

**City Council Regular & Board of Adjustment Meeting
MINUTES**

May 9, 2023, at 6:00 PM

CALL TO ORDER

Mayor Byron Sanford called the meeting to order at 6:00 p.m.

Present:	Byron Sanford	Mayor
	Carol Langley	City Council Place #1
	Casey Olson	City Council Place #2
	T.J. Wilkerson	City Council Place #3
	Cheryl Fox	City Council Place #4
	Patricia Easley	City Council Place #5
Also Present:	Gary Palmer	City Administrator
	Nici Browe	City Secretary & Director of Administrative Services

CALL TO ORDER

Mayor, Byron Sanford called the meeting to order at 6:00 P.M.

INVOCATION

Mayor Pro Tem, T.J. Wilkerson provided the Invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

ANNOUNCEMENTS

1. Recognition of outgoing Councilmember TJ Wilkerson.

Mayor Byron Sanford presented Councilmember TJ Wilkerson with a plaque and flag in recognition of his dedication and service to the City of Montgomery during his term on City Council.

2. Presentation of Proclamation by Mayor designating the week of May 21-27, 2023 as "National Public Works Week".

Mayor Byron Sanford presented Eric Standifer of Public Works a proclamation in recognition of Public Works First Responders Week.

VISITOR/CITIZENS FORUM:

Ms. Sara Countryman requested that she discuss her concerns at the time of the item #6 being presented.

CONSENT AGENDA:

3. Approval of the following:
 - (a) revised City Council meeting minutes of 04-11-2023.
 - (b) City Council and Board of Adjustment meeting minutes 04-25-2023.

Councilmember Carol Langley moved to approve the consent agenda as presented. Councilmember Cheryl Fox seconded the motion. **Motion Passed (5-0).**

CONSIDERATION AND POSSIBLE ACTION:

3. Presentation of the Annual Financial Report and Audit from Belt Harris Pechachek, LLLP.

Ms. Darla Dear, Auditor presented to Council the City's Financial Audit results. She began by thanking Nici, Dave and Gary for all of their assistance in providing the documentation that had been requested in order to complete the audit.

She addressed the council and instructed them to review page 1. As this is the "opinion page" and out of the entire packet is the most important page. The Auditors issued the city with an "unmodified opinion" which is a great opinion. She reviewed pages 24 and 25 which was the revenue and expenditure and stated the City had an ending fund balance of \$2,5154 million which is an excellent job. Most government entities should be looking to keep a minimum of 25% in the fund balance to cover three months of operating expenses, the city is running at 38%.

She stated that on Page 67 you can see that the city came in under budget by \$446,000.00.

Ms. Dear concluded her presentation and requested any questions from the council.

Council did not ask any questions.

4. Consideration and possible action by the City Council acting as the Zoning Board of Adjustment on a revised variance request to Section 98-122 of the City Code of Ordinances related to rear yard requirements for 128 Dina Lane.

Mr. Dave McCorquodale informed the council that this item is a revised request, the applicant has complied with the conditional recommendations from Planning & Zoning and has supplied a drainage plan, and there is a 5 ft. encroachment. Staff are recommending approval of the variance for a 5ft encroachment, and no raised beds and or decking.

Councilmember Casey Olson moved to approve the variance as presented along with the conditions of the submitted drainage plan and no raised beds or decking. Councilmember Cheryl Fox seconded the motion. Motion Passed (5-0).

5. Receive the Final Report from the Planning & Zoning Commission on a rezoning request for 14640 Liberty Street, Montgomery, Texas from R1-Single Family Residential to B-Commercial as submitted by Evan Ballew and convene into a Public Hearing for the purpose of allowing interested parties to be heard.

Mr. Dave McCorquodale presented this item and informed the council that the recommendation of the Planning & Zoning Commission is not to rezone the property as requested. Tonight, is the Public Hearing which is a legal requirement for any rezoning request.

Mayor Byron Sanford opened the public hearing at: 6:22 P.M.

*****Audio from the podium is at time distorted***

Sara Countryman, resident stated that she had been doing her research last week and wanted to bring a few things to light. The State Law in the State of Texas says that the Specific Use Permit (SUP) is not a tool for circumventing the table of uses. Currently, today the house is zoned R = Residential and that means it is residential as someone should be living in that house, continues as R zoning and to be considered for Special Use there has to be a requirement such as ‘home occupation’, for that.

