

MINUTES OF REGULAR MEETING
February 6, 2024
MONTGOMERY PLANNING & ZONING COMMISSION

CALL TO ORDER

Chairman Simpson declared a quorum was present and called the meeting to order at 6:00 p.m.

Present: Bill Simpson, Merriam Walker, Thomas Czulewicz, John Fox

Absent: Daniel Gazda

Also Present: Dave McCorquodale, Director of Planning & Development

Alan Petrov, City Attorney

Katherine Vu, P.E., City Engineer

VISITOR/CITIZENS FORUM:

Mr. McCorquodale said the applicants for items #2-5 are present.

Chairman Simpson asked Mr. McCorquodale to move items #4, #5 up to follow item #2.

1. **Consideration and possible action on January 2, 2024, Regular Meeting Minutes.**

Merriam Walker moved to approve the January 2, 2024, Regular Meeting Minutes. Thomas Czulewicz seconded the motion. **Motion carried (4-0).**

2. **Consideration and possible action on a wall sign for Bar & Vines located at 401 College Street Suite 150 in the Historic Preservation District.**

Mr. McCorquodale said this sign is the same size as the H-Bistrot sign and is related to a name change from one to the other.

Merriam Walker asked if the establishment is changing in any way other than just the name and asked if the light on the sign is from behind.

Mr. Harold Vines, the owner replied no, just changing the dba and the logo, no light.

Merriam Walker moved to approve the wall sign for Bar & Vines located at 401 College Street Suite 150 in the Historic Preservation District. Thomas Czulewicz seconded the motion. **Motion carried (4-0).**

3. **Consideration and possible action on the Preliminary Plat for Hills of Town Creek Section Five.**

Ms. Vu said section five is the last remaining subdivision. She said with the platting of this section, this will complete Emma's Way out to Lone Star Parkway. She went on to say section five consists of 73 lots similar in size to sections one through four. They have reviewed preliminary plats. Their review was based on the City's Code of Ordinances as well as any previously approved variances that apply to the property. Additionally, they were given four variances. One was for minimum lot width to allow them to go down to 3-foot lot width, lot depth to allow them to go down to 100-foot minimum lot area of 5,500 square feet and a side-yard setback of 5-feet. Ms. Vu said these variances were previously approved on December 14, 2021, and that is the criteria they reviewed against.

Ms. Vu stated the street widths, the entrance lane, the city right-of-way, internal streets, driveways will remain even width and that is in accordance with the ordinances.

Merriam Walker asked if those are the ones that have the smooth curb.

Ms. Vu responded that was correct, they will all have the roll over curb just like sections two through four. Chairman Simpson asked if this was the last section.

Ms. Vu said yes, it is the last section.

Thomas Czulewicz asked if the streets were 28 feet and in accordance with what?

Ms. Vu responded yes, they were and in accordance with the City's Code of Ordinances. She said these are considered minor residential streets since each street goes through the internal and each serves less than 50 lots, so they classify as a minor residential street with a 50-foot driveway with a 28-foot pavement width. This is the preliminary plat that is the first step before they begin reviewing construction plans. She said by approving the preliminary plan it simply allows the next step in the planning process to continue.

Merriam Walker moved to approve the action on the preliminary plat for Hills of Town Creek Section Five. John Fox seconded the motion. **Motion carried (3-1)** Thomas Czulewicz voted against.

Discussion after the motion.

John Fox said because this was a planned community, as they build each section of the community, they then get drug into going along from one section to the next section to all those things were approved with variances that were approved in the first section and third section. John Fox asked if this is the way he reads this.

Ms. Vu said not with this development. With this development, each section the variance is granted individually and with other developments it is in the beginning as part of the development agreement but that is not the process with Hills of Town Creek. She said they did grant requests for section two and three, a separate one for section four and section five was originally active in 2021 when the variances were originally presented, and section one was on hold for a couple of years and has now come back.

John Fox said he is not clear on the plat approval process from start to end and he thinks it is very important they understand where they are in that line of approval and how they are getting there. He said it looks to him like a rush on the 50-foot lots and somewhere it has to stop.

For the preliminary they go over what kind of requirements they are proposing and anything outside of what the code is that would require a variance request. If the variance is not granted before the preliminary plat, she is only allowed to review against the ordinances, so the variances come first and then the preliminary plat. The final plat is the one that is recorded with the County. It subdivides the property and provides a legal property boundary for every plot and reserves.

Chairman Simpson asked if they asked for variances for the narrower and smaller lots that comes to the Board first and then City Council makes the variance decision.

