

MINUTES OF REGULAR MEETING

June 27, 2016

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the regular meeting to order at 6:03 p.m.

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

Absent:

Also Present: Jack Yates, City Administrator

Larry Foerster, City Attorney

VISITOR/CITIZENS FORUM

Any citizen with business not scheduled on the agenda may speak to the Commission. Prior to speaking, each speaker must be recognized by the Chairman. Commission may not discuss or take any action on any item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

William Simpson stated that the way Montgomery is growing with new communities and home development, he felt that the Commission needed to take into consideration, when they are reviewing plats, etc., to look at the spacing of the homes.

William Simpson said that developers and builders are used to building on a larger lots on large tracts of land, but they are moving in homes 5-6 feet apart, leaving nowhere for the water to go. William Simpson said that they have a major problem in the Lake Creek, so they need to look at the entire drainage issue and where the water is shedding and the effects it will have downstream. William Simpson said that the first street, Racetrack, in Lake Creek has a huge drainage problem. The water comes off of Buffalo Springs and goes into their backyards, with everything converging there the water cannot get out of there quick enough.

William Simpson said that they are putting the homes closer together and where the water used to shed and be absorbed into the ground, now there is no place for it to go. William Simpson said that he witnessed two homes, when they had the 12-inches of rain, where the water was going in the front door and leaving out the back door. William Simpson said that he felt that was something that they all needed to consider when these builders come in and want to start crunching homes.

Jeffrey Waddell said that in the last two or three years, he has seen more rain deflected off roof tops to low areas, and they are seeing much more water. Jeffrey Waddell said that they are seeing situations that they have never seen, with standing water that seeps into the ground weeks later. Jeffrey Waddell said that while everybody loves the terrain of the area, it creates some real challenges with water flow.

William Simpson said that he did not know how the drainage is calculated, because there are actually no storm sewers. Mr. Glynn Fleming, City Engineer, said there are no storm sewers in Lake Creek, but the plans for Lake Creek, Section 1, was designed in 2013, then reviewed by the City in either late 2013 or early 2014. Mr. Fleming said that one of the things that he was immediately struck by was the street that William Simpson was talking about. Mr. Fleming said that the rear elevation of lots on one side of the street is 8 feet or more above the elevation of the front door of the homes across the street. Mr. Fleming said that it was his understanding, from documentation from the previous City Engineer, the developer was granted a variance for a reduction in side yard setbacks. Mr. Fleming said that there was a cumulative 5 foot building line in between each of those homes. Mr. Fleming said that the developer has admitted, even absent the flooding issue, esthetically it does not work. Mr. Fleming said that in Lake Creek, Section 2, the developer asked for and was granted a 5 foot setback on either side of the lot, as opposed 10 foot, which is what the Code requires.

Mr. Fleming said that in terms of a responsible review of a subdivision like that, there were some potentially similar issues in Lake Creek, Section 2, that were identified during the plan review

phase. Mr. Fleming asked that the issue be corrected, and to a certain extent they were corrected, or at least to the degree that they have the ability to enforce.

William Simpson said that now they are going to have water running down Racetrack and they cannot get rid of the water quick enough right now. William Simpson said that the builder has lowered prices dramatically to get rid of those houses, so therefore, the people that bought their homes at higher prices will have their homes valued lower. Arnette Easley asked whether some of the burden of the drainage be on the City, because they do not want to deter builders coming into the City, and asked if the Montgomery EDC could address some of the drainage problems. William Simpson said that he felt that the Commission just needed to scrutinize everything more on what they are allowing developers to do.

William Simpson said that he did not know who regulates the elevation of the homes and the pad sites during construction, because on Racetrack there are two homes built on one elevation, then the next two were built lower, then the next ones are built higher. Mr. Fleming said that as the City Engineer, when he reviews plans, whether residential or commercial, they can really only review it for general compliance with the Code of Ordinances, and Montgomery County Drainage Criteria, because the City does not have their own Drainage Criteria it defaults to the County's Criteria.