She went on to state that our city codes have those standards spelled out and, in the Planning & Zoning meeting, although they voted “no” staff did not go through the items (“which I have here”) A through G of what the requirements are, the homeowner said he wanted to do just inside and outside paint and add parking. According to item G on the Code of Ordinances those *(audio distorted)* done.

Ms. Countryman continued that he (homeowner) wasn’t advised differently, and she doesn’t know if staff is aware or fully understands what is being done and that the conditions are of home occupancy and what the conditions are for a special use permit. Spot Zoning is not in our City Code and not like Harris County where you can have residential, industrial and convert from residential to commercial. That area according to the current Adopted 2018 Zoning map is zoned residential. She noticed in the P&Z packets there was a map and Merriam Walker bought it up as well it shows it to be “Future Commercial”, that has never been and is a “pie in the sky” idea by the former administrator Jack Yates in 2015, it has never been adopted. The fact that was bought up as a possibility makes her feel like the staff is hoodwinking or directing people to do something as he thinks that the council will approve a Special Use Permit. She wonders if we are advising correctly.

Ms. Countryman went on to add that P&Z accepted this zoning in 2018 on a 9/24/2018 meeting item no. 6, on page 74 there is a map, that’s the map that should have been presented to the owner and as she has mentioned some of these homes don’t have titles and deeds, so turning them into commercial property is a pipe dream.

Julie Dennison, resident

stated that she is against the property being zoned commercial as firstly its in her back yard and they purchased their home as a forever home. The house in question was built as a home and that is the way it needs to stay. If you let this gentleman, go commercial in it, then the next one and next one after that and you will end up with a strip there which will sit vacant and its going to cause rats, dumpsters would be placed there and who knows what types of businesses would go in the other places.

Ms. Dennison continued by stating that when they purchased their home, they were told it was residential and that it would all stay residential, she understands there are deed problems but feels that could all be resolved pretty easily. She reiterated that she is against this commercial application.

She went on to say she is sorry the gentleman has put a lot of money into the place, it was built as a home, he knew it was a home and he should have checked everything out before he placed his business in there to start with. She wants it to remain residential as it could ruin their property values.

Evan Bellew, property owner introduced himself and stated he had been here in town for 25 years, and he had opportunities to take his business to other local cities, and recognizes that is no one’s problem but his, but he did want to have his business where he lives, although not “in” but right on the outside and wants to continue to contribute to the city as he has previously worked at the Montgomery Fire Department and is now at the Magnolia Fire Department.

Mr. Bellew stated he truly wanted a place for his business to go in and based on the city’s future land use plan maps which he found on his own accord and researched through the city’s website, he had communicated with staff on other properties he has which has been impacted by the city’s

infrastructure, staff have been very helpful on that, he has tried to follow due process and whatever decisions are made here today, he is open to any available options.

Councilmember Carol Langley inquired if Mr. Bellew had purchased the property.

Mr. Bellew confirmed that he had.

Mayor Sanford closed the public hearing at 6:29 P.M.

Councilmember Casey Olson stated he has a question on the zoning maps that he has in front of him.

Mr. McCorquodale inquired if he has questions about the differences between the zoning map and future land use map.

Councilmember Casey Olson stated that he has seen a future land use plan, but it was his understanding that it was never adopted.

Mr. McCorquodale responded that the P&Z over the course of ten (10) months in 2017 reviewed the future land use plan with the City Administrator at that time and the City Engineers. In July of that year, they met for a joint workshop (P&Z and City Council) they get all the way to the end and in September/October and the attorneys advised that they were unable to locate in records a current comprehensive plan on file, therefore the city cannot formally adopt the future land use plan. Everyone agrees it is a tool that the city wants to look to the future with.

Mr. McCorquodale continued that in October at the Planning & Zoning Commission meeting Bill Simpson moved to approve the future land use plan and recommended approval of it to City Council, amended the motion to include it with any future comprehensive plan updates that may occur, it was a unanimous vote and Ms. Carol was one of them.

He added that is the history and it is an unofficial guide and as he told the owner Mr. Bellew, he cannot tell you this is what they are for sure going to do, but it is a tool that gives us a little bit of a view. Again, it wasn't formally adopted and wasn't included in the comprehensive plan, the city spent the better part of a year with staff and consultants developing it. He concluded that it should be looked at. He feels it could use an update, it certainly wasn't a pipe dream or never saw the light day kind of thing.

Councilmember Patricia Easley inquired if it had gone through the rezoning process, with notification of the neighbors?

Mr. McCorquodale responded that it had and published the notice in the paper and said that he is there to do one main thing a rezone applicant in our city, that we as a city follow state law and the applicant has met all the requirements on the way to you.

Councilmember TJ Wilkerson inquired that if it is zoned commercial would it affect the neighbors tax base.

Mr. McCorquodale responded that it will not, he had spoken with the County several years ago when he took on a rezoning project when he first joined staff. They advised him that if land is vacant, the county is going to use our zoning, so if you a vacant piece of property zoned commercial that is the way you are going to be taxed Vacant being no structure on the land.

Therefore, with this it would not affect the surrounding properties.

Councilmember Patricia Easley inquired if they had considered a Special Use Permit (SUP).

Mr. McCorquodale responded that he had discussed that at planning and zoning and ran it by the attorneys and was advised it certainly is a tool available to use, that would allow you to change the use to professional only, or some type of office space, and if you wanted any parking restrictions, landscaping etc. then an SUP would do that.

Councilmember Patricia Easley stated that she felt part of the concern if and when he sells the property and as it is then zoned commercial how could the city prevent a service station going in.

That is why P&Z couldn't ultimately approve it to rezone commercial as it could then be any business within the permitted uses.

Alan Petrov, City Attorney reminded council that they are not discussing an SUP this evening, this is a question do you approve a rezoning request to commercial.

Councilmember Cheryl Fox inquired if he had received any other resident's opposition.

Mr. McCorquodale responded that he had been provided with notice from a relation of a resident, who was serving in the military and was not in favor of the rezone request.

Councilmember Carol Langley inquired what size is the property.

Mr. Bellew responded that it is 200 ft long and 125 ft wide. He also stated that after participating in the rezoning process it is questionable that on the application there is a box that asks does this meet the city's future land use plan. Somewhat confusing. To address Councilmember Wilkerson's point, the property is already appraised at half a million dollars, the buffalos' springs area is what is driving it up. He concluded by stating that if he didn't care for the neighbors he wouldn't be there.

Councilmember Carol Langley stated that she knows in her mind that commercial on 149 will come someday, is this the day? Probably not. There are a lot of problems in that area with regard to titles.

Councilmember Carol Langley moved to accept the final report as presented. Councilmember Cheryl Fox second the motion. **Motion Passed (5-0).**

7. Consideration and possible action on AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE ZONING CLASSIFICATIONS AS DEFINED IN THE CITY CODE OF ORDINANCES CHAPTER 98, "ZONING," FOR A 0.57-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, TRACT 16, MONTGOMERY COUNTY, TEXAS COMMONLY REFERRED TO AS A PORTION OF 14640 LIBERTY STREET, MONTGOMERY COUNTY, TEXAS FROM "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT, AS FOUND ON THE CITY'S OFFICIAL ZONING MAP TO "B" COMMERCIAL ZONING DISTRICT CLASSIFICATION; AND TO AMEND THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION.

Mr. Dave McCorquodale informed the council that this is the ordinance which relates to item No:6 and staff is recommending to not approve or move to deny it.

Councilmember Casey Olson moved to deny the ordinance for the rezoning application. Councilmember Carol Langley seconded the motion. **Motion Passed (5-0).**

EXECUTIVE SESSION:

Adjourn into Closed Session in compliance with Section 551.01 etseq. Texas Government Code, to wit:

Sections 551.071 (consultation with attorney: Redbird Meadows Development Agreement)

Council convened into Executive Session at 6:44 P.M.

Council reconvened into Regular Session at 7:05 P.M.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

Consideration and possible action on matters deliberated in Closed Executive Session.

No motion was made from executive session.

COUNCIL INQUIRY:

There were no items for Council Inquiry.

Councilmember Carol Langley moved to adjourn the meeting. Councilmember Cheryl Fox seconded the motion. **Motion passed (5-0).**

ADJOURNED: 7:05 P.M.

Submitted by: _____
Nici Browe, City Secretary

Date Approved: _____

Byron Sanford, Mayor