Mr. Petrov, City Attorney said is does not go to the Board. He said the variances go to the Board of Adjustment which in this case is the City Council, and they make that call. The commission's job in approving plats or preliminary plats is what the courts call "ministerial function." He said you do not have a lot of discretion and your only function is to look at the plat document that is submitted and whether or not it meets all of the code requirements for those plat documents. There is a list of codes of what they have to have on there in terms of the scale of the plat, boundary lines, identification markers, and easements, and if it meets all of those and meets all of your zoning code requirements then you are actually **required** to approve the plat.

Mr. Petrov continues that in this case it does not meet the zoning code requirements as they normally are, but they have variances ahead of time and granted through the City Council. He said it is a situation where if they complied with those requirements then you are essentially required to.

Chairman Simpson asked if the lot sizes that are in their ordinances right now are the lot size they are stuck with until things change.

Thomas Czulewicz said the lot size in their ordinance is 75 feet.

Mr. McCorquodale responded yes correct.

John Fox said he thinks where that leaves them is they have other action by City Council to allow variance and when they see it, they do not know if there is any variance involved in the approval process. They are not seeing the variance and the only thing they see is the plat. He said there is no way for them to know incrementally how it went through each one of those steps and how the variance got there. He said it sounds like they start negotiations way up front. They start the initial history and study of the possibility of using the property as a development with certain size lots and it looks like they start negotiating all of that away right away. He said he thinks it should be a more ridged requirement.

Mr. McCorquodale said one of the things they changed in the past couple years at the staff level was the Board of Adjustment, the small portion of the code that speaks to the genre of Board of Adjustment says they can get the opinion of the Planning and Zoning Commission whereas with the rezoning the Planning and Zoning Commission is required to give a recommendation. He said they started bringing those to Planning and Zoning for a recommendation before it goes to City Council because they are going to ask what does Planning and Zoning think about this. He said this one is a bit different as it was granted in December 2021 so there is a lot of water under the bridge between then and now.

Thomas Czulewicz asked what the process is going forward now and are they going to have an opportunity as the Planning and Zoning Commission to see these requests for variances before they are approved by the Board of Adjustment.

Mr. McCorquodale said in addition to proactively coming to Planning and Zoning for a recommendation before it goes to the Board of Adjustment, one other change they made is during the feasibility study they had seen a very similar thing where there are a lot of conversations and a lot of work that goes on and the Planning and Zoning gets involved and they feel like they are way involved after the fact, so one of the things they are trying to do is bring the feasibility report to them and review it with everyone so you know the project. Mr.

Merriam Walker said they did bring it up that it was 75 feet then 45 feet then they agreed to 55 feet when the Hills of Town Creek was presented to them and with other neighborhoods as well. She said they did make their recommendation, but it was approved and passed by the City Council. This already happened in 2021 and they are now just seeing it three years later.

John Fox asked what it would take to get to change the ordinance itself. He said a 75-foot lot is just not feasible. He asked why they don't find middle ground if it is 60 or 65. He said when you take the size of these houses it may look good on a lot if they are not crammed together 5-foot side yard easements apart. He said the city should look at changing those ordinances, so they are not giving ordinances on everything they do.

Mr. McCorquodale said the planning update that Gary had given them that they are currently working on, they will look at every nut and bolt involved in the zoning code as well as a lot of the other development related to subdivision ordinances. He said the second piece is are there items they can package into an interim update to be able to say they know they are updating the zoning code and all of their government regulations and that will take a long time but what can they put in place early on in the process so they do not have to wait another 12 months before they have a new lot size. When you get into lot size it is deceptively simple but there is a whole lot that goes into it in terms of economic development and considerations that need to be made, but certainly if it something Planning and Zoning and City Council feel strongly about amending sooner then it is something they can put on their list and talk with the consultants about.

Chairman Simpson asked if that is the multi-code Gary is working on now.

Mr. McCorquodale said yes.

4. **Consideration and possible action on a freestanding sign for 504 Caroline Street located in the Historic Preservation District.**

Mr. McCorquodale said the survey found on page 18 shows where they are planning to locate the sign near the intersection of Caroline and Liberty Streets at the southeast corner of the property. Page 20 shows the graphics of what the actual sign will look like.

Merriam Walker asked when you call it freestanding are you referring to it being on a base or what exactly does freestanding mean.

Mr. McCorquodale said freestanding means it is not attached to anything.

Merriam Walker asked several questions, if it is lit or electricity goes to it, if it matters if it has electricity or not being right there on the corner, and if the sign stays within the perimeter of the boundaries of the property or does it go over.

The representative responded it was not lit.

Mr. McCorquodale said he does not see how they would electrify this particular sign.

The representative said he believes it is inside the boundaries of the property.

Merriam Walker asked if they are permanent signs or do they have to be refinished and redone as the years go by with the wear and tear of the wind and the weather.

The representative responded he is not sure, but he is sure Mr. Cox is pretty adamant about things staying nice looking so if it shows any wear and tear, he does not think that will be an issue.

Mr. McCorquodale said there is not a technical standard that is in their ordinance that requires a certain UV rating.

Merriam Walker moved to approve the freestanding sign for 504 Caroline Street located in the Historic Preservation District. John Fox seconded the motion. **Motion carried (4-0).**

5. **Consideration and possible action on a wall sign for 504 Caroline Street located in the Historic Preservation District.**

Mr. McCorquodale said on page 22 is the detail of the sign with the dimensions and specs of the sign. It is a wall sign, and, in the packet, it shows where the sign will be located, it is not flat to the wall but hangs out perpendicular so much that they call it the shingle style sign.

Merriam Walker asked the applicant how it is attached to the wall and what material it was made of.

The representative responded the bracket will stick out from the wall with screws in the wall to the bracket, it is made out of aluminum.

Chairman Simpson asked if other tenants move into the building will it be a similar sign.

The representative said yes, he believes that will be the case.

Thomas Czulewicz moved to approve a wall sign for 504 Caroline Street located in the Historic Preservation District. Merriam Walker seconded the motion. **Motion carried (4-0).**

6. **Review and discussion regarding Land Use Assumptions map to be used in the impact fee updates.**

Ms. Vu stated they briefly discussed impact fees last month and what that means for the city. adding the next step in the impact fee process is to review land use assumptions. She said the impact fees are based on the cost of the capital projects needed to serve the City in the next 10 years and the other part is the anticipated growth in the next ten (10) years. In order for them to calculate that they have to make some assumptions on what is going to go on the undeveloped pieces of property.

Ms. Vu pointed referred to the overlays shown, which outline the undeveloped areas. Anything that does not have an overlay hash on it is either already existing, it is currently in design and so they already have a solid idea of what is going there, or it is a flood plain and is undevelopable land, so it is not included in their assumptions for land use. She stated the next action is to create water and sewer projections. She said behind the map you will find their projections. We look at every development in the city single-family, commercial, institutional as well as what is potentially coming, and what is existing then they base it on actual usage. They have meter data and will look over the past 12 months for an average daily use, taking the average current usage and apply it to future developments that are coming.

Ms. Vu said their buildout as they are looking to the future the speed of construction for the connections, they are expecting per year is based off of a couple of factors. One factor is if a developer tells them they are planning to build around 60 to 90 homes per year that gives them a very clear idea of what to expect for the future. Otherwise, they look at trends in the city of how many connections are going in be it single-family connections, commercial connections and make an educated prediction from there. She went on to state that this is a time for you to give feedback on the assumptions that are made, because that will ultimately drive the impact fees. If you see an area the is currently zoned as residential and you would like to change the land use assumptions to something different now is the time to bring that up.

Merriam Walker asked if they only have tonight to decide.

Ms. Vu responded they can assess this again next month as well. You do not have to make a final decision. When they are looking at usages for what a typical single-family home uses, they look at historical meter data. The State has a scanner for what they think a typical single-family home uses and their standard is very high. They expect a typical single-family home to use 360 gallons per day. She said what they have typically seen in the cities is 200 to 225 gallons per day. She said to be conservative but not dangerously so, they use 225 gallons per day for a single-family connection especially with the smaller homes and the smaller lots the irrigation is a lot less and sometimes those averages will dip below 200 gallons per day.

When looking at commercial usage it is hard to know what is going to go into commercial. It could be a retail with a single bathroom and low usage or a restaurant with very high usage. To try and equalize that they use a middle ground average. This is the industry standard they call an equivalent single-family connection.

Tom Czulewicz asked what the significance of the yellow dots on the planned development is. He said there are some that have yellow dots and some do not.

Ms. Vu said the ones that do not have yellow dots are known developments. The ones with the yellow dots the City zone for planned development allows for mixed use so they do not know what that is going to be.

Tom Czulewicz asked if the section that is northeast of the intersection of Buffalo Springs and Lone Star Parkway across from Town Creek Crossing will have yellow dots there that is mixed use.

Ms. Vu said that is mixed use and they have seen ideas for commercial to go there and they have seen ideas for residential to go there. Right now, there is no concrete movement on that property. She said that is one option for CIAC to say they would like to assume that corner tract is going to be residential, or we would like to assume the one to the south is going to be residential. This is where the CIAC provides direction on that.

John Fox asked how do they define the flood plain area on this map.

Ms. Vu said if it is within the boundaries of a tract that is partially usable, they did not necessarily completely eliminate it as there are ways to work around it. She wanted to point out one that was specifically removed from it is next to where the CTE building is going. There is the MISD CTE and a blank area and some yellow dots. The yellow area was platted with Town Creek Crossing Section One as a drainage reserve

and it is almost entirely flood plain and flood way so that area not only is it not developable by flood plain, but it was also plated as a drainage reserve so nothing will go there.

Chairman Simpson said what they need to do by the next meeting is look at this and come up with ideas on best use in different areas than what they are marked.

Ms. Vu said yes and if there were any changes in assumptions they would like to see, that would be a good time to bring it up and specifically draw attention to the planned development area.

Chairman Simpson asked with regard to the future of the city are they looking at more residential or more commercial or industrial.

Ms. Vu said yes, be cautious against making too many changes. She said with impact fees you can do updates as often as you like. What you are deciding on while yes, it will affect this current update, you are not locked in place for the next 10 or 20 years.

Thomas Czulewicz asked about the different areas and how do the impact fees relate to those areas like industrial for instance. He also asked what the impact fees are used for.

Ms. Vu responded that impact fees are applied the same across the city, so they do not have an industrial impact fee or residential impact fee. The way they are calculated is based on the size of your water meter. Since everything is based on the standard single-family home the single-family house will pay a certain rate. There is a multiplier in capacity of that meter as they go to larger meters that multiplier is applied to the impact fees.

Thomas Czulewicz asked if the impact fees go in a fund for future maintenance and expansion.

Ms. Vu responded that the impact fees collected go into a separate impact fee fund. The only thing those funds are allowed to be spent on are projects that are on the impact fee list. The only thing impact fees are allowed to be spent on are those projects against the capital costs.

Thomas Czulewicz asked if the impact fees are the same regardless of the land use what are they looking at as far as assumptions. It is an assumptions map, but assumption impact fees are the same wherever he looks on the map based on meter usage.

Ms. Vu said yes, essentially the difference that makes is if they are looking at a fraction, the numerator is the capital cost, but what you are changing is the denominator. If they are assuming that property is going to be commercial that will have a different assumed number of connections with a different demand on the system than if that tract becomes homes. The draw on the system the demand is different and so what that then changes is what is the impact fee per connection. It will still be uniformly applied but what that number is will change because the land use has changed.

Thomas Czulewicz asked if an industry moves in and at the time of construction says they need a certain amount of water, what happens three years later when they have to double that amount. Will they have a new impact fee?

Ms. Vu said they do not, so their impact fee is based on the size of the meter and the size of the meter is determined by how much flow they are going to use. If all of a sudden that industry says they are going to use 30,000 gallons and start using 100,000 gallons per day they will have a conversation with them on why they are using so much more and what has changed. They would need to end up getting a larger meter and pay a different impact fee or get a second meter with a second tap and pay an impact fee for that second tap.

Thomas Czulewicz said he is trying to see if there is a way they might try to beat the system.

Ms. Vu said that is something they keep an eye on, especially with the car washes and they can tell that with their water usage.

Thomas Czulewicz said that is covered by the monthly bill for water and sewer.

Ms. Vu said yes.

Mr. Petrov said part of it is also that you update this periodically and in fact the statute requires it is done every five years because we are making a best guess at this point in time for the next five year period. As we know, with the economy and real estate the things we think will happen do not always happen. When you come back and revisit a few years down the line you make adjustments and that is actually what this whole process is. You are adjusting from the impact fees that were established five years ago and they are constantly being reviewed and updated over time.

Chairman Simpson asked how far off are they from five years ago on what they should be.

Ms. Vu said they are lower. Five years ago, their daily usage was lower than what they thought it would be. What they have changed since then is how much they assumed each home or equivalent connection uses. Five years ago, that assumption was 360 gallons per day. Now they are basing it on actual flows and the biggest reason is not wanting to overbuild and expand facilities prematurely and then they do not get fully utilized. They want to expand at the right time.

Thomas Czulewicz asked what they are talking about dollar wise per meter size.

Ms. Vu said the currently the 5/8-inch meter is your base line is two parts, the water and sewer impact fee which combined is about \$3,800 per connection and increases from there.

Thomas Czulewicz asked if at the time of construction, the developer pays that, and it is wrapped into the price of the house.

Ms. Vu responded the impact fees are assessed at the time of plating and are due at the time of connection. Plating early, the developer can lock in their impact fees and do not have to pay until they are physically connected to the system.

Thomas Czulewicz said all these developments that were approved years ago they got a little price impact fee than the new developer.

Ms. Vu said this is actually the first update to the impact fees since they have been done and went into effect. The impact fees are relatively new to the city within the last five to 10 years.

Chairman Simpson asked if the \$3,800 per household is high or low to what they are looking at now.

Ms. Vu said you will see a small increase but does not know exactly what that number is yet because they need to finish up the land use assumptions.

Chairman Simpson asked if that would be the same thing for commercial.

Ms. Vu said yes there will be an increase to all the meter sizes, but they are not expecting a large increase.

Mr. McCorquodale asked about the Capital Project List where in the process are they looking at.

Ms. Vu said after land assumptions are approved, they will bring the full packet to you to present and walk you through what projects they are including, what is the expected cost of it so they can include construction fees and everything that goes into it. If they want to discuss this again at their March meeting they can. At that point after this is set in place, then the next meeting they will bring the impact fee packet to you. If you are not seeing anything in having substantial changes, they can go ahead and bring the final draft of that to your next meeting so they can start to walk through the project list so you can get an idea of it.

Thomas Czulewicz said he would like to look at the assumptions in more detail so they can discuss it at the next meeting.

Ms. Vu said they will bring that to the next meeting so they can see what water and sewer projects they are looking at and how do they get the numbers.

Merriam Walker said she sees a lot of lists of different things that are on here but has not seen Home Depot. She said she did not see the name on the spreadsheet.

Ms. Vu said it is titled under Buffalo Springs Shopping Phase 2. The reason it is there and not in the future section is because that reserve was already platted back in 2016.

Mr. McCorquodale said a good example of one where they will not pay an impact fee but their cost for their tap falls under what the old fee structure was the actual cost-plus 200 percent of the cost because of when they platted and when the Home Depot parcel was a legal lot ready to be built on. He added that without having a ton of experience in looking at these you do not see a big difference between the cost-plus 200 percent. Several years ago when they were dealing with that effective date and had some subdivisions that were before and some subdivisions that were after, the cost plus 200 percent and the impact fee amount were very close so even the impact fee the biggest difference between the cost plus 200 percent and when the developer pays that they can use that on anything in the water sewer system that needs it. The big difference with these impact fees is the expansion of the system in part of that specific development coming into the city.

Thomas Czulewicz said it seems like the cost-plus 200 percent would be a better system because the impact fee does not take into effect inflation as far as the cost. For instance, today the hourly wage for you to make a connection is going to be far different three years from now. It seems like the cost-plus 200 percent would be a more equitable and efficient way for the city to do business.

Ms. Vu said when they are looking at the costs of these projects, they do look at inflation and make sure they are not losing money to inflation. When they are building those costs, they take into account what year they think this project is going to need to happen. The timing of that can make a difference in the pricing.

Thomas Czulewicz said for instance over the last three years nobody anticipated the inflation rate going as fast as it has so if they run into that again you are actually going to be losing your impact fee versus cost.

Ms. Vu said that is another reason to do a periodic update.

Thomas Czulewicz asked if there is a way to tie the inflation rate to periodic update.

Ms. Vu said maybe not directly but whenever they are doing an update on these costs, they are rebuilding all of the cost estimates to get these costs and when they build the cost estimates they base them on actual construction costs and so it does take into account inflation. In the five-year update that they have done some of the projects have not changed and some of them are still the same projects that they thought were going to be needed when they first did the impact fees, and they are still needed and on the list, but the cost of them has changed over time.

Chairman Simpson asked if they pay the impact fee in real time, not when they bought the property but when it is connected.

Ms. Vu said the only reason that would not be the case is if it was by a separate development agreement.

Thomas Czulewicz asked if you do agree to impact fees before the development agreement.

Ms. Vu gave a couple of tangible examples of this. Montgomery Bend and Redbird Meadows both developments had capital expenses that had to be done to serve the property, so they had a development agreement, each developer had an agreement with the city that impact fees are assessed and due at the time of platting, so they prepay.

COMMISSION INQUIRY:

None at this time.

ADJOURNMENT

Thomas Czulewicz moved to adjourn the meeting at 7:00 p.m. Merriam Walker seconded the motion.
Motion Carried (4-0)

Prepared by:

Date approved:

Diana Titus, Deputy City Secretary

Attest: _____
Nici Browe, TRMC, City Secretary

Bill Simpson, Vice-Chairman