

**MINUTES OF PUBLIC HEARINGS and REGULAR MEETING**

**May 23, 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 6:00 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.

No comments were made.

**CONSIDERATION AND POSSIBLE ACTION**

1. Discuss/take action regarding April 25, 2016 minutes.

Jeffrey Waddell moved to approve the minutes from April 25, 2016 Meeting. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Public Hearing for a request for a special use permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in the John Corner survey, abstract number

eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc., (property is immediately east of Rumpy Lake and west of Lone Star Pkwy.)

Chairman Cox convened the Public Hearing at 6:03 p.m.

Mr. David Strauss stated that he did not object to the tower, but he wondered how the ordinance that they had set up to cover property along Lone Star Parkway regarding height restrictions and all the other restrictions effects this tower. Mr. Strauss said that he would like to see if when they put the fence up that it could be a cedar wood fence so that you would not see all the equipment that will be located there.

Mr. Nick Liberatore, representing the owners in partnership with the Estates of Mia Lago, which is directly across from where the tower project is supposed to be located, said that as property owners they have been very selective over the years on use of their land and people purchasing their land commercial and residential. They have several million dollar homes that they have built and pay hundreds of thousands of dollars in property tax and they are very concerned about the project. Mr. Liberatore said that he has studies that have been done near and around these cell towers where the property values have actually decreased from 10-50 percent, and in some cases making them impossible to sell. Mr. Liberatore said that with their investment in the City and being right at the entrance of the City of Montgomery they are very concerned about the tower and they are opposing the project. Mr. Liberatore shared a letter with the Commission from their group. Chairman Cox advised that they had already received the letter. Mr. Liberatore said that property around and near cell towers is very hard to sell and decreases the value of the properties. Mr. Liberatore said that they have been very selective in what they allow to be built on their property and he was hoping that the Commission could help them out.

Arnette Easley asked if the report showed that the tower could affect the specific area or the overall market around the tower. Mr. Liberatore said that there are so many different studies done and it could be anything within a couple hundred feet to a mile parameter of

the tower. Mr. Liberatore said that every report on towers that he has read was negative, with no positive comments at all, with serious declines in property values. Mr. Liberatore said that he knows that they need the towers, but right at the entrance to the City of Montgomery corridor, where the new Kroger is being built would be pretty detrimental to the area.

Mr. Cody Cogdill, representative for the tower project, asked if the Commission had any questions. Arnette Easley asked if there were any hazards caused by the tower or was it just an eyesore. Mr. Cogdill said that the only thing that they come up with is an eyesore. Arnette Easley asked whether there were any gamma or microwave rays from the tower. Mr. Cogdill said that they would have more of an issue holding your cell phone up to your head than you would from a radio tower. Mr. Liberatore said that the reports talked about the health issues with towers.

William Simpson asked Mr. Fleming about the report that says 0.0574 acres of what they are going to build on, and on the drawing there is an additional acreage. Mr. Fleming said that he was sure that there was an access easement along the property. William Simpson asked about another square that was shown on the drawing. Mr. Fleming said that he could not speak about that piece of property. Mr. Yates said that the access easement was right off of Lone Star Parkway.

William Simpson asked about the size of the base of the tower. Mr. Cogdill advised that the base can be 5-6 foot and the concrete base diameter will depend upon the design. He did not know the dimensions of the tower itself. William Simpson asked if the tower would have lights. Mr. Cogdill said that the tower does reach the height required for lighting by the FAA or nearby airports, so it will not be a nuisance to the local residents or businesses. Mr. Cogdill said that regarding safety from radiation, he has been around them for 20 years, and there are no safety issues, and if there was, there would be a lot larger outcry. Mr. Cogdill said that there are hundreds of thousands of them across the country with tens of thousands of them in Texas. Mr. Cogdill said that everyone wants their cell phones to work, but nobody wants to look at the towers.

Mr. Cogdill said that unfortunately it was not only a need, but a safety requirement by communities as they grow. Mr. Cogdill said that it was his understanding that at that intersection it was also planned to be a commercial development area, and as that develops the requirements for communication and safety increase. Mr. Cogdill said that people are moving away from landlines and using their cell phones.

Jeffrey Waddell asked what the distance was from Lone Star Parkway to the tower. Mr. Cogdill said that he did not have that information, but he was guessing it would be 150 feet. Jeffrey Waddell said that there was a lot of engineering information from Jones & Carter, but he did not see anything about the distance from the road. Jeffrey Waddell said that he did not know why the distance information would not be available. Mr. Cogdill said that was not something that was called out. Jeffrey Waddell said that the feeling that he is getting from people is that the real issue is the appearance of the tower as you are approaching from any angle, and being the site of the Memorial and the flag. Jeffrey Waddell said the tower is 172 feet tall and it seems awfully close to a main street.

Jeffrey Waddell said that the other question is why the tower has to be located there. Mr. Cogdill said that you have to have a property owner that will work with you, and Mr. LeFevre has agreed to move forward with a deal on this property. Mr. Cogdill said that the problem is finding property owners willing to work with him, because they do not want to give up their land until they see how the property is going to develop first and then see if they have a place for the tower.