Mr. Fleming said that if there is something that they do not like in the plans, but it complies with the City's Code of Ordinances, then do not have any way to enforce it. Mr. Fleming said that the minimum slab elevation is in the International Building Code and the National Residential Code is usually 6-12 inches above the curb if it is not within a flood area. Mr. Fleming said that it is an unfortunate reality, from a policy standpoint, when something like this happens, because the residents are immediately going to come to the City looking for guidance and restitution. Mr. Fleming said that it is likely going to be a civil matter between the property owner and their home builder, as long as the City has done their due diligence by making sure that the plan is compliant. William Simpson stated that the elevation is set and it is really up to the builders. Mr. Fleming said that when a new development comes in to the City they look at the impact

within the development, but also look upstream and downstream, which they do have the ability to regulate, thanks to Montgomery County Drainage Criteria.

Arnette Easley asked when was the last time that Town Creek had been dredged, because he thought that might help control some of the overflow by the school that gets bad anytime that it rains. Arnette Easley said that Town Creek is just filling with dirt, so it needs digging out and widening. Mr. Fleming said that in the case of a water way like this, which is within the City, the reality of Town Creek and a large portion of Stewart Creek is that they go through private property. Mr. Fleming stated that when you go back and look at County records, despite what the Code of Ordinances tells us we are supposed to have, it does not appear that there were ever any drainage easements recorded on either side of those channel banks. Mr. Fleming said that is something that the City looks at when a new development that has a waterway going through it, the City needs to have access to go in and clean up issues like this one. Mr. Fleming said that when they get these large rain events, what you are seeing in Town Creek by the bridge, that water is trying to reach equilibrium and go where it wants to go.

William Simpson asked whether the City control the streets in Lake Creek. Mr. Fleming said that they do not because all of the streets in Lake Creek, Sections 1 and 2, are private streets. William Simpson said that the developer has put in a couple concrete spillways, and asked if he can do whatever he wants to do. Mr. Fleming said that the roads are platted as private and any runoff generated within that development is private water. Mr. Fleming said that the City of Houston only requires a design for a 2-year storm, but Montgomery County requires a design for a 5 and 25 year storm. Mr. Fleming said that the two events that they had within six weeks of each other, far exceed that criteria.

CONSIDERATION AND POSSIBLE ACTION

1. Discuss/take action regarding May 23, 2016 and June 6, 2016 minutes.

William Simpson moved to approve the May 23, 2016 and June 6, 2016 minutes as presented. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Discuss/take action on variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center.

Mr. Fleming advised that the developer has requested that this item be removed from the agenda, via email, because they want to revise their plat. The email from the developer is attached to the minutes as Exhibit "A."

No action was taken on this Agenda Item.

3. Discuss/take action on variances request from McCoy's Building Supply regarding:
 - a. from required side yard setbacks for the proposed McCoy's Building Supply
 - b. from required driveway spacing for the proposed McCoy's Building Supply

Mr. Fleming reviewed the information and advised that the property is split into three different zoning classifications. Mr. Fleming advised that they recently went in, at the request of McCoy's and rezoned the entirety of their tract as zone B-Commercial. However, at the present time, the adjacent property on either side is still zoned with three different zones. Mr. Fleming said in the conversations that they have had with the Commission and City Council, there is a desire to go in and make a comprehensive rezoning for various areas of town, with SH 105 frontage being one of those locations. Mr. Fleming said that he anticipates that the area adjacent to McCoy's that is currently Single Family, Multi-Family and Commercial will more than likely in the future be zoned entirely commercial. Mr. Fleming said based on that, his recommendation to the Commission is that he has no objection to this request and he would say that the staff recommendation would be to allow it to move forward regarding the side yard setback. Carol Langley asked what the setback was supposed to be. Mr. Fleming said that instead of a 25 foot setback they are asking for a 15 foot setback. The developer will construct a retaining wall, drainage swale and some fencing along this area. Mr. Fleming said that they would like permission to place that retaining wall and fencing inside the required 25 foot setback. Mr. Fleming said that if and when the adjacent property is in fact rezoned commercial, at that

point they would have commercial property abutting commercial property and the City Code only requires a 10 foot setback, and they are asking for a 15 foot setback. Mr. Fleming said that on their plat, since this property abuts three different zone criteria, their side setback gets narrower and wider along the property line, and they are asking for a way to create a uniform setback along their property line.

Jeffrey Waddell asked if the drainage swale ran parallel with the retaining wall. Mr. Fleming said that was correct, it will be just below and parallel to the retaining wall. Jeffrey Waddell asked to confirm that they would not build on top of the easement. Mr. Fleming advised that they might pave over a small portion for the base of the retaining wall. Jeffrey Waddell said that with everything that has been said so far about the building along SH 105, that they would be going toward commercial. William Simpson said that he did not see any problem with the variance that they are requesting.

Jeffrey Waddell moved to approve Item 3(a) regarding approving the side yard setbacks go from 25 feet to 15 feet due to projected commercial use on the adjacent lots. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Mr. Fleming said that he had received a phone call from McCoy's advising that they would like to rescind this portion of the request. Mr. Fleming said that he has requested that request in writing and it will be treated the same as the previous item that was pulled. Mr. Fleming said that recommendation would be to table this request, and if they want to come back in the future to make this request, they are welcome to do so.

Carol Langley said that they already have two driveways off of Buffalo Springs. Mr. Fleming said that was correct, and stated that both of those driveways are Code compliant and he has not objections to them. Mr. Fleming stated if this request would have remained on the agenda, he would have recommended denying it because he had a list of objections to the request, one being that the driveway being requested would have been too close to SH 105.

Jeffrey Waddell asked about the temporary turn-a-round shown on the plat. Mr. Fleming said that temporary turn-a-round would remain in perpetuity until such time should Buffalo Springs extend south across the creek. Mr. Fleming said that the Code of Ordinances provides that anytime there is a dead end road, you have to have some sort of turn-a-round. Jeffrey Waddell asked if the elevation would be substantially higher than where the detention pond dumps out. Mr. Fleming said that surprisingly it is not higher, which is one of the comments that he had made on the plans. Mr. Fleming said that he has already reviewed the plans and sent them back. Mr. Fleming said that one of the comments on their plans was that their proposed detention pond discharges, in part, out onto the City's road, which is not acceptable for several reasons. Mr. Fleming said that they would have to review that information and find ways to revise the plans.

After discussion, Arnette Easley moved to table Item 3(b) regarding the driveway spacing for the proposed McCoy's Building Supply. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

4. Discuss/take action regarding tree ordinance

Mr. Yates reviewed the information with the Commission, which he stated also includes the extra-territorial jurisdiction, because of the growth in the area.

William Simpson asked whether the fees and enforcement of the ordinance had been worked out. Mr. Yates said that the fees have not been included because they have not been determined yet. Mr. Yates said that what he feels is that they should be enough to cover the urban forester or consultant needed to review the tree plan, and to manage the plan once it is place.

Carol Langley asked what a "previously platted residential lot" includes. Mr. Yates said that it was a platted lot that had been subdivided and on file with Montgomery County. Carol Langley said that her 2 acres that she lives on is not platted. Mr. Yates said that it was under 5 acres so it would not be affected. Carol Langley said that there were a lot of

people that properties that were not platted, they just acquired them by surveys or inheritance. Mr. Yates said that as long as the property is less than 5 acres, or previously platted they would not be affected by the ordinance.

Mr. Yates said that he had attached a protected tree listing, which was taken from the City of Shenandoah's very involved tree ordinance, which he decided not to use as the guide for the ordinance.

Arnette Easley said that since this is an older community, and asked why the properties that are not platted be grandfathered, and the new subdivisions coming in to the City be subject to the ordinance. Mr. Yates said that you could do that, but then it would open up a lot of tree cutting that would open up the land. Arnette Easley said that he thought that there were not a lot of properties inside the City limits that were over 5 acres, but he was not sure. Mr. Fleming said that the question that Arnette Easley is describing probably will take care of itself, for example, if there is no change in use and the land is not subdivided, that would not trigger submission of a plat. Mr. Fleming used the medical plaza off of Houston Street as an example, and said that because there is a proposed change in use at that location, where they are going from a residential home to a commercial building, which triggers the need for a development plat. Mr. Yates said if they excluded all the unplatted property, an owner could go in and remove all the trees before they come in to plat the property. Jeffrey Waddell said that the ordinance is really to keep developers from coming in and clear cutting their property, they are not really concerned with an individual building one house. Arnette Easley said that he felt the ordinance should apply to developers. Mr. Yates said if their property was already an existing platted lot, then they would not fall under the ordinance.

