr. Jacobs said Conroe, Willis, Magnolia and Navasota give industrial sites for them to come and build their plants, and said Montgomery does not have that set up. Mr. Jacobs said they have the Montgomery IDC that helps little things, but we do not have that situation. Mr. Jacobs said the flexibility within the industrial zone, if a good company comes here they will want to keep them here and do what is right. Mr. Jacobs said west of FM 149 going around Lone Star Parkway is on the future land use map as probably residential but it is zoned industrial. Mr. Jacobs said that is a gateway coming in from that side of town, and it is probably going to go more toward those type of uses. Mr. Jacobs talked about how City Council did not agree with the Special Use Permit for his development because of the time frame and having to renew, so it killed his deal the first go round. Mr. Jacobs said west of town there are multiple owners that did not change their zone; they kept it as industrial, and now they have the table of uses that states that is all they can do on that property instead of the cumulative zoning. Mr. Jacobs said he and the other property owners out there missed the boat when the zoning was changed, and said the City is looking at some good things to be able to integrate some different uses. Mr. Jacobs said something is going to be against something at all times and you can't not have that. Mr. Jacobs said he felt they were looking at the right type of issues to go forward.

Mr. Yates said some cities require Special Use Permits on almost all large commercial and industrial properties, and he has never pushed for that because with the zoning ordinance the industrial has such a wide range of use that the Special Use Permit, if they can work out the terms, they could come back to the Commission in about a month with an ordinance if they are open to the idea, or they might want to wait until they discuss the next item on the agenda.

8. Report regarding Cumulative Zoning in the City of Montgomery.

Mr. McCorquodale presented information to the Commission and said cumulative zoning is a zoning method in which any use permitted in a higher-use, less intensive zone is permissible in a lower-use, more intensive zone. Mr. McCorquodale said that any less intense use is okay in a more intense zone, and a good example would be you could have single family residential in an industrial zone, but you could not have an industrial use in a residential zone. Mr. McCorquodale said right now they do have one carve out that is closely mirroring what a cumulative zoning method would be. Mr. McCorquodale said the City does allow in the commercial areas any use that is allowed under single family or R1 residential. Mr. McCorquodale said they do not have to have a blanket idea of it and can take it in parts and pieces, such as multi-family residential, which is a more intense use than single family, would be fine in an industrial zone, but single family use is not.

Mr. McCorquodale said there are pros and cons for having cumulative zoning, and pros and cons for non-cumulative zoning or Euclidean zoning, where each use just happens in its own little district. Mr. McCorquodale said if there is a draw back in cumulative zoning; for example in the industrial zone, they could say they could build anything they want in that zone if they had cumulative zoning, and they build \$2 million dollar estate homes in the industrial zone because it is a very scenic area, and they are just a little bit a head of an industrial developer looking for an area and locates next to them. Mr. McCorquodale said if they start stacking up a bunch of non-district uses, eventually you get into that “not in my back yard” mentality where you get someone that knew they were building in an industrial zone, but suddenly they do not like the uses that are adjacent to them, which has been one of the arguments against cumulative zoning. Mr. McCorquodale said he did not know if that argument holds water, but he wanted to bring it to the attention of the Commission. Mr. McCorquodale said what they are asking

the Commission is for their thoughts on the idea of being able to stack a less intense use in a more intense district, but not the other way around.

Chairman Cox said in an ordinance you would want to be very clear on that information and not leave any doubt, so they won't mix the wrong way. Mr. McCorquodale said that was right, and they would specifically mention the intensity of the use. Carol Langley said the ordinance now reads that if she is located in a commercial area she can only do commercial. Mr. McCorquodale said in the commercial area you can also do what is permitted in the single family district, and said the ordinance specifically calls that out and states that anything that is allowed in R1-residential is also allowed in B-commercial. Mr. McCorquodale said when you get to the industrial zone it states that the only thing that can go in there is what is shown on the list of uses. Mr. Yates said another option to accomplish what they are talking about in the industrial area and the cumulative is if they wanted to get a lot more specific on the Table of Permitted Uses, they could come up with 30-40 more different types of industrial uses that would be more descriptive, with some that they might want to put in the Special Use Permit category.

Mr. Yates said if they have cumulative zoning what would keep them from building a residential development of 200 homes in the lot that is north of the Lone Star Parkway, then what you would get almost immediately is people would purchase their \$250,000 or \$500,000 home and then someone comes in with a canning business right next to them. Mr. Yates said the person that purchased the industrial property would say the people that purchased the homes knew that was a possibility of the industrial development moving in. Mr. Yates said both sides are right, but yet you get into the patchwork quilt land use, and then what is the point of zoning. Mr. McCorquodale said to Mr. Yate's point, in his mind that is the big question that they need to try and figure out, and said the City is typically going to side with the residents not with the businesses, so does cumulative zoning create more market uncertainty.

William Simpson said he felt this was worth looking into more, and said his thought is Montgomery is not that big of a City; they do not have much left. William Simpson said with the price of land in the City, he did not think there was going to be many industrial people coming to look in this area, but this is something to look into for industrial purposes and they have to be prepared.

Mr. Yates said this is to be discussed later on the agenda, but the rezoning of property by the City, and said if they really felt that strong about the northwest, north of Lone Star, what they could do is rezone the property that can be initiated by the City anytime that they want to. Mr. Yates said if they do that they should have a general plan for the area. Mr. Jacobs spoke about rezoning that whole area north of Lone Star, one of the problems they have on that side of FM 149 is they have multiple property owners and they all have the same thought, which is okay. Mr. Jacobs said on the other side of FM 149 they have larger developers and they put in for planned development districts and they can do a lot of different uses. Mr. Jacobs said on Lone Star Parkway he has had two churches come and look at the property; they were very interested but they chose other sites. Mr. Jacobs said Mayor Countryman suggested to him the other day about a boutique hotel, and said she thought that would be a great place for a hotel. Mr. Jacobs said the “intensity” of the use is a great word to keep in mind. William Simpson said he felt that was the kind of direction that they are going in; they would like to see the proper growth along that corridor if there is any way possible. Mr. McCorquodale said he would continue to keep exploring the ideas.

Chairman Cox asked to move onto the next item.

9. Report regarding Tree and Landscaping Ordinances.

Mr. Yates said the reason that they are talking about these items is due to the Fisher issue bringing up the cumulative zoning, the report on the trees and to some degree the report having to do with initiated zoning is all coming from a developer meeting that was held in September with about 10 developers, Mr. Roznovsky, the Mayor and himself attending. Mr. Yates said these items are coming from comments made by the developers that are having issues with them. Mr. Yates said Mr. Roznovsky presented a report to City Council following the developer meeting and City Council assigned the Planning and Zoning Commission the task of considering cumulative zoning, the question of the types of uses in the industrial zone, and the tree and landscaping ordinance.

Mr. McCorquodale said the primary concern regarding the tree and landscaping ordinance was the cost of the tree surveys. Mr. McCorquodale said he did not know if the developers had a good understanding of what is required of the tree ordinance by the developer or their surveyor.

Mr. McCorquodale said as he reads the ordinance there are very specific requirements for what trees need to be surveyed and what trees do not. Mr. McCorquodale said he did not know if the developers and surveyor were following the ordinance because he was not at the meeting. Mr. Roznovsky said using the Mabry tract as an example, they have a lot of trees and they have to use a line of sight and whether they do it electronically or by line of sight they still have to go to the location and make it clear enough so that they can pick up the information to do the survey. Mr. Roznovsky said there are a couple of times that the survey is required; it is required at the front end of the project and then as they build out there are updates that have to be done every two years. Mr. Roznovsky said it is an intensive process to come up with the survey.

Mr. McCorquodale said another point that was made was the survey has to be less than two years old, so if a developer's time frame is five years for development that means that he will have a tree survey on the front end of the development and at best he will have one more. William Simpson asked exactly what a tree survey is. Mr. McCorquodale said it is just like a form survey that you would do for your house except you are locating a tree trunk. Mr. Roznovsky said they produce a map, which is in the plan sets that are now coming in as they map the entire property, they pin point every single tree with a number and then there is a table that says the type, size and caliper, and from that table they have to say, per the ordinance, whether the tree is a protected nor non-protected tree, and they do their plans and pick out what trees they have to remove. Mr. Roznovsky said there is a calculation that says they are allowed to remove 20% of the trees without penalty, and anything over 20% they have to replace inch for inch, and then there are different requirements if it is a tree over 16 inches, because all large trees count as protected trees no matter way type it is. Mr. Roznovsky said the smaller trees of lesser species do not count, but anything over 16 inches has to be replaced with two six inch trees at a minimum. Mr. Roznovsky said then it is a balancing game of number of trees removed, number of trees replaced to make sure they meet the requirements. Mr. Roznovsky said if you have a piece of property that is a pasture, with three or four trees it is easy to calculate, but The Shoppes of Montgomery was not pasture and was heavily wooded, so they had paid \$30,000 to have the survey done. Mr. Roznovsky said their replacement number was 600 trees that they would have to plant, which was not feasible to cover the inches of trees that they had to get to. Mr. McCorquodale said he thought the intent of the ordinance is a good one and is to make sure that the City has trees remaining, but it would be nice for all sites to be treated as evenly as possible. Mr. McCorquodale said there are some large trees that have

significance around town, such as 30 inch live oaks that are a couple of hundred years old, so they would like to have a mechanism that incentivizes the developer to want to keep the trees, and the rules make it easier to keep the tree rather than removing it. Mr. McCorquodale said they would like to look at the ordinance and find some changes that will benefit the City and the developer, to ensure that they don't end up with one big parking lot in town, without making so many restriction on the developers.

Mr. Yates said something else that was discussed by the developers is what the City is after; are they after the greening of the entire City or are they wanting to protect the limited areas that do have trees. Mr. Yates said another way of looking at it is to reduce stiffness of the tree ordinance over replacing trees that require every tract to have x-number of trees, such as 5-10% coverage of every tract regardless of how many trees they had on the property. Mr. Yates said if they asked a lot of the citizens they would say that they are for the greening of the entirety of the City regardless of what was there before, because right now if you have no trees on your property you do not have to put any trees on the property other than the 12% the landscape ordinance requires. Mr. Yates said the 12% includes ornamental gravel, grass and shrubbery.

Mr. McCorquodale said one of the ideas he would like to look into is in the City of Conroe; they have a tree zone that is out near the road, which is the idea to have a canopy of trees that is either along the roadway so there might be something that they can pull from their ordinance that will not make it so hard on the developers. Mr. McCorquodale said one of the developer ideas was the idea of being able to swap some more landscaping for some of the trees. Carol Langley asked if Mr. McCorquodale was going to look at some other ordinances in the area regarding trees. Mr. McCorquodale said that was correct because looking at our ordinance there are some things that could be improved.

William Simpson said they will probably need to reread the ordinances before they can make suggestions. Mr. Yates asked for some recommendations on what the Commission was interested in seeing. William Simpson said he liked what Mr. McCorquodale was mentioning where if someone had a semi-wooded piece of property, but has two or three large old oak trees, give them an incentive that they can take out a certain amount without having to replace those because you are keeping the three large trees. Arnette Easley asked how they would

address a dangerous tree on a residential lot. Mr. McCorquodale stated that residential property that is under 5 acres is not subject to the tree ordinance, but if they had a 100 year old tree that had to come down, they would still need approval to take it down, but there would be a justification to take it down. Arnette Easley asked if the owner wanted to take down the tree and the Commission found that the tree was fine, would they have some type of leverage to contest the tree being taken down. Mr. McCorquodale said yes, he believed the ordinance allows for an arborist to inspect trees and you would have a professional unbiased opinion. Arnette Easley said they had a similar incident occur where a residence had a tree that was taking out the fence, and asked what they ended up doing about the tree. Carol Langley said they let the homeowner take down the tree. Mr. Yates said they required a 4 inch caliper tree be replaced on the property. Arnette Easley asked if they had replaced the tree. Carol Langley said she has not replaced the tree and the owner advised that she had said she was not going to replace the tree. Mr. Yates said the homeowner could be in penalty for not following the ordinance. Carol Langley asked if they would have to replace it in the same spot as the previous tree, or could she have placed it in her backyard where we can't see it. Mr. Yates said he did not think it said on the front of the property, he thought it just said on the property. Mr. Roznovsky said the location of the tree is not a requirement, it just needs to be on the site, or if they are not able to put it on the site they can pay into a tree fund or work out an arrangement with the City and plant the tree at another location, such as City Hall. Carol Langley said she thought the owner probably planted something in the back yard. Carol Langley asked if Mr. McCorquodale would come back with some suggestions and areas that could be changed to fit Montgomery better. Mr. McCorquodale said that was correct, and said this is a continuation with what they have, which he thought was a great start, and they realize that there are some improvements to be made. Mr. McCorquodale said one of the points that Mr. Yates had discussed with him a year ago was the little nodes or pods of landscaping. Mr. McCorquodale said he is looking at a few different landscape ideas and/or palettes that would be representative of the area. Mr. McCorquodale said anytime you do things around the roadway there are a lot of things that you want to take into consideration, like site lines where you do not want to make a situation where you can't see around a curve or a corner of an intersection. Mr. McCorquodale said they also need to look at maintenance with the idea that it would be very low maintenance work, such as landscaping that would not require a lot of ongoing maintenance, they would want something that would adapt well to the area and not require a

lot of water, and said there are a lot of considerations for these areas that will enhance the area and not increase the cost to the City.

Chairman Cox asked to move to the next report.

10. Report regarding City-initiated zoning of parcels in the City of Montgomery.

Mr. McCorquodale reviewed the proposed map with the Commission, showing the current zoning and a few parcels that they feel like they could look at the zoning either based on what is currently there or what they feel is very likely to happen, and they can look at some zoning changes based on an owner asking for the change, but maybe in an effort to help the development process. Mr. McCorquodale said even though the ordinance states that residential use can go in a commercial zone, he did not know if the intent was to build a subdivision on commercial property. Mr. McCorquodale said if they know that something is never going to be commercial, it should not be zoned that way. Mr. McCorquodale said he is picking up on a project that the Commission has already spoken about in the past.

Carol Langley asked about item 5 on the map. Mr. McCorquodale said that was on the north side of town on the west side of FM 149, just across the street from China Chapel, where that area could go to a commercial zone as the City grows north. Mr. McCorquodale said the idea of single family residential along one of the three main corridors in town seems like the highest and best use there may be commercial, and candidly, that was a parcel that he did not necessarily come up with but is one that they have talked about for a number of years going to commercial. Mr. Yates said he gave Mr. McCorquodale the old list that the Commission has discussed in the past, and he thought that was one lot that they decided they did not want to change and it being brought up reminded him of that. Mr. McCorquodale said that would be an easy change. Carol Langley said she did not know if someone had brought it up again or it was an area of concern. Mr. Yates said no, he gave Mr. McCorquodale the old list and as soon as they brought it up he remembered it had been decided not to force the zoning and if they wanted to change the zoning it would happen progressively, and progressive was all right. Mr. Yates said basically what is happening is now that Mr. McCorquodale is working on this he can stay on schedule and move this along. Mr. Yates said they have the steps for the City initiated zoning process, which is very solid regarding the steps and it just needs someone to do the steps and follow through. Mr. Yates said another reason is now that they have a new

zoning ordinance, if there are any areas that the Commission wants to look at during the next month, so next month they can have a discussion and have a map of each one and then have a serious discussion regarding City initiated zoning. Mr. Yates said there is an unknown piece of property, and he asked Mr. Roznovsky how it became industrial. Mr. Roznovsky said what is on the original 2004 zoning map, is industrial and there is no record since 2008 to present of any change. Mr. Yates said he had a phone call this past week from a realtor who was good friends with the property owner, and he wanted to know how to change it from industrial to R1 residential. William Simpson asked if that was item 3 on the map. Mr. Yates said that was correct. Mr. McCorquodale said he will be looking at each one of the numbered tracts. Carol Langley asked if Mr. McCorquodale would come to the next meeting with a larger map and give them reasons why they should be changed or not. Mr. McCorquodale said he would not try to sway them but present them with the pros and cons of a particular zoning change, and will look for guidance on what the Commission likes. Carol Langley asked about item 6 and if they changed it to commercial they could never put multi-family on that site. Carol Langley asked to confirm that you could not put an apartment complex if it was changed to commercial. Mr. McCorquodale said that was correct.

Mr. McCorquodale said that he wanted to stay with the idea of the intensity of use because that, to him, is as important as the type of land use.

Chairman Cox asked to move on to the next report.

11. Report regarding City Comprehensive Plan and Downtown Streetscape Plan.

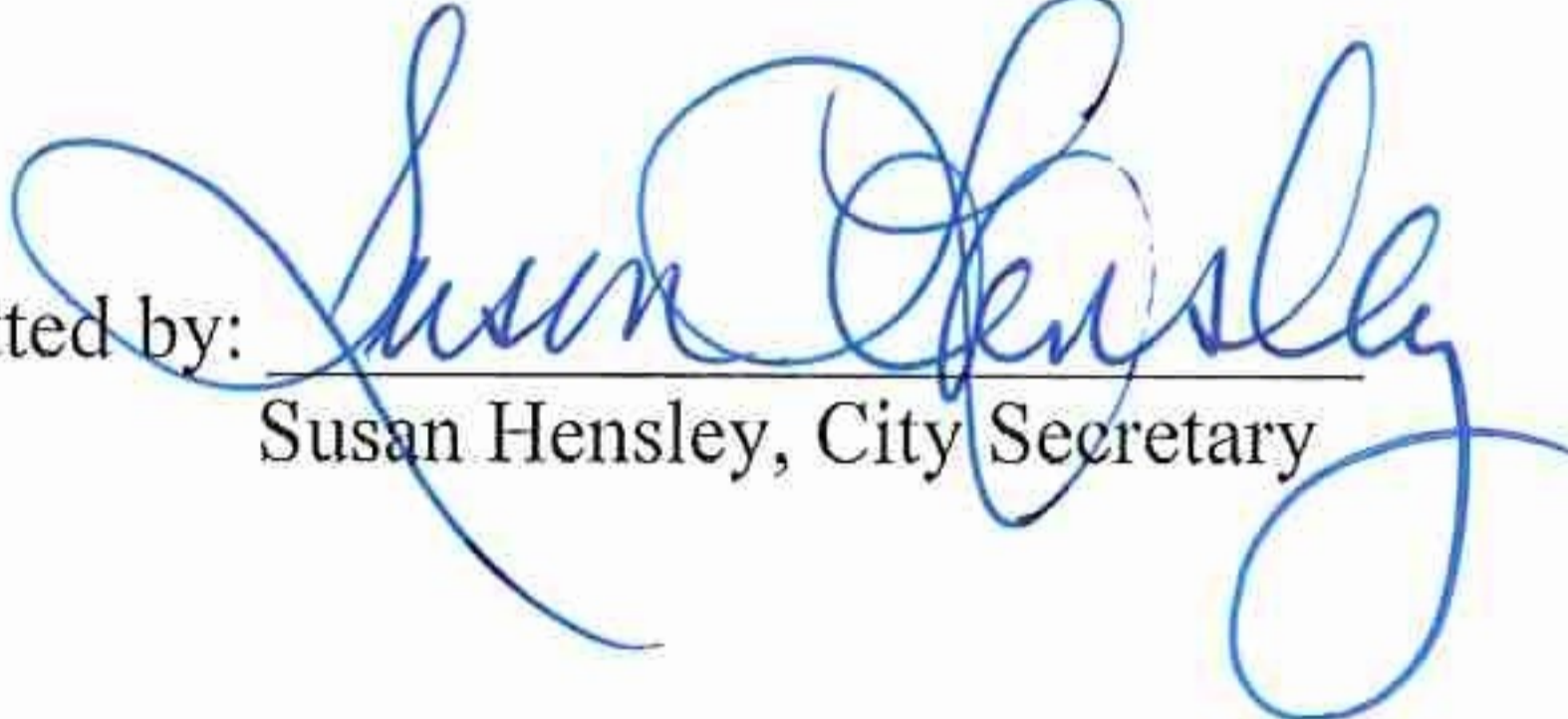
Mr. McCorquodale said he did not have much more to add to this item, but said that he is about to get plugged in to the information and he has been working with some software that will allow them to visualize this information. Mr. McCorquodale said he will be meeting with Mr. Walter Peacock from Texas A&M tomorrow afternoon on what he has done and what he needs from the City in order to keep the process moving on his end with regard to the Comprehensive Plan.

William Simpson asked how many spots they will be looking at regarding the streetscape. Mr. Yates said he thought there would be something on every corner. Mr. McCorquodale said they

would start with the downtown area and understand what they have there, and then in an appropriate way move out into the rest of the City. Arnette Easley said that Bryan College Station has trains at every corner of the City.

ADJOURNMENT

Carol Langley moved to adjourn the meeting at 8:00 p.m. William Simpson seconded the motion, the motion carried unanimously. (4-0)

Submitted by: 
Susan Hensley, City Secretary

Date Approved: 11/26/18


Chairman Nelson Cox