Mr. Cogdill said that Verizon and other carriers would rather get in ahead of the game so they can be there for the development. Mr. Cogdill said that the spot that they are on is a piece of property that can't be developed and is located on the back of the pond area, and can't be used unless the pond has been removed. Mr. Cogdill said that it was his understanding that Mr. LeFevre plans to make the pond a little smaller, but not to take it away. Mr. Cogdill said that the spot that they are at can't be used for anything, so they are not taking up prime commercial land. Jeffrey Waddell said he was not quite sure whose

opinion that would be because this could be very valuable property because it is on water. Mr. Cogdill said that is true, but they would have to get rid of that pond to make that work because that pond is used as an overflow. They are having to build up their site to make sure that there is water overflow into the backside of the pond.

Jeffrey Waddell asked for an estimate on how many feet the tower would be from Lone Star Parkway. Mr. Fleming said that he thought the answer would be approximately 150 feet from the edge of the pavement to the front gate. Mr. Fleming said that the tower would be set back 52 feet from the right of way, with about another 80-100 feet between the right of way line and the edge of the pavement. Mr. Cogdill said that L3 on the survey shows 46 feet from the edge of the fence just to the right of way. Jeffrey Waddell asked about the right of way. Mr. Fleming said that the actual right of way allotted to Lone Star Parkway is wider than the pavement itself, which he believed was a 120 foot right of way. Mr. Fleming said that right now the road is only a two travel way and there is a potential for future expansion and there is land allotted there for nothing but Lone Star Parkway. Jeffrey Waddell said that it seems that the tower is right there on top of the main commercial retail area and he asked why it needs to be there. Mr. Cogdill said that it needed to be there for coverage. Jeffrey Waddell asked how much leeway they had when trying to determine where the tower has to be. Mr. Cogdill said that he was not an engineer and he could not speak to that, the company advises him of the location, but ultimately it comes down to having a favorable property owner to work with.

William Simpson asked how many other towers were in the City of Montgomery. Mr. Yates said that he did not know. William Simpson said if they let Verizon in, how many more will be allowed to follow, because according to some of the documents that he has read you can't pick or choose, so if you let one in, will it just multiply. Mr. Foerster said that is a possibility and certainly an argument that could be made. Mr. Foerster said that they are doing this on a case-by-case basis and every application is treated on the value of that item. Mr. Foerster asked Mr. Cogdill whether Verizon would be the only one using that tower. Mr. Cogdill said that at this particular time it would only be Verizon, but anybody is able to co-locate on the tower, such as AT&T, T-Mobile, etc. and share that

facility, which is usually encouraged by municipalities to help reduce the number of cell towers. Mr. Cogdill said that some municipalities require a certain distance from existing cell towers to help reduce the number of towers, and they make sure that there is appropriate distance between residential structures and cell towers. Mr. Cogdill said that there are ways that the City can protect the community and still make sure that people are covered.

Mr. Foerster asked to clarify that this would be a monopole tower. Mr. Cogdill said this would be a monopole tower with no wires coming off of the tower to go out and would not be a big ugly tower. Mr. Cogdill said that the only reason the tower is the height that it is was to optimize coverage. If you don't have appropriate height for the signal then there will be a need for additional towers. Jeffrey Waddell said that there was always going to be a need for towers and asked if things could be added to the tower later. Mr. Cogdill said that was correct. Mr. Cogdill said that for the community and for the City the only thing that he recommend in the future to help protect themselves and the community would be to put in an ordinance where there are certain places where towers are allowed and limitations regarding residential structures. Mr. Cogdill said that the towers do not just fall and there is not a safety concern to people, the only thing that comes up is an aesthetic eyesore. Mr. Yates said that they could pass an ordinance before this is approved, which he was not recommending, but it could be done. Mr. Cogdill said that it would have to be a very strict ordinance, because he is not close to any residential structures. William Simpson said that they are going to be looking at another residential item that is going to be very close to that location. Mr. Liberatore said that there would be million dollar homes within 400 feet of the tower.

William Simpson said they have been approached to discuss getting a Comprehensive Land Use Plan Ordinance together, and Mr. Yates has done a lot of work on the tree, light and sign ordinances. William Simpson said that what concerns his is he knows the people that are going to be building in that area do not want the tower.

William Simpson said that he was at an MEDC meeting and Mr. LeFevre brought his poster of his proposed futuristic development of Buffalo Springs, and right around that pond he wants to make a Market Street. William Simpson said that he did not know how the tower would affect his plans with the visibility of the tower right next to that pond and the restaurant. Mr. Cogdill said that you can't go to any major city or community and not have cell towers. William Simpson said that Montgomery is not a major City, and they are trying to keep this City as quaint as possible. William Simpson said that this location being requested is going to be a focal point coming into the City of Montgomery and when you come down the hill the tower is going to be the first thing that you see. You won't see the monument from Kroger you will see the tower.

Jeffrey Waddell said he knows that the towers are very well built, but he asked Mr. Cogdill if he got involved with fall zones and whether the tower is away from major roads. Mr. Cogdill said that roads are not a problem, it is hard to restrict anyone from roads because if they have to go too far from the road it would not be cost effective, because you have to build access, utilities and fiber optics. Mr. Cogdill said that the biggest concern was residential structures, and the standard distance from residential structures is one and a half times the tower height for the distance, and in commercial and industrial area almost all communities allow towers.

Chairman Cox said that they had time constraints for comments, and asked if they had anything else to comment. Mr. Cogdill said that he did not have any other comments. Mr. Foerster said that he had a couple questions. Chairman Cox asked Mr. Foerster to continue. Mr. Foerster asked where the next closest tower that serves the City was located. Mr. Cogdill said that for Verizon it looked like you would have to go southwest 1.5 miles. Mr. Foerster asked, ideally to have the adequate coverage, how far away does his cell phone have to be to get good coverage. Mr. Cogdill said that it was hard to say because it would depend upon terrain, and on flat land the transmission goes further and better. Mr. Cogdill said that optimally you want to be about a mile to a mile and a half for good service. Mr. Foerster said that what Mr. Cogdill is suggesting is that as the City grows there is going to be towers that have to be there in order to serve the community. Mr. Cogdill said that it

really has to be, but the bottom line is aesthetics is the problem with the tower not safety. Mr. Cogdill asked what was more important the aesthetics of the tower or the safety of the people. Mr. Cogdill said that when the intersection gets developed, with Kroger and a strip mall, the exterior cell towers will be jammed with just the regular day to day calls and won't be able to keep up.

Arnette Easley asked if locating the tower in the City limits was the only viable location, or could it be located just outside the City limits where it was more rural. Mr. Cogdill said that you would not be optimizing your coverage and covering your residents. Mr. Cogdill said that you could surround the outside of the City limits with cell towers, but then you won't have the coverage inside the City where you have more of a population and safety concerns. Arnette Easley asked what the closest tower to the City limits was now. Mr. Cogdill said that he did not know because he did not have the City limits marked out showing the towers outside the City.

Mr. Fleming said that there was a large transmission tower on the west side of the City by MidSouth Electric, on the north side of SH 105 by Nappa Auto. Mr. Fleming did not know if that was a cell tower. Mr. Yates asked if Mr. Cogdill could co-locate on an existing tower. Mr. Cogdill said that there was nothing in that area because he had already looked. Mr. Cogdill said if there was one available they would not have to go through all this process, they would just file an application with the owner of the tower, which they prefer to do, but there is nothing in this area.

Mr. Foerster stated that Mr. Strauss asked a question about the kinds of structure that would be hiding the equipment on the ground. Mr. Cogdill said that they would build whatever they would like, he had no problem. Mr. Cogdill said they could put up a nice 8 foot cedar fence, he had no problem with that at all, they would do whatever they like.

Chairman Cox adjourned the Public Hearing at 6:34 p.m.

3. Discuss/take action regarding special use permit to Verizon Tower for a special use permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in



the John Corner survey, abstract number eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc. (property is immediately east of Rampy Lake and west of Lone Star Pkwy.)

Mr. Yates advised that the Commission had been provided with a copy of the Special Use Permit Ordinance.

Mr. Foerster stated that it had been mentioned about Mr. LeFevre and his property development, and said that it was his understanding that Mr. LeFevre has posed no objection to the tower. Mr. Yates said that Mr. LeFevre has stated that he has no comment about the tower. Mr. Fleming stated that the Development Agreement, for this area in question, does include a specific prohibition of structures of this nature and height. Mr. Fleming said that the sole arbiter is the Architectural Control Committee, which the members of that Committee have offered no objection. William Simpson said that Mr. LeFevre also owns the land.

Mr. Yates noted that the height of the tower would be 181 feet, including the lighting rod.

Mr. Foerster asked for the diameter of the monopole. Mr. Cogdill said that the tower would have a larger base that can range 4-6 feet, and then tapers off at the top.

Jeffrey Waddell asked about Note 10 on the survey abstract that shows Lone Star Parkway, and has an arrow pointing to the box, and he did not see Note 10. Mr. Cogdill said that Note was on the back page of the document. Jeffrey Waddell said that he was trying to visualize the distance from the edge of the pavement to the structure. Mr. Fleming said that from the edge of the pavement to the fenced structure is going to be roughly 60-80 feet, maybe slightly more. Jeffrey Waddell said that somewhere it stated that typically you take the height of the antenna times 75% percent and that should be the minimum setback, 172 time 75% percent would be 129 feet and this is a lot closer than that to the edge of the pavement. Jeffrey Waddell said that some people could perceive that as a safety issue because anything can fall down, and what happens if it does fall, does it come apart or stay solid. Mr. Cogdill

said that he has never seen one fall. Jeffrey Waddell said that in the business it must happen. Mr. Cogdill said that it does not happen. Mr. Yates asked whether the tower was a breakaway type construction. Mr. Cogdill said that it was not because it would compromise the actual structure. Mr. Cogdill said there was more of a chance of a tower burning to the ground versus falling down. Mr. Cogdill said the only way that a tower would come down, would be if you were cutting a porthole and catch the interior cables on fire. Jeffrey Waddell said that they could have hurricanes, so his question is why they have to be so close to a major street and to an entry way to the new shopping center. Mr. Cogdill said that Mr. LeFevre is not willing to give any other area, this area is an overflow area and not a development area. William Simpson said that the problem is the property across the street is a development area that Mr. LeFevre does not own.

Mr. Fleming said that regarding Note 10, which might be immaterial, but reads "this survey has been prepared for the sole purpose of the transaction described in the above referenced abstractors certificate and parties listed thereon. The survey is not to be used for any subsequent transactions. Jeffrey Waddell thanked Mr. Fleming. Jeffrey Waddell said that he thought that history has shown that a lot of other cities had a problem because they were highly visible on the skyline, which is what they are talking and asked if the tower can be put near trees or more forested area. Mr. Cogdill said that it could be if there was land in that area, but the only ones available are next to that creek, and they can't build in a creek. Jeffrey Waddell said that they are getting ready to rezone some areas that are pretty close to that area that he would think would have available land. William Simpson said that they would have to have a landowner willing to give up the land and if it is valuable land they are not going to give it up a piece of land to break up their property.

Arnette Easley said that Mr. Cogdill made a few interesting points and he felt that they need to look at moving forward and from a futuristic standpoint with the growth in Montgomery and when you think about 9-1-1 and businesses moving in, all those things have to be considered and we just need to figure out how we are going to address them. Arnette Easley said that maybe they have a shorter tower on the backside of the pond. William Simpson said that there is give and take on both sides. William Simpson said that the City is trying

to come up with a Comprehensive Plan and he wants to make what is left here attractive to good developers. In his opinion, he does not want to have to take a lesser development in the City because something was put in that brought the property values down. Arnette Easley said that at the end of the day William Simpson was exactly right, because when you talk about opinions there is a whole calamity of just opinions, some people don't like fences and brick facades.

Mr. Liberatore said that he understands Mr. Cogdill's concern and the need for the towers, but not at the entrance to the City of Montgomery. He and his partners have spent tens of millions of dollars of his money for development in the City of Montgomery, and he feels the tower is detrimental to our future with them even moving forward. Mr. Liberatore said that if the tower were to go in, they would probably figure out something else to do with their development. Mr. Liberatore said that they can't build million dollar homes 400 feet from a 200 foot tower, it just won't work. Mr. Liberatore said that he understood they have to go in and he was trying to think of some more land that they own, even on the backside of his development or the backside of The Villas, which is still near their property, but not at the entrance to his property, the new Kroger and to the City of Montgomery. Mr. Liberatore said that he was not objecting to the tower it is just the vicinity of where it is going. Mr. Liberatore said that they have spent in excess of 15 million dollars as of today developing and building homes in the City of Montgomery.

Chairman Cox asked if there was any consideration given to using the stadium. Mr. Cogdill said that it was too far away and if they get too close to existing cell towers they have overlapping coverage and it would not work, which is why they are spaced apart. Glynn Fleming asked if the tower could be constructed in the flood plain. Mr. Cogdill said that they could, it would just be expensive because they would have to do elevated platforms and upfront construction costs. Several different locations were suggested and discussed, but Mr. Cogdill advised that they were too far away and would not provide the service needed.

After discussion, William Simpson asked what would be the procedure to table the decision to gather more information. Mr. Yates advised that they could have a Special Meeting. Mr. Yates also advised that the City Council would hold a Public Hearing on the same matter on June 14, 2016. Chairman Cox said that City Council would like to have a recommendation from the Commission by their Public Hearing.

Mr. Cogdill asked the Commission what additional information they would like to make their decision. William Simpson said that he would like to know how it is going to affect the undeveloped residential properties all around the tower location. William Simpson said that he would like to know how it is going to affect those people that come in with the price target homes that they like in this area. William Simpson said that they are going through a lot of trouble working with the developers and the home builders to keep everything a tight knit deal with price points, and if they start knocking the price value down for the property, then they will come in with their price points down on their homes. Mr. Cogdill said that he personally did not see how one cell tower would drop the value down on homes. Mr. Liberatore said that if Mr. Cogdill read the reports he would understand. Mr. Cogdill said that the people in those homes will still want cell coverage. William Simpson said that he understood that they needed cell coverage and it needs to be updated for safety purposes. After discussion, William Simpson moved to table the decision regarding the Verizon radio tower until the Special Meeting to be held on June 6, 2016 at 6:00 p.m. Jeffrey Waddell stated that as long as they have a quorum, because he was going to be out of town. Arnette Easley seconded the motion.

Discussion: Carol Langley asked what type of information they are trying to get for this next meeting. Carol Langley asked if she needed to work on something and/or is someone going to get the information. Chairman Cox said that he felt that it would allow time to think about the matter, because they have been given a lot of opinions pro and con, and he felt that it was difficult for them to make a decision tonight. Jeffrey Waddell said that they are not experts and it seems like there should be other options. William Simpson said that he would like to see if Mr. Cogdill had any other options. Mr. Cogdill said that he would

love to have other options other than the pond area, because he has checked with other owners and realtors.

The motion carried unanimously. (5-0)

Mr. Cogdill thanked the Commission for their time and consideration.

4. Discuss/take action regarding sign permit for 20998 Eva Street – Lance DeLoach

Mr. DeLoach was present for the discussion and advised that the sign would go up June 1, 2016. Carol Langley asked about the lighting and asked if the sign was lit for the inside. Mr. DeLoach said that was correct. Carol Langley asked if the sign colors were true colors. Mr. DeLoach said that was correct. Mr. DeLoach advised that the sign was 4' x 4' and made of aluminum with plastic facing and florescent lighting behind it. Jeffrey Waddell asked about the sign height. Mr. DeLoach stated that the sign would have a seven inch overlay. Carol Langley asked where Mr. DeLoach was purchasing the sign. Mr. DeLoach advised that he was purchasing the sign from Lone Star Sign.

William Simpson confirmed that the sign was in the historical district and asked if there was any other similar signage in the district that are plastic and light up from the backside. Mr. Yates advised that Burger Fresh has a similar sign on a pole.

After discussion, Carol Langley moved to approve the sign permit for 20098 Eva Street in the Historic District. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

5. Discuss/take action regarding Villas of Mia Lago, Section Two Preliminary Plat

Mr. Fleming presented the plat to the Commission stating that it is a continuation of an existing development. Mr. Fleming said that the plat is in keeping with the Code of Ordinances with a handful of review comments that he felt were fairly typical regarding

clearly identifying side yard setbacks and some conceptual questions. Mr. Fleming said that he did identify a handful of items, if left unchanged, would require variance requests to be brought to the Commission, specifically on side yard setbacks, lot widths and minimum lot areas.

Jeffrey Waddell asked if there was an intended use for Reserve A. Mr. Fleming said that was actually one of his comments because it is not identified, because it could be used as compensating green space to compensate for the smaller lot sizes, which then would have to be labeled as a Restricted Reserve.

Mr. Liberatore said that they had thought about doing a community pool and park area for the Villas. Mr. Fleming said that they have not seen civil site drawings yet for this plat.

William Simpson moved to approve the preliminary plat for Section Two of the Villas of Mia Lago, Section Two Preliminary Plat. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

6. Discuss/take action on Final Plat and construction drawings for Heritage Place Medical Center

Mr. Fleming presented the final plat to the Commission. Mr. Fleming stated that the Commission has approved the preliminary plat for the project, then they brought some variance requests regarding minimum driveway spacing, which the Commission acted favorably on and then sent to City Council. City Council offered provisional approval on the variance request pending resolution of a couple of items. One of these items included receipt of a comprehensive landscaping plan, which was submitted last Friday along with civil site drawings and the final plat submission. Mr. Fleming said that they have a request from the developer to offer the Commission's provisional approval of the final plat submission as well as the revised construction drawings, pending review and approval by the City Engineer, and City Council action. Mr. Fleming said that the developer would like to get underway as quickly as possible. Mr. Fleming said that they do have a handful

of items to hash out, such as variance requests, improvements to Houston Street, which they have submitted a drawing. Mr. Fleming said that he will be reviewing the drawings and meeting with TxDOT to discuss the plans next week.

Mr. Fleming said that the action this evening would be to offer the provisional approval of the final plat submission and construction drawings, pending City Council action on the variance requests and his review and his comments have all been addressed.

Carol Langley asked when the plat would go to City Council. Mr. Fleming advised that it will be on May 31, 2016, and they have also asked to see the landscaping plans prior to moving on the variance requests. Jeffrey Waddell said that they are going with the assumption that they need an entry/exit on Houston Street. Mr. Fleming said that everyone is in agreement that there is a need for improvements to Houston Street. Jeffrey Waddell said that at a future date he guessed that they would discuss who would pay for the improvements. Mr. Fleming said that was correct, and the indications coming from City Council are that they expect most if not the entirety to be paid for by the developer.

Carol Langley asked what happens if the Commission approves the plat tonight and City Council is not happy with the landscaping plans. Mr. Fleming said that he was sure that City Council would have some comments and directives for the developer and his engineering team. Carol Langley asked if it would have to come back before the Commission. Mr. Fleming said that if the Commission acts favorably on the plat it will not need to come back.

William Simpson moved to grant provisional approval for the final plat and construction drawings for Heritage Place Medical Center. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

7. Discussion regarding Lighting Ordinance –citizen’s comments welcome

Jack Yates introduced Brian Solomon, electrician, to discuss with the Commission regarding the full cut off light fixture.

Carol Langley asked why they would want a full cut off fixture in a parking lot versus what they have now. Mr. Solomon said that with the current lighting that is there now, if it backs up to a residential neighborhood you don't want that light shining into the residential properties. The full cut off fixtures limit the amount of light that is dispersed. Carol Langley asked if they would still put out enough light for people to be safe. Mr. Solomon said that as far as light output they would be safe. Mr. Solomon said that a non-cutoff fixture allows light to go up into the sky where it is not needed. Mr. Solomon said that they might want to designate areas where a cut off fixture is allowed, because it would eliminate the flood lights or the standard wall lights. Mr. Solomon said that a full cut off fixture directs the light down not out. Mr. Solomon said that in comparing a full cut off fixture and a standard fixture, you still get the same amount of light on the ground it just does not allow the glare to come in someone's window.

Mr. Solomon said that as far as parking lots he did not see a need for the full cut off in the middle of the parking lot. Mr. Solomon said that the cut off fixture would prevent the light from shining out onto the roadway.

Carol Langley asked if the full cut off fixtures cost a lot more money. Mr. Solomon said that there really was not much of a cost difference from what you have now. Carol Langley asked if the full cut off fixtures were popular. Mr. Solomon said that they are becoming more popular now than in the past mainly due to the light trespassing ordinances and things of that nature. Jeffrey Waddell said that from the photo examples that compare the fixtures it seems like from a distance the full cut off might be better because it is not glaring in your face so you can see what is going on. Jeffrey Waddell asked if everything was going LED. Mr. Solomon said that most everything is going LED. Mr. Solomon said that there was really no cost difference between the current fixtures and the full cut off, it was more of a specification difference.



Arnette Easley said that after looking at the diagrams, the full cut off fixture is fine, but the other fixture is a safety hazard. Mr. Solomon said that if you look at the ground level output that fixture will only have so much light hit the ground, whether it be the cut off or the full cut off. Mr. Solomon said that he did not foresee any problems with future commercial developments other than specifications for different light fixtures, it would just be a matter of changing the part number and ordering the correct fixture. Mr. Solomon said that cut off and full cut off is becoming more common and most parking lot lights now are those type of fixtures.

William Simpson said that the plans that have already been approved can't be changed and asked how many of those are there. Mr. Fleming said there was only one large scale commercial development that is Kroger, McCoy's is still in the preliminary phase. Mr. Solomon said that he would assume that Kroger parking lot lights are probably a cut off fixture, because most of those are deemed that way. Mr. Yates said that given the choice of cut off or full cut off could be added to the ordinance. Mr. Solomon said that you could do that or do it by location, such as, if the property borders residential, it might need to be a full cut off to keep the light from glaring in someone's windows.

8. Discuss/take action regarding recommendation of Lighting Ordinance to City Council

Carol Langley asked about Section 98-381(4) where it addresses parking lot lighting and says that all lighting shall be full cut off. Mr. Yates said that they will give them a choice of cut off or full cut off. Carol Langley said that she liked that. Mr. Foerster said that they will also need to add the definition of "cut off." Mr. Solomon said that as far as property or structures bordering residential property would deem that light to be a full cut off and not disperse light past their property. Mr. Yates advised that Section 98-381(c)(2) addresses multi-family residential property and can add "if it borders residential property it shall be full cut off."

Jeffrey Waddell asked Mr. Yates if he was comfortable with his staff enforcing an ordinance like this with all the time involved for somebody to review the information, and

asked how it would change things from how it is being currently done for enforcement. Mr. Fleming said that he did not know that it would change much because the building code reviewer would just have to be notified of the new requirements and the building code officer who goes out on site to do above grade inspections would also need to be notified. Mr. Fleming advised that both of those people are third party consultants that work with a host of municipalities around here so it is not something that they have not been exposed to already. Mr. Foerster asked whether Rick Hanna, Code Enforcement Officer, has been approached about this information to get his suggestions. Mr. Yates said that he had been consulted, and he said that this would not be much more for him other than glancing at the light fixtures to make sure they are correct.

Mr. Foerster said that the terms “cut off” and “luminous flux” need to be defined because the average person won’t know what that means. Mr. Foerster said that as they draft this ordinance it needs to be easily understandable.

Mr. Solomon said that the main issue that he sees with lighting ordinances is the height of the pole is going to mean how far out the light throws, which is going to be the architectural engineer drawing the plans to determine what light fixture and how far actually throws out. Mr. Fleming asked about retro fitting existing light fixtures like the Brookshire Bros. lot. Mr. Solomon said that it would probably require a lot of light fixture change outs on the poles. Mr. Solomon said that he was almost positive that there were shoebox fixtures on the poles at Brookshire Bros. parking lot, which would be a cut off fixture.

Mr. Fleming asked at what point the businesses would be required to bring their fixtures up to the current Code. Mr. Solomon said that he would think that if it would be anything that would have to be replaced, it would need to be brought up to the current specifications.

Carol Langley asked if Mr. Solomon was familiar with what the Cowboy Church has in their parking lot. Mr. Solomon said that he was not. Mr. Solomon said that at his parking lot they actually have one of each of the fixtures, one a semi cut off fixture that is a flood

light mounted and shining into the parking lot from a light pole. Mr. Solomon said that they have cut off fixtures in the parking area on another light pole.

Carol Langley said that the Cowboy Church is the problem and it is surrounded by residential property, except on SH105. So evidently the residences around the parking lot don't think they have cut off or full cut off. Mr. Solomon said that he could drive through and check them. Carol Langley asked if when one of their lights went out would it be grandfathered and they just replace the bulb, or would they have to replace the fixture. Mr. Yates said that they would be able to replace the bulb.

Chairman Cox asked whether they needed to include the height of the pole in the ordinance. Mr. Yates said that he did not think so at the time because of the definition that it could not cause glare to the residential area. Mr. Solomon said that with a 30 foot pole, no matter what fixture, you will get some glare, so that might be something to consider. Jeffrey Waddell asked what a typical height was for a parking lot pole. Mr. Solomon said that it varies, and he would say that around 30 foot for a larger parking lot. Jeffrey Waddell said that the larger parking lots don't usually have residents around them.

Carol Langley asked about Section 98-382(c) (d), and whether this was over and above the sign ordinance that they have already or does it blend with the sign. Mr. Yates said that this was a bit more descriptive than our current ordinance and he felt it described it better. Carol Langley asked if this was saying that they could not have these types of electronic signs at all. Mr. Yates said that he did not mean that, so he would recommend excluding (c) and (d) of that Section. Carol Langley said that the sign just can't flash, which is addressed in the current sign ordinance.

Mr. Yates said that he did receive one comment from Ken Stephens at 65 Waterstone who said that he was in favor of a lighting ordinance that requires the use of full cut off fixtures because the back of his house is lit up from the Industrial Park on FM1097.

Mr. Foerster commented on page 3 that discusses municipal activities and states that all municipal activities shall be exempt from the requirements of this ordinance. Mr. Foerster said that he was wondering if they should also exempt State activities, because as the City grows and they have more traffic on SH 105 and FM 149, he could see the State putting in significant lights along SH 105 and FM 149. Mr. Foerster said that he was not sure that the City's ordinance could override the State's right to put the best lighting for traffic purposes. Carol Langley asked if Section 98-383(1) traffic control signals and devices, would not be enough since they were talking about lighting along those roads, so she agreed that they needed to add "State activities." Mr. Foerster said that he thought what he had seen on the Interstate was a type of cut off fixture put up by the State. Mr. Fleming said that was correct. Mr. Solomon said that Section 98-381(b)(2) has a height restriction of 25 feet for street lighting. Mr. Solomon said that all the decorative street lights in the Historic District, adding any new fixtures would be against the ordinance. Mr. Yates said that there are fixtures that cap the light making it like a full cut off light. Mr. Fleming said that the Historic District is treated differently, so they might want to add a section for that District. Mr. Foerster asked if they wanted to change Section 98-381(6) Municipal Activities by changing it to read "State and Municipal Activities" as being exempt. The Commission concurred that would be the easiest way to change it.

Carol Langley asked about Section 98-384(a) that says the ordinance shall be enforced by the Planning and Zoning Commission and the City. Mr. Yates said that it should be the City Administrator. Mr. Foerster said that they would add "or his/her designee" that would allow Rick Hanna or any of the other Code Enforcement Officers to be delegated by the City Administrator to do that.

Chairman Cox asked if they would send this proposed ordinance to City Council for approval, with the changes that have been made. Mr. Yates said that was correct if that was what they wanted to do.

Mr. Foerster reviewed the changes that were to be made as follows:

- Add definition for cut off;

- Add definition for luminous flux;
- Remove 98-382.(c)(d) totally;
- Add “State and Municipal Activities” to 98-381(6); and
- Remove Planning and Zoning Commission from Section 98-384(a) and add City Administrator or his/her designee.

Jeffrey Waddell moved to recommend the Lighting Ordinance, with the noted changes, to the City Council. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

9. Report regarding tree ordinance

Mr. Yates advised that this information was based on the information from the City of Oak Leaf, which is south of Dallas. Mr. Yates said that the ordinance does require a tree replacement plan for all properties with 5 acres of property and does not include current subdivided property. Mr. Yates said that the premise of the ordinance is that you can still cut down trees, you just have to replace them with an equal amount of coverage of the canopy. Mr. Yates said that what he would like to do is show this ordinance to a couple of the local developers and get their comments before he recommends it to the Commission or City Council. Mr. Foerster said that he was not sure that they would be able to apply this information to the extra territorial jurisdiction of the City, it would only apply the City limits.

Carol Langley asked about Section 3.1804, and whether the Police Chief was still the Emergency Management Coordinator or was it the City Administrator. Mr. Yates said that he would get that information. Carol Langley asked when they would see a fee schedule and how does it work. Mr. Yates said that it would be part of the ordinance, which he would get for probably next month. Mr. Yates said that he also had obtained a list of approved trees from the City of Conroe that fits our area better. Carol Langley asked if Mr. Yates had seen the fee schedule and whether it was reasonable. Mr. Yates said that he

had seen it. Mr. Yates said that he thought the plan review was \$150 dollars and the trees are \$6 dollars per 2 inch caliper, so he felt that it was very reasonable.

Carol Langley said that ordinance was a very thorough, and somebody has really got to be on their toes, and who would that be. Mr. Yates said that the City would have to hire an arborist, which the fees would cover. Mr. Yates said that he will have to speak to an arborist to get pricing. Carol Langley said that the arborist for Cedar Brake Park was not cheap. Mr. Fleming said that as they move forward, developers will have to set up an escrow account, but they need to determine a dollar amount possibly \$5,000, \$10,000 or \$15,000, depending on the acreage of the development. Mr. Fleming said that the Code was very specific about all the expenses incurred by the City on the behalf of the development including, legal, engineering, plan and plat reviews, code review, code enforcement, etc., is to be covered by and reimbursed by the developer. Mr. Fleming said that they are trying to make that process as easy as possible by establishing an escrow account upfront and then all fees would be pulled directly from that account. Mr. Fleming said that as long as this is clearly worded and incorporated into the ordinance, in his mind, this is just one more review fee or expense that the City can incur on behalf of the development, thereby pulled from the escrow account. Jeffrey Waddell said that it helps if everything is all very clear up front.

Mr. Foerster said that they are going to want to have a public hearing on both the lighting ordinance and the tree ordinance and City Council will need to conduct a public hearing so they can all get input from people to see if there is something that they are missing. Carol Langley said that she had people call her on the lighting ordinance and they were going to come to the meeting but they did not show up at the meeting.

10. Discuss take action regarding authorizing the purchase of tablets to convert to paperless agendas for Planning and Zoning Commission meetings

Mr. Yates stated that the City Council and the MEDC has already approved this item. Mr. Yates said that they would be receiving a \$200 tablet that each member would be assigned

and they would receive their agenda packs via email, except for oversized plats, which would be delivered to them. Mr. Yates said that he was kind of concerned with how he would learn the tablet, but it only took him about five minutes and it is very simple. Mr. Yates said that this would save quite a bit of staff time and police time to deliver the packets. Mr. Yates said that he thought it would actually be easier for the Commission because the tablets are large enough to be read easily.

Susan Hensley, City Secretary advised that she was getting City emails set up for everybody and that is where the agenda pack will be sent. Ms. Hensley advised that the tablet will have Word, Excel, PowerPoint and Adobe Reader. Ms. Hensley stated that at the last City Council Meeting she had the tablets set up and ready and the Council members used the tablets for the meeting and it went very well. Mr. Yates advised that he would be putting his notes with each individual item instead of at the front of the packet. Ms. Hensley stated that the tablets would be set up and ready to use, with a Bluetooth keyboard case so you can use the keyboard or touchscreen. Chairman Cox asked if Ms. Hensley would be able to give instruction on the tablet. Ms. Hensley advised that she would be more than glad to assist with the tablets. Ms. Hensley said that the tablets can be ordered in the morning and she will receive them in a couple of days. William Simpson asked if each meeting will be saved on the tablet so they can go back and look at them. Ms. Hensley said that she will email the packet and they will open them in Adobe and it will save them onto their computer. Carol Langley asked if they would have to sign for the tablets. Ms. Hensley advised that they would have to sign for them and everything would be logged.

Arnette Easley moved to accept this great technology and all these fine findings. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

Mr. Fleming stated that a copy of the memo that he had delivered to the MEDC a week ago as an update to them. Mr. Fleming advised that McCoy's development is moving forward and wrapping up their request for rezoning, and the construction drawings are on his desk. Mr. Fleming said that one of the things that they identified from the very beginning was that water service was already available to them, but they were going to need an extension

of the City's sanitary sewer to reach their tract. Mr. Fleming said that McCoy's has indicated to them from the very beginning that in order to guarantee their own timeline for construction and to adhere to their opening date, which they are hoping to make late spring of 2017, they would be willing to fund the entirety of that construction cost upfront. Mr. Fleming said that while they only need an 8 inch line to serve them, which is about 2,100 feet, and there is an item in the City's Code that offers a mechanism for the City if they deem it prudent from a future planning perspective to fund the cost associated with upsizing the line larger than what a particular development needs. Mr. Fleming said that in this case McCoy's only needs an 8 inch line to serve them, however, from a future planning perspective it would make very good sense for the City to consider upsizing that line to a 12 inch line. Mr. Fleming said that would guarantee that they would collect all the future development along the southern right of way of SH 105, possibly even divert or limit one or two existing lift stations in the process. Mr. Fleming said that his recommendation to the MEDC last week was that this is something that they definitely want to consider. Mr. Fleming said that he did not have real hard numbers on it right now, but based on current bids that they have seen it could be a difference of \$18 - \$22 per linear foot, so he would expect the cost with engineering and contingencies would probably be in the neighborhood of a \$50,000 contribution. Mr. Fleming said that this is going to be coming up pretty quickly for consideration in the next 30-60 days.

**ADJOURNMENT**

William Simpson moved to adjourn the meeting at 8:14 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Submitted by:

  
Susan Hensley, City Secretary

Date Approved:

06/27/16

  
Chairman Nelson Cox