Mr. Yates said that he felt comfortable recommending the ordinance to the Commission and then to City Council. Carol Langley asked if they would have the fees ready before it goes to City Council. Mr. Yates advised that he would have the fees ready before he took the ordinance to City Council. Carol Langley said that she was not comfortable approving the ordinance without seeing some of the fees. Mr. Yates said that the fees would be

enough to cover the tree expert's time, and not much more, similar to how they handle the engineer's costs. Mr. Yates said that he will work on having the fee included in the Escrow Agreement with the developer.

Carol Langley Sec. 3.1805(9) that says at the request of the applicant, the developer can put trees on City property, and asked what that meant. Mr. Yates said that if a developer wanted to put trees on City property, instead of on their property, the City could allow them to do that. Mr. Yates used the Cheatham development on SH 105 as an example, saying that if they were working on the property and the City wanted to put some trees along the edge of the City Park, Mr. Cheatham could opt to place the required trees there instead of on his property, if the City approved. Carol Langley said that if a developer is required to have trees on their property, but they don't want them, then it would give them an option to donate to the City.

Jeffrey Waddell said that he thought the ordinance was really geared for commercial development not individual acreage. Jeffrey Waddell said that Carol Langley's concern was the fees, which he did not want to go too high. Carol Langley asked if most developers were familiar with a tree ordinance or will the City of Montgomery be the first one that they have ever dealt with. Mr. Yates said that most developers are going to be familiar with tree ordinances.

William Simpson said that the fee is probably going to be determined by the size of the project. Mr. Yates said that he was going to probably ask for the actual fee for the time, plus 10%, and include the fee in an Escrow Agreement for the tree plan, just like they do for the other developments. Carol Langley asked if they would submit the tree plan when they submit all their other plans, and asked if it would delay their approval a week or two if they did not provide the tree plan. Mr. Fleming said that largely the onus is on the developer and the tree plan would just become another portion of what is a complete application for development. Mr. Fleming said from the City's standpoint there is really not much to do, and should be pretty easy for the City to enforce. Mr. Fleming said that any one that has done development in this area is familiar with this type of concept

regarding trees. Mr. Fleming said that he would recommend that the City has a clear and easy to understand fee structure in place, which fees will be deducted out of the developers escrow account. Jeffrey Waddell said that the information would be part of the developer's packet so it is really not much more than they are used to completing. Mr. Fleming said that it would probably add two pages to the plan set. Jeffrey Waddell said that he wanted to make sure that they had a reasonable fee structure because they do not have the fee structure.

Carol Langley asked when this ordinance would go to City Council. Mr. Yates said that he was planning on taking it to them in July.

Jeffrey Waddell made a motion to recommend the ordinance, contingent upon a reasonable fee structure, based on cost, being included. William Simpson seconded the motion, the motion carried unanimously. (5-0)

Carol Langley said that she would like a copy of the fee schedule prior to the ordinance going to City Council, or she can just come to City Council.

5. Report regarding cellular tower ordinance

Mr. Yates said that he really has two versions of the tower ordinance. The one from the City of Conroe, which is very lengthy and covers the approval process, where the Department of Community Development approves the tower.

Mr. Yates said that he likes the Special Use Permit process where it comes to both Planning and Zoning Commission and City Council for approval. Mr. Yates said that if someone comes in requesting to put in a tower and meets the terms of the ordinance, then you have no choice but to accept it.

Mr. Yates said that they could take the regulations from the City of Conroe's ordinance, because their regulations are more detailed than Cedar Hill's ordinance. Mr. Yates said that

they could keep the Special Use Permit process in the ordinance. Mr. Yates said that he also liked the ending of the City of Conroe's ordinance regulations. William Simpson asked whether they could add the City of Conroe's regulations into the Cedar Hill ordinance. Mr. Yates said that they could do that. Mr. Yates said that he also liked the permit fees in the Conroe ordinance that they could also include with the Cedar Hill ordinance.

William Simpson asked whether there was anything in the ordinance that would cover other people attaching to the approved tower, without having to go through any approval process. Mr. Fleming said that he did not see anything, but they could regulate the array of the tower. Arnette Easley asked whether they could charge someone a permit fee when they piggyback onto an approved tower. Mr. Yates said that they could add that specific information into the ordinance. William Simpson asked if they could stipulate only one additional connection. Mr. Yates asked why they would care if they added more connections as long as they meet the required size. William Simpson asked if it was an antenna or another large module.

William Simpson said that he would like to see the Cedar Hill ordinance, and adding from the City of Conroe ordinance the following sections: Section 98-37 (tower permit fees), and Article 3 (regulations), and Sections 98-71 through 98-32.

William Simpson said he felt the City should collect a fee from each of the people that attach to the tower. Carol Langley said that the permit for the people attaching would have to be something else besides a tower permit. Mr. Yates said he could add another section that states new arrays would require a permit, with a proposed fee. Chairman Cox asked if they should limit the number of arrays. Mr. Yates said he did not think they needed to do that, and not every array would be for cellular service. Carol Langley said that the tower by the Methodist Church is a broadcasting tower and they do not allow cell phone arrays. William Simpson asked if they could start a draft using the regulations from Conroe's ordinance 98-37 and then they can review the information, and get the City Attorney's opinion. Mr. Yates said that he had spoken to the City of Conroe, and the City

Administrator really liked their ordinance, but it is based on them having enough staff to enforce the ordinance.

Mr. Fleming said that they could tie the tower permit into the zoning ordinances, and also mentioned that they could limit the footprint of the tower. Jeffrey Waddell said that it is easier to locate the tower close to the street because of the fiber optics. William Simpson said that the Cedar Hill ordinance is very specific on placement of where the tower can and cannot be built. William Simpson asked Mr. Yates to pull the sections of Conroe's ordinance that he had referenced earlier and combine them with Cedar Hill's ordinance. William Simpson also said that he would also like to discuss additional fees at a later date. Mr. Yates said that he would add that information to the ordinance.

6. Report regarding landscaping ordinance

Mr. Yates presented the information and said that he obtained a short ordinance from the City of Corinth, and the long version from the City of Tomball. Mr. Yates said that he liked the City of Tomball ordinance because it is more precise. Mr. Yates said that the City of Corinth has the City Manager, Planning and Zoning Commission and City Council approving the plans, because their ordinance is not that detailed. Mr. Yates said that the Tomball ordinance is very clear, while it would be more difficult to administer. Mr. Yates said that they are going to just have to start doing whatever it takes to administer the ordinances.

Mr. Yates said that the City of Corinth requires landscaping on along the street frontage of all new businesses and multifamily residential developments. Mr. Yates said that the City of Tomball covers parking lots and is much more detailed than Corinth, and has the City Manager as the deciding factor. Mr. Yates said that Tomball's ordinance would be clearer for the developer. Mr. Yates said that the developer could submit their landscaping plans with their other plans as had been discussed with the tree ordinance. Mr. Yates said that he had added the information about the education materials regarding zero scaping, which is very popular in Arizona where water is an issue.

Jeffrey Waddell said that the ordinance from Tomball was more in keeping with the area, and they might just have to tweak the ordinance as reviewed by Mr. Yates. Jeffrey Waddell said that he liked that it covered commercial and multi-family because he did not want Mr. Yates to have to get into approval of plans for residential. Chairman Nelson asked if this ordinance would make it necessary to hire additional staff to keep up with the enforcement. Mr. Fleming said that he did not think that it required additional staff. Mr. Fleming said that the City had a pretty good start to a Public Works Department and things like this are tailor made for them. Mr. Fleming said that he would like to firm up exactly what the enforcement issues are in terms of what occurs when the person is found to be not in compliance, and the time window that they have to get into compliance. Mr. Fleming said that they could state that everything must be in compliance and implementation of their landscaping plan prior to issuance of the certificate of occupancy. Jeffrey Waddell said that the Tomball ordinance would require planting in a large parking lot.

Mr. Yates said that they will get the Tomball ordinance in better form and have the City Engineer to provide comments, which he will forward during the month.

ADJOURNMENT

William Simpson moved to adjourn the meeting at 7:46 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date Approved: 07/25/16
Susan Hensley, City Secretary


Chairman Nelson Cox

