

## MINUTES OF REGULAR MEETING

July 24, 2017

### MONTGOMERY PLANNING AND ZONING COMMISSION

#### CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the special scheduled meeting to order at 6:0 p.m.

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

Absent:

Also Present: Jack Yates, City Administrator  
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.

No comments were made.

1. Consideration/take action regarding June 26, 2017 minutes.  
Jeffrey Waddell moved to approve the minutes as presented. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)
2. Consideration/take action regarding sign permit for Pecan Hill Florist and Groggy Dog Tees at 14259 Liberty Street – Kirk Jones.

Carol Langley asked whether the sign was the same size sign as Mr. Jones had previously. Mr. Jones said that there used to be two signs, and now it is one sign that is overall a little larger. Mr. Jones said that he was trying to match the size of the windows to balance the look.

Jeffrey Waddell moved to approve the sign permit for Pecan Hill Florists and Groggy Dog Tees. Carol Langley seconded the motion, the motion carried unanimously. (5-0)

3. Report regarding Amendment to Corridor Enhancement Area Ordinance to increase from 300 feet to 750 feet adjacent to present Corridor Enhancement Areas.

Mr. Yates presented the information stating that the current Corridor Enhancement Ordinance (Section 98-363(a) and (b) states 300 feet from the corridor is the area to be included. Mr. Yates stated that the question was whether or not the Commission wanted to expand beyond the 300 feet. Mr. Yates presented an aerial map that showed 750 feet versus the 300 feet. (A copy of the map is attached to the minutes.) Mr. Yates said that the map shows in red 750 feet on either side of the roadway. Mr. Yates said that businesses along the corridor enhancement area are required to build their building with according to the required corridor enhancement standards.

Mr. Yates advised that when this ordinance was written it was thought that 300 feet would be a good ways from the road, but the Kroger building is further away than 300 feet, and would not have had to live up to that standard. Mr. Yates said that was the issue. Mr. Yates said that he could have gone on the north side of the map, and said that he would go and catch all of Stewart Creek Road and the HEB property on the southeast corner of FM 2854 and SH 105. Carol Langley asked whether or not they would be required to conduct public hearings and all of that since it was dealing with zoning. Mr. Yates advised that was correct.

William Simpson said that he had a question and asked whether or not the requirements dealt with the sides of the buildings, such as Mc Coy's, and asked if there was any way that the City could say that they have to have some type of a side wall or screen to hide the air

conditions that you see driving on the road. Mr. Yates said that anything within the 300 feet they can. Mr. Yates asked how the City handles hiding dumpsters. Mr. Roznovsky said that he could check the ordinances and see if there is anything that requires screening. William Simpson asked if they could adapt that to roof mounted air conditioners. Mr. Roznovsky said that he would check on some different options regarding screening, such as they use for the dumpsters. Mr. Yates said they would check the City Code to see where it addresses screening.

Mr. Yates asked he had asked the City Attorney about the use of the word “all property within 300 of the right of way” in Section 98-363(a). Mr. Yates said that he and the City Attorney had interpreted was that meant buildings within the 300 feet. Carol Langley said that at one time they had some properties that people owned the front piece and somebody else owned the back piece, so it was only for the piece of property that was facing either SH 105, FM 149. Mr. Yates said that they probably needed to amend the ordinance to say that if it was touching or adjacent to one of the roadways in that area. Mr. Yates asked if they were sure they would want to do that, because you might have a case where someone owns the front 150 feet and they are not immediately adjacent or touching SH 105, and then they build a building behind that location and they would be able to build a metal building on that property. Carol Langley asked whether there had been any complaints regarding Mc Coy’s metal building. Mr. Yates said that he had not received any complaints.

SH 105, Lone Star Parkway, FM 149 would have the 750 feet. Mr. Yates said that FM 1097 is becoming a corridor commercial and it is not currently included in the corridor enhancement. Carol Langley said that it was not classified as a major thoroughfare at the time of the ordinance.

Mr. Yates said that he would like some type of direction from the Commission. Mr. Yates said that he would prepare a revised map showing all the corridors with the 750 feet around all those areas and send it out to the Planning and Zoning Commission. Mr. Yates said that he will have to talk to the City Attorney to make sure that this is in fact part of the zoning.

Carol Langley said that if they are going to include FM 1097 they would have to send out letters to notify them of the changes or have a public hearing. Mr. Yates said that he would continue working on the information, and will also look into doing this for the entire City and what it would do to the City. The Commission concurred that they were interested in adding FM 1097 to the corridor enhancement. William Simpson said that he would also like to see air conditioner screening added. William Simpson said that with the metal buildings, in six or seven years you are going to see a metal building with a bunch of polka dots because the screws are backing out and they are going through with white coating and patching the roof.

The Commission concurred that Mr. Yates would pursue the entire area. William Simpson asked if Mr. Yates could do 750 feet in some areas, and then in the smaller areas use 300 feet. William Simpson said that they could make FM1097 and FM 149 the 300 foot area and SH 105 should be 750 feet because of the difference in the depth of the property. Mr. Yates said that he would put the revised map together.

4. Report regarding Historic District Area.

Mr. Yates presented a map to the Commission. (A copy of the map is attached) Mr. Yates discussed possible expansion of the Historic District area. Mr. Yates stated that the possible additions would be south of Hodge Podge Lodge to SH 105

Mr. Yates discussed the property in front of the Hodge Podge Lodge stating that if the owner of the property were to sell they could turn that area into a strip center or have a fast food restaurant or convenience store. Mr. Yates said that the theory is that type of development would affect the Hodge Podge Lodge. Mr. Yates said that the Hodge Podge Lodge is not opposed to this change nor have they requested it.

William Simpson said that he thought it was a good idea to take in that property because who knows what might go in there and they need to control the esthetics. There was also discussion of the Monte West property. Carol Langley stated that property was already in

the Historic District according to her handbook. The Commission concurred that they would be in favor of pursuing this expansion. Mr. Yates said that there was a process that had to be followed with public hearings and notices. Mr. Yates said that they would probably have to wait until next month to call the public hearing.

5. Report on Zoning Amendments

Mr. Yates said that following the Joint Meeting with the Planning and Zoning Commission and the City Council, we wound up with Cliff Rampy's property, which is along SH 105, next to First Baptist Church, and Allen Wayne's property, down on Womack Cemetery Road and Old Plantersville Road. Mr. Yates said that Richer Randall has some of the multifamily next to the First Baptist Church and Woodforest Bank, and the thought is to zone the front 300 foot to commercial. Mr. Yates said that the City Council and the Commission did not want to do the rezoning on FM 149 north or south, or the FM 1097 area because of the concern of the property owners. Mr. Yates said that they did not want to rezone FM 149 south area, which is south of Lone Star Parkway down to about Berkley.

Mr. Yates said that unless the Commission tells him otherwise, what he will do is the draft letters to Cliff Rampy, Allen Wayne and Richer Randall, he will get the Chairman of the Commission to sign the letters that basically states to each of the owners what they are planning on doing and invite them to either call or come to the next meeting for an informal public hearing. Mr. Yates said that what he would do is put each of the property owners on the agenda for discussion, but not for a final decision. The final decision would require a couple public hearings and the adjacent property owners within 200 feet have to be notified. Once the Commission conducts their public hearing, they would file a final report with City Council, then City Council would conduct a public hearing.

Arnette Easley asked who gave the notice of not wanting to get those areas rezoned, and whether letter were sent out to the property owners. Mr. Yates said there were no letters sent out, it was just the feedback from the Joint Meeting. Mr. Yates said that they need to have more planning discussions with those property owners so that they will know what those

people really think about the matter before they begin the process. Mr. Yates said that they could bring the matter up at a community meeting or some other type of communication method prior to starting the process. Carol Langley said that she had been contacted by two or three of the property owners along FM 149 and they were hoping that their property was not going to be changed because they had the feeling that the City was trying to change it to commercial so that somebody could come along there and buy it out and move them out of town. Carol Langley said that the owners are not ready to move, so she understood their situation, and asked Arnette Easley if he had spoken to any of the property owners. Carol Langley asked Arnette Easley if he thought that the small pieces of property there on FM 149 that if she were to buy the Hughes' property by the church and she put in a convenience store, that the neighbors would not be upset because they are living there residential. Arnette Easley said that he felt that the problem was if you do not do anything, and people just get complacent. Arnette Easley said that he thought doing something might encourage people to start to do something, but if they do nothing, they will not accomplish their goal of making the City a better City. Arnette Easley said that when these people hear information it is second and third hand, and the Commission knows that they are not going to take anybody's property. William Simpson said that what Arnette Easley is saying is to go ahead and start the process and then let them come in and start the conversation. William Simpson said that he thought it would be better if it was all zoned commercial and the property owners could decide what they want to do.

Mr. Yates said that they could have an informal public hearing to discuss the information. William Simpson said that they should have someone here that night to explain to the people how this will not affect their property taxes, they will just be increasing the property value should they sell their property. Mr. Yates said that they can find out what the residents have to say. Jeffrey Waddell said that with growth they have to remember that FM 149 and SH 105 is the City's main intersection and crossroad, and any city that you look at as it grows, those areas usually have some commercial property. Mr. Yates said that he would be working on the documents and getting the Land Use Plan ready over the next couple of weeks.

6. Report regarding Land Use Plan.

Mr. Yates advised that all that is necessary for the Land Use Plan is to call a public hearing. Mr. Yates said that he would like to talk to Mr. Cheatham and Mr. LeFevre regarding the Land Use Plan prior to the public hearing, being that they are the two larger developers in the City. Mr. Yates said that they will call the public hearing at the next Commission Meeting. Mr. Yates said that he will confirm with the City Attorney on the process for the Land Use Plan adoption.

Mr. Foerster spoke to the Commission regarding wireless telecommunication network providers have been approaching cities all over the country to have access to City right of ways to include, traffic lights poles and signs owned by the City. Mr. Foerster advised that the cell towers used in the past are very expensive to build, plus the rent for the land over a 20 year period, so the companies were looking for a cheaper solution to service wireless phones. Mr. Foerster said that there is a new technology that has been out for many years, but is becoming more popular, which is involving network nodes, which are boxes with an antenna, that maybe as much as 2 feet long by 15 inches wide and placed on poles or buildings.

Mr. Foerster said that for the past couple of years some companies have had contracts as wireless network providers, to provide the antenna service for these companies, and they have wanted to put their fiber optics through the City right of ways, and cities have pushed back saying that they will interfere with traffic and disturbing the nearby property owners, or they have charged them very high fees for rental. Mr. Foerster said that with the pushback, the vendors went to all the State Legislatures and said that they wanted the state to force cities to allow these devices to be put in the City right of way and they want them to regulate how much a city can charge for the installation of a box and for the rental fee for use of the public right of way. Mr. Foerster said that HB 1004, Chapter 284 of the Texas Local Government Code, because that regulates all of this procedure now, and the cities no longer have a right to say they do not want them in the public right of way.

Mr. Foerster said that effective September 1, all the cities in the State that want to at least have some control on how this is being installed in their public right of ways, need to pass certain ordinances and approve certain documents. One document is a design manual, and the law allows the cities to have some control and regulation how high the nodes are going to be, where they are going to be situated and so forth, and how they are going to be installed in the public right of way. Mr. Foerster said that he has prepared the documents for the City of Montgomery and briefed the City Council on the matter a couple of meetings ago. Mr. Foerster said that another thing is what is called a Right of Way Management Ordinance that allows the City to have some control over the money that the City gets paid to have staff process these requests, because they will have to fill out a permit, pay a fee for the processing, and they have to pay an annual rental fee.

Mr. Foerster said that the City of McAllen is about to file a lawsuit saying that this law the way it is written is unconstitutional because it is in effect giving away public property to somebody like the network provider. Mr. Foerster said that they are stuck with the law and it is still valid until some court tells them that it is not. Mr. Foerster discussed the fees that will be established and said that the City can also enter into a Pole Attachment Agreement, where the network provider has to comply with the Design Manual and Right of Way Management Ordinance by signing a Pole Attachment Agreement. Mr. Foerster said that all those documents have been prepared for the City of Montgomery, and Mr. Yates felt that it was important for the Commission to know what is going on. Mr. Foerster said that he has suggested that at the first Council meeting in August, he will be presenting these documents for adoption, so that they can be ready and effective for September 1, 2017. Mr. Foerster said that if the City does not do these document, the network providers will still come in anyway, and they will just be unregulated and the City would not receive any compensation.

Mr. Yates said that the only way that they can regulate the area, is there is a provision for the Historic District. Mr. Foerster said that there are some limitations in a residential area, such as if there are deed restriction, there might be some control there per the statute. Mr. Foerster said that for the Historical District or the Design District, the network provider would actually have to come to City Council for approval in those areas. Mayor Jones asked if that would



include the Corridor Enhancement District. Mr. Foerster said that they looked at that, and he did not think that it would fall under that requirement.

Mr. Foerster advised that the Design Manual tracks everything that the legislature allows them to do. William Simpson asked if this would take away the future of a company coming in and wanting to put up a cell tower. Mr. Foerster said that it would not, they would just have less of an incentive to do that because this would be so much cheaper. Mr. Foerster said that this would not regulate Entergy power poles because that is not City property, they are only talking about City property. Arnette Easley asked if the network providers could approach private property owners. Mr. Foerster said yes the network providers could do that, the law only regulates cities not homeowners. Mr. Foerster said that the items would be presented to City Council on August 8, 2017 for adoption.

Chairman Cox stated that he was glad that we have that we have quality people that look at all this information before they wind up with a headache down the road. They have good engineers, good City Administrator, City Attorney and a good Mayor.

7. Adjournment

William Simpson moved to adjourn the meeting at 7:22 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date approved: 8/28/17  
Susan Hensley, City Secretary

  
Chairman Nelson Cox

