

MINUTES OF ZONING AND PLANNING COMMISSION
PUBLIC HEARINGS AND REGULAR MEETING
CITY OF WEST LAKE HILLS, TEXAS
August 21, 2019
6:30 P.M.

PRESENT: ZAPCO Chairman Robert Meisel, Commissioners Bill Harwell, Jim Pledger and Sarah Swanson

ABSENT: Commissioners Bill Vandersteel and Laurie Maccini

1. Call to Order. Chairman Robert Meisel.

Chairman Meisel calls the meeting to Order at 6:33 p.m.

2. Consent Agenda: The following items are considered to be self-explanatory by the Commission and will be enacted with one motion. There will be no separate discussion of these item/s unless a Commission Member or citizen so requests.
 - a. Approval of the July 17, 2019 Meeting Minutes.

COMMISSIONER PLEDGER MOVES BUT ASKS FOR CLARIFICATION IF COMMISSIONER HARWELL WAS PRESENT. COMMISSIONER SWANSON SECONDS. UNANIMOUS (3-0) APPROVAL.

3. Land Use: 3300 Bee Cave Road: A requested amendment to the Uniform Sign Agreement for Westbank Market-3300 Bee Cave Road to allow for the installation of new menu board signs at McDonald's (Chapter 32 of the West Lake Hills Code). Applicant Tracey Diehl, Expedite the Diehl LLC.
 - a. Staff Briefing.

Planner Naini: My report is on file. I left a supplementary document is on the dais. There are two menu boards that are being proposed. The sign ordinance and the Uniform Sign Agreement don't cover any provisions for menu boards. They are wanting to bring them into how their nationally boards are done. We are having to amend this agreement to make these changes. The proposed signs are single-faced signs. Both are electronic. The boards will replace the existing ones and will reduce the total signage of 95 sq. ft. It will be 44 sq. ft. total. The pre-browse will show specials of the day and the two menu boards where you actually order. We are not expecting additional traffic since it is an existing drive through. The signs will be internally lit and can be adjusted. Staff recommends approval. These changes are only applicable to the McDonald's. If lighting is an issue the tenant will work with the city to adjust it.

Chairman Meisel: The city shall have the right to require adjustment. We're not going to negotiate.

Bill Harwell: At BDC we had discussion about menu boards as opposed to signs. On that agreement, letter (e) says internal lights will not be permitted.

Commissioner Swanson: I did have a question for staff before that. I went there over the weekend specifically. It looks so much the same.

Applicant James Alfaro: The old signs were vinyl. They are outdoor rated televisions that change during menu periods. The pre-browse menu will have the one burger of the day or whatever special. We haven't done anything until we get approval from the city.

Commissioner Swanson: Thank you for clarifying.

- b. Presentation by applicant.

James Alfaro is from San Antonio. The purpose of the signage is actually a nationwide roll out. A lot of the smaller towns are wanting to do due diligence and how they are going to affect any standing ordinances. As we mentioned before, these signs are actually smaller than the existing signs. They are illuminated internally but less. At night they go down further. A nit is a measurement of light. A lot of municipalities that use a tool that measure the brightness. These signs are not designed to advertise off premise. They won't advertise for any other business in this area. It's for the menus for breakfast, lunch and dinner. When they switch the move into the next lunch menu or dinner menu. You probably won't see when it changes and stays for that period of time. There is nothing where there is a lot of movement with the signs. One thing that we are presenting the LED lighting are more energy efficient and reduced a lot of waste in landfills. The menu boards are paperless. They reduce the carbon footprint. They are not on the street side; they are on the back end of the building. Passing motorists won't be affected at all. One thing they wanted me to share, while these boards are new they will allow for quicker ordering times because they are easier to read. It will reduce cars just sitting there. Other than that, it's pretty simple. We're not asking for a whole lot but want to utilize the new technology to make it easier for customers. They feel the menu boards required this change to eliminate delays. I'll open up to any questions you have for me.

- c. Public Hearing: All persons wishing to speak for or against shall be heard.

Chairman closes the Public Hearing and reconvenes the meeting.

- d. Deliberation and action.

Commissioner Harwell: I'm guessing the boards are dark when the restaurant is closed?

James: No. They won't be brightening up the drive-thru area. They will be low.

Commissioner Harwell: When do they close? 10:00 p.m.?

James: Most are 24/7.

Commissioner Swanson: Why aren't they turned off when they are closed?

James: The majority of the locations the drive through area is open 24 hours.

Commissioner Swanson: Would they have an objection if the city required them to be turned off?

James: They wouldn't have any issue for McDonald's. I'd have to address that with them. I don't see that would be an issue.

Chairman Meisel: There is no reason to leave them on?

James: Exactly.

Commissioner Pledger: Or program the lights.

James: The majority of the parking lights are programmed. I can't speak for them. I wouldn't think they would have an argument.

Commissioner Swanson: Regarding the initial sign, does that change only 3 times a day with those meals?

James: The new sign will change with the other menu boards.

Commissioner Swanson: That sign functions as an ad to tell you about the specials? Having had kids here, the backup for this location doesn't occur because of the boards, it's a single lane. Is this initial sign necessary?

