

# MINUTES OF PUBLIC HEARING and REGULAR MEETING

September 24, 2018

## MONTGOMERY PLANNING AND ZONING COMMISSION

### CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the meeting to order at 6:01 p.m.

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

Absent: Carol Langley

Also Present: Jack Yates, City Administrator  
Susan Hensley, City Secretary  
Chris Roznovsky, City Engineer

### 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.

Mr. Larry Jacobs asked to speak during his item on the Agenda.

Mr. Steve Weisinger, Attorney for Mrs. Fisher, advised that he has been before the City three or four times. Mr. Weisinger said the maps of the City were drawn in such a way that nobody that is here now drew them. Mr. Weisinger said that sometimes the maps just do not make sense and in this case there is one piece of property that, for whatever reason, the line was drawn and cuts it in half. Mr. Weisinger said the map creates a lot of checker boarding, which does not make sense. Mr. Weisinger said they are asking that the part that is zoned Residential be changed to match the other half of the property. Mr. Weisinger said the property does not suit Residential use on the railroad, and they are just asking

to do what makes sense and what they think is right. Mr. Weisinger asked that they rezone the eastern part to match the other part.

Mrs. Fisher said that she wanted the same thing because she and her husband bought the property and they did everything they had to do to ensure what they call in real estate “commercial” property and it was, which is what they were told. Mrs. Fisher said she did not know how it got changed.

Chairman Cox noted for the record that William Simpson stepped out at 6:05 p.m., but they still have a quorum present. William Simpson returned at 6:06 p.m.

Mr. David Potter stated that he was here about the property located at 1005 Old Plantersville Road, which is northeast of his property, stating that from what he understood they want to rezone the property to Light Industrial. Mr. Potter said that right now Mr. Yates testified to this that they have been having problems with Mr. Mabry and his trash. Mr. Potter said they live in a Residential area and it is not Industrial. Mr. Potter said you can drive by Travis Mabry’s place right now and there is trash all in the ditch. Mr. Potter said he called the City today and reported all this trash that somebody dumped in the ditch. Mr. Potter said he gets trash in his pasture and so does his neighbor; he has complained about the trash numerous times and now we have another place that is up for sale that wants to change their zoning to Light Industrial. Mr. Potter said he really does not know the meaning of Light Industrial, but the way that he feels about it is you give them an inch and they will take a mile. Mr. Potter said when Travis Mabry first took over that property he was dumping that trash on the ground and he fought him tooth and nail, and came to the City regarding the matter. Mr. Potter said he went to everyone he knew and finally got something done about that. Mr. Potter said people still dump their garbage at that location. Mr. Potter said he was completely against the property being rezoned Light Industrial. Mr. Potter said the representative for Mrs. Fisher said the property is right next to the railroad tracks, and said that had nothing to do with it because his place is right next to the tracks. Mr. Potter said he would like his comments considered and asked to keep the area Residential and said that he wants to keep his property clean. Mr. Potter said they are saying that they are going to have portable buildings, but they are not going to keep everything inside the buildings.

#### **PUBLIC HEARING:**

**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 - regarding preparation of a Final Report to be submitted to City Council on September 25, 2018 regarding the request to rezone the eastern portion of a 2.148-acre tract of land located at 1005 Old Plantersville Road, Montgomery, from R1-Single Family to ID-Industrial Use, as requested by Theresa Fisher.

Chairman Cox convened the Public Hearing at 6:10 p.m.

Mrs. Fisher stated that no one has ever complained about her property. Mrs. Fisher stated that her property has a metal building on the Industrial side of the property. Mrs. Fisher said people have complained about the man that has the dump that has nothing to do with her property.

Chairman Cox adjourned the Public Hearing at 6:12 p.m.

2. First Public Hearing for the purpose of giving all interested persons the right to appear and be heard regarding the Preliminary 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. (2nd Public Hearing will be held on October 22nd)

Chairman Cox convened the Public Hearing at 6:13 p.m.

Mr. Jacobs said he appreciated Planning and Zoning Commission's actions in the past and being able to communicate. Mr. Jacobs said he is going back with his original tract that the Commission previously approved and he is adding to it a commercial business tract, which is the two acres between the apartments.

William Simpson said the original portion was for people over 55 and asked if it will be the same concept. Mr. Jacobs said he was still working on that. William Simpson asked if this would be in conjunction with what is going on and there is no competition with anyone else. Mr. Jacobs said no, this would be a straight up deal. William Simpson asked if the project would still be a one story facility. Mr. Jacobs said that was correct, as long as Emanuel still goes forward, which is what he is hoping. Mr. Jacobs said if it fell apart with him he would

try to find someone else to move forward. Mr. Jacobs said Emanuel is not exempt so he will pay 100 percent of his taxes. William Simpson asked if in the front portion he is wanting to do a commercial building. Mr. Jacobs said that was correct. William Simpson asked if that would be office space. Mr. Jacobs said he did not know yet, and said the space lends itself to be an office warehouse location, but it could be retail because the area is unproven so far but he has enough faith that they can move forward. William Simpson said they have gone back and forth and changed so many things and asked if there is an enhancement corridor along Lone Star Parkway. Mr. Yates said yes, there is an enhancement corridor on Lone Star Parkway and follows the Land Use Plan.

Jeffrey Waddell asked if this will be next to the existing disabled multi-family site. Mr. Jacobs said yes, it will be next to Independence Place. Mr. Jacobs said the commercial area on the front of the property would be a buffer between Independence Place and the road. Jeffrey Waddell said he noticed on the map that the property, outside of the City, was Residential. Mr. Jacobs said the landowner, Bob Smith, has a large place and the back corner of his place is in the City limits, but the rest is not. Mr. Jacobs said that he had lunch with Mr. Smith the other day and made him aware of what he had planned. Jeffrey Waddell said it does look like a good balance with the commercial being close to the Community Center.

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

3. Consideration and possible action regarding Meeting Minutes of August 27, 2018 Regular Meeting.

William Simpson said that he had one correction to make on Item 9, when they were discussing the Zoning Map (page 7, Item 9), and he thinks the wording got twisted around and should state William Simpson stated that this matter has been discussed and gone back and forth with this information, and said his question is the area on Lone Star Parkway by Mr. Jacobs' property, as small as this area is and everyone will be on top of everybody and asked if they felt that area needs to be high density Residential/Commercial. The City Secretary advised that she would make the correction.

Jeffrey Waddell said that the Planning and Zoning Commission, as a group, had the discussion that they were all leading towards Residential. Mr. Yates stated that his statement in the minutes should be “Mr. Yates said that he felt that it should be Residential. The City Secretary stated she would make the change.

Jeffrey Waddell moved to approve the minutes as corrected. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

4. Consideration and possible action regarding the request to rezone the eastern portion of a 2.148-acre tract of land located at 1005 Old Plantersville Rd., Montgomery from R-1 single-family to ID- Industrial as requested by Theresa Fisher

Jeffrey Waddell said that he wanted to thank Mr. Yates for looking up the history because this has been a difficult subject. Jeffrey Waddell said he wanted to touch on a couple of things, the scribes error that was indicated; all indications are this was originally intended to be Industrial, and it is very odd to have a split in property. Jeffrey Waddell said the part of the property that is zoned Industrial will stay Industrial and from the history, and the scribes error caused the confusion. Jeffrey Waddell said the 60 percent of the property that is Industrial has the metal building on it and is not going to change. Jeffrey Waddell said he hates that they have this difficult situation and someone is going to be disappointed with the outcome, but they have to look at the facts and what has happened in the past.

Chairman Cox said regardless of what the Commission does, this will go to City Council and they will be the ones making the decision.

William Simpson asked about the number of residential lots that are across the road from these two parcels and how long they have been there. Mr. Potter said that he has been on his property since 1992, and another in 1994-95 and another one for five years. William Simpson said he would assume that when they purchased the property it was on the assumption that across the road was Residential and a little bit Industrial. Mr. Weisinger said that leads to confusion because some of those which you look at as Residential, are in fact zoned Industrial. Mr. Yates said there was one tract that was directly south of this property that is zoned Industrial.

Jeffrey Waddell said that the homes on those lots are set back around 400 feet and asked if there was ever a setback. Mr. Yates said that was the way the property was developed over time; they were not required to set their homes that far back. Mr. Roznovsky said the closest set back line is about 240 feet and the farthest set back is 380 feet. Mr. Yates said the property south of Old Plantersville Road is zoned Industrial, but it is used as a house and he does not know if the owner even knows the property is zoned Industrial.

William Simpson said his problem is the residents across the street from this property and whatever the best intentions of whoever is buying that piece of property now to keep it nice and clean, it does not say that in a year or so he decides to sell and they run into another mess.

Mr. Potter asked Mr. Yates if he was in the process of trying to eliminate Travis Mabry's place. Mr. Yates said the City is not initiating and rezoning for that property; they are trying to keep the property clean. Mr. Potter asked how that property is zoned now. Mr. Yates advised it was zoned Industrial. Jeffrey Waddell said that was his point, the nature of the area, if you go back in history this whole area was Industrial and no matter what they do, this property will still be Industrial. Arnette Easley said you would have the same problem with a residential piece of property if they built a home and then they trashed out the house, so it is cleanliness versus it being rezoned Industrial; you have to keep the area clean.

Jeffrey Waddell said the City has a way they can enforce open trash if it gets to be a problem. Mr. Yates said it had been a problem where they had gotten to the point of issuing a citation, and just before the citation was written the owner cleaned up the trash on the ground and emptied the containers. Mr. Yates said the owner can have trash in the containers as long as it comes and goes very quickly, but just as Mr. Potter said, it is also not anything that Mr. Mabry is doing, but it is a place where they have had lots of problems with people dumping. Mr. Yates said maybe it is when people go down there and they are not able to get inside so they are dumping their trash because the gate is closed. Mr. Potter said there is no gate there, and said you can go to that property right now and see trash piled up in the ditch in front of his home. Jeffrey Waddell said the dumpsters don't look like they are overflowing anymore; this is something that if the City continues to enforce will make a big difference. Mr. Yates said the owner was on notice not to dump anything or leave it for any period of time. Mr. Yates said the trash along the road is a City problem. Jeffrey Waddell stated the metal building that is on

the Fisher property has always been well maintained, and if whatever happens there becomes a problem, the City can do something to enforce the matter. Mr. Yates said what Arnette Easley said is correct, and what he would also say is that the basic industrial use lends itself to more clutter being on the property, such as a dumpster. Mr. Yates said Mr. Mabry is not doing anything wrong with having 20 dumpsters on his property. William Simpson said there could be the same thing on this property. Mr. Yates said there could be. William Simpson said he is just thinking about himself personally, the questions that he would have with not only the trash but the noise, odors and whatever else they are going to be producing there. Jeffrey Waddell said with this lot they are limited on how far they can go because it is very narrow and no matter what they do today or what City Council decides, the one portion that has the building on it is going to be Industrial no matter what, so again he goes back to there should never be a split in the property, there is one address and 60 percent is going to be Industrial. Jeffrey Waddell said he understands the concern for what goes in on that property. William Simpson said there is no control once this is done, it is done. Jeffrey Waddell said anything can go in there industrial because it is still going to be Industrial, it is just not quite as big. Jeffrey Waddell said he did not think that it was good to have a split in the property. William Simpson said he did not think it was good to have a split, but you have got to be concerned with everything else around it. Jeffrey Waddell said they can't complain about something that was done years ago. William Simpson said he understood.

William Simpson asked if there was anyone in the metal building on the Fisher property. Mrs. Fisher said it was her building. Mrs. Fisher said she knows the man who wants to purchase the property and she could advise what he is going to put on the property if the Commission wants to know. William Simpson said in two years something could change. Mrs. Fisher said the man wants to build some storage buildings for RV's, boats and cars, so people can store them. Jeffrey Waddell asked if it was going to be covered storage. Mrs. Fisher said they are going to be built and they can't have anything on the outside. Arnette Easley asked if this would be open or closed storage. Mrs. Fisher said it would be closed storage. Mrs. Fisher said she did advise the man that everything would have to be inside the building, and he said that would not be a problem. Mr. Yates said not in an industrial area. Jeffrey Waddell said this is storage.

Mr. Yates said he had discussed with Mr. Weisinger and Mrs. Fisher about using the Residential area for parking for the Industrial, but if all they do is park on the Residential

portion and walk over to the Industrial portion it is still being used as Industrial, but that does not mean that there could be other uses that still may help the Industrial portion, but he can't think of anything right now. Mr. Yates said anything that it tied to the Industrial use would not be allowed. Mr. Yates said if the City does not rezone the property, Mrs. Fisher's option would be that she could sell it to anyone for a house. Mrs. Fishers said that she did not think that she could put a house on that piece of property with the railroad tracks right behind it.

Jeffrey Waddell said he knows that is a difficult situation for everyone, but he just keeps going back to this is one address, one piece of property and no matter what the part with the building is going to stay Industrial, and he felt that they need to look at the nature and spirit of what it was originally. Jeffrey Waddell said that people who came later and purchased the property knew that was there and typically in our society and culture we do things like that along the railroad tracks.

Mr. Potter asked when the metal building was built. Mrs. Fisher said the building was built in the beginning of 2004. Mr. Potter said he has been here since 1992 on his property, and that property was owned originally by Billy Giles, who used to have the pulp wood yard across the road from Old Plantersville Road, where the dump is now. Mr. Potter said later on Billy Giles built that building for a wood chip mill. Mr. Potter said the people were complaining about the noise being so bad that you could not hear anything, so the City shut him down. Mr. Potter said that Mike Hammer bought the place for an investment; he fenced it and then Mr. and Mrs. Fisher bought the place. Mr. Potter said the Fishers' kept the place up very nice and clean, but that does not mean the next person that comes along will keep the place as nice as the Fishers'. Mr. Potter said he was particular about his place and keeping it nice and clean and neat because he lives there and he did not want to see anybody come in there with Light Industrial and Industrial Commercial and put a business in there where there will be stuff outside and visible, traffic back and forth and trash on the road, because he lives there. Mr. Potter said all the people there keep their places nice and neat, including Mrs. Fisher and he has no complaints about the way she keeps her place. Mr. Potter said that he was completely against Light Industrial use and felt that it was completely wrong. Jeffrey Waddell said he keeps going back to the location and wonders if it would ever support any kind of high traffic, because in his mind why would someone put something there that would require a lot of traffic because it is pretty far back. Mr. Potter said he lit this City Hall up during a City Council meeting about



the traffic before the new high school was built, about the kids speeding up and down the road going 75-100 miles per hour and now we are dealing more with traffic because of this. Mr. Potter said he is the reason why they put speed bumps out there. Mr. Potter said they had a young man just about killed out there. Arnette Easley said they have to find a happy medium here because every property owner wants to feel like they have a right to do what they want with their property. Arnette Easley said they can't foresee what will come in, and the other person may or may not have as much integrity as Mrs. Fisher. Mr. Potter said that is why his place is up for sale. Jeffrey Waddell said that he would hope they can enforce anything that the City can enforce to keep that area from being an eye sore, and it might take more diligent enforcement to do it. Mr. Potter said ever since Travis Mabry put that place in he has been griping about it, complaining all the time. Mr. Potter advised that he tried talking to Travis Mabry and they came close to fighting many times. Mr. Potter said he has come to the City, dealt with the Health Department, Montgomery County and it has not improved. Mr. Potter said the only thing that Travis Mabry has done is pick up a little trash out there. Arnette Easley said that he thinks that it could be an asset versus a burden, and said if Mr. Potter wants to do something to his property he feels like he has a right to do that. Mr. Potter said he would do the right thing, it is not going to be the wrong thing. Arnette Easley asked what if Mr. Potter wanted to rezone the property. Mr. Potter said he would not rezone the property, he lives there. Arnette Easley asked what if Mr. Potter wanted to sell the property. Mr. Potter said he is trying to sell his property and he is going to sell the property Residential.

William Simpson said, going back to the best intentions, if the use is a storage unit you do not have one person there controlling it; if there are 14 units, you have 14 individuals there doing something different. William Simpson said that owner can't really control them, he can get letters from the City, but at the end of the day he is going to have to police 14 units. Jeffrey Waddell said they were talking about a storage that has one entrance and one manager. William Simpson said he was not talking about that because there is not going to be a manager there. Jeffrey Waddell said he was talking about work being done, because this is just storage it is not repairs. William Simpson said he has been around storage units with closed doors where guys work on hot rods at all hours of the night, so who is going to control the noise ordinance in the middle of the night when they are working on their cars. Jeffrey Waddell said this is a very narrow lot and not really enough room for that to go on. Arnett Easley asked how you would control someone with a skill saw working in his garage at night because it is basically

the same thing. Jeffrey Waddell said it is one lot and it is going to be Industrial no matter what they do; there is 60 percent of the lot that is Industrial and that is not changing. Mr. Potter asked which side was Industrial. Jeffrey Waddell advised that it was the west side with the building located on it. Mr. Potter asked what is going to happen to the truck traffic that is coming in to bring this material in and are they going to be building the storage buildings there and where are they going to put them. Mr. Potter again stated that he was completely against zoning this Industrial and feels that it is wrong.

Jeffrey Waddell said the property has been there for years with that portion of the property being Industrial and that is not going to change. Jeffrey Waddell said there is always a chance that something can happen, but that is just the way it is. Mr. Potter asked when the property went Industrial. Mr. Yates said it was about 2001. Mr. Potter said he would like to see that.

Chairman Cox asked for a recommendation so this can be taken to City Council, because all they are doing is making a recommendation; City Council will make the decision. Chairman Cox said it is time that this mistake of years ago was straightened out. Chairman Cox said if someone has something to say, he felt that City Council would be the ones that they need to be very outspoken to. Chairman Cox asked if he could get a recommendation that this property be rezoned as requested and let it go to City Council for a decision with maybe a note that Code Enforcement will need to be looked at real close because that is the problem and it has nothing to do with Mrs. Fisher. Chairman Cox said apparently Mr. Potter has seen a lot and he thinks the problem everybody in the room knows, it just needs to be a note made of that.

Jeffrey Waddell moved to recommend the request to rezone the eastern portion of a 2.148-acre tract of land located at 1005 Old Plantersville Rd., Montgomery from R-1 single-family to ID-Industrial as requested by Theresa Fisher, with the stipulation that strong code enforcement needs to be addressed. Arnette Easley seconded the motion, the motion carried with 3-Aye votes and 1-Nay vote by William Simpson. (3-1)

5. Consideration and possible action regarding the Hills of Town Creek Section 3 Final Plat.

Mr. Roznovsky advised that he has reviewed the plat and performance bond and there were no issues with the plat and documentation and all the comments have been addressed.

William Simpson moved to recommend to City Council approval of the Final Plat for the Hills of Town Creek Section 3 and to accept the payment performance bond as submitted. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

6. Consideration and possible action regarding adoption of the proposed corrected Official Zoning Map of the City of Montgomery based on previously approved City Ordinances.

Mr. Roznovsky advised the Commission has talked about the zoning map at the last meeting and this item is to recommend to City Council that they adopt this map as the Official Zoning Map making all the previous corrections. Mr. Roznovsky said this is not changing anything that was not already approved by ordinance.

Arnette Easley moved to recommend adoption of the proposed corrected Official Zoning Map of the City of Montgomery based on previously approved City Ordinances. Jeffrey Waddell seconded the motion, the motion carried unanimously. (4-0) A copy of the proposed map is attached to the minutes.

7. Consideration and possible action on partially vacating the plat of Lonestar Parkway North Section One.

Mr. Roznovsky said this was a plat that was originally done outside the City limits along Lone Star Parkway that is part of the Carwile property. Mr. Roznovsky said they are requesting on this one to remove Reserve D and make the western most reserve of that tract and making it unplatted acreage for tax purposes. Mr. Roznovsky said their concern with this was that part of the plat had a dedicated easement along the frontage that will be needed for future utility extensions by the City, so they brought up that concern to them and they had that easement recorded by a separate instrument, that way even when this is released, the utility easement will remain for public use. Mr. Roznovsky said of the four lots that are shown, only the western most is the one that is being vacated. Mr. Roznovsky said the next Agenda item has four more lots that continue to go west, so it is the entirety of that plat and the reserve on this plat that is being requested to be vacated.

Jeffrey Waddell moved to approve vacating the plat of Lonestar Parkway North, Section One. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

8. Consideration and possible action on vacating the plat of Lonestar Parkway North Section Two

Mr. Roznovsky stated that there are only two reserves that are part of this plat. Mr. Roznovsky said since the property is in the ETJ, the plats will also have to go to Montgomery Country for their approval.

Arnette Easley moved to approve vacating the plat of Lonestar Parkway North Section Two. William Simpson seconded the motion, the motion carried unanimously. (4-0)

9. Adjournment

Jeffrey Waddell moved to adjourn at 7:04 p.m. William Simpson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date Approved: 10/22/18  
Susan Hensley, City Secretary



  
Chairman Nelson Cox