James: It's part of the menu board selection. It helps you make a decision to buy this certain item. It's a part of the process when you go through the drive-thru.

Chairman Meisel: There is no question the pre-browse sign is a marketing device. The menu is for information. If Jason's wants to put a board out front, that's triggering an issue with the sign ordinance. I would recommend not having a pre-browse board. The other thing is, those signs shall be off when the restaurant is not open, period. Both of those issues need to be issued. Our proposed amendment should state the lights be off when the restaurant is closed.

Commissioner Swanson: Did we already have the language for the "shall" language for the city? That would need to be included, too. I think the city should have the ability to determine that the lumens be turned down.

Chairman Meisel: Yes.

Commissioner Pledger: For the record, a nit is 3.46 lumens.

Commissioner Harwell: The browsing menu, is that featuring seasonal and monthly items that aren't on off seasons?

James: Correct.

Commissioner Harwell: I could make the case that there is a consumer benefit to that, they've got a lemonade Slurpee going on. That is advertising but as a consumer I might find that useful information. There is some consumer information.

Commissioner Swanson: Wouldn't that be on the main menu anyway?

James: Not necessarily. The McRib, it's not always on the main menu board. This is something that can be delivered to the potential consumer to say, we have this for the time period.

Commissioner Swanson: The pre-browser can be highlighted on the main menu board?

Chairman Meisel: That screen is nothing more than what is sent to it.

James: These are already programmed. What they have there are the specific items. I'm not the marketer.

Commissioner Pledger: I don't disagree that it's useful consumer information. I would hate to see the Hill's put out a new exercise machine. In my head signs are signs. Something that is advertising specials is a different category.

Chairman Meisel: Our recommendation would include two signs, not three. A pre-browse is not necessary. The lights should be turned off when the restaurant is closed.

Commissioner Harwell: The language of the sign ordinance, no internally lit signs. This was pre-led technology and the ordinance might need to be revised.

Chairman Meisel: The purpose of that was neon. We don't want neon signs.

Planner Naini: It's also meant to be back-lit. The signs that is primary covered in the Agreement are wall signs. The signs that are there now are back-lit. All our sign agreements are different. It depends on the nature of the look of that particular area.

Commissioner Swanson: We're only approving this for this location?

Planner Naini: This would not affect anyone else.

Commissioner Harwell: This is almost like a TV screen and not a sign.

Commissioner Pledger: I think it's something that needs to be addressed. If you approve this approach it won't be long you have a moving TV screen at another shop.

Assistant City Attorney Mueller: While this Uniform Sign Agreement is separate, if you look at the design guidelines, we don't allow electronic messaging signs. This Uniform Sign Agreement allows something special. Almost every city I represent don't allow those types of signs.

COMMISSIONER SWANSON MOVES TO APPROVE WITH THE LIMITATIONS ON THE BRIGHTNESS OF THE SIGNS AND THE SIGNS SHOULD BE OFF WHEN MCDONALD'S IS CLOSED AND LIMITED TO TWO SIGNS NOT THREE. NO PRE-BROWSE SIGN

**APPROVED. COMMISSIONER PLEDGER SECONDS. (2-1).
COMMISSIONER HARWELL OPPOSES.**

4. Land Use: Discussion/recommendation regarding City Code amendments to Section 28.03 to bring into compliance with Chapter 212 of Local Government Code.

ALL AMENDMENT ITEMS WILL BE DISCUSSED ALL TOGETHER.

- a. Staff Briefing.

Assistant City Attorney Mueller: A new House Bill is shortening our deadlines. We could work with people that are requesting plats and give us more time to work out the kinks. We only have 30 days to review the item. All of these amendments are related to that bill. If anyone has any written comments, please give them to me. We might present at City Council next week but we will likely present them on September 11. We would have to make sure we were compliant with the review process. Also, through pre-development meetings, if we take these to Council September 11th we'd still be okay. Hopefully with this in place or by September 11th, we should be okay. Anjali can also still do the pre-application meetings.

Commissioner Swanson: When is the next ZAPCO? ZAPCO wouldn't get to comment on any changes? We can't make any changes until September 11th?

Assistant City Attorney Mueller: One issue we have on the site plan, we do site plans in the ETJ. I added the "whereas" clauses. I removed my changes to the ETJ. It was an unusual situation. I made these changes. There aren't many changes to what you received earlier. One thing is doing site plans in the ETJ but really what the city does is part of the building permits in the city limits. We included regulations for condo regimes. This is just a form of ownership. We've already regulated the property. We've had disagreements with developers and we clarified that information. We changed the definition to make it clear that the application is not considered filed until it is administratively complete. That's really the main changes to make sure everything is in place. Before we accept an application, any variances they are requesting, they get those first and other permits you need and then come to us then we look at the site plan. We can disapprove it if it has a variance.

Commissioner Pledger: We wouldn't be in a situation where we would disapprove it?

Assistant City Attorney Mueller: Site plans are done administrative now. We did it to be transparent. These site plans, if compliant, variance go through the same process. Plats will have to come to ZAPCO but site plans will not come to ZAPCO, only if they are in the ETJ. That's to keep that 30-day window happening. If there is any variance, allowing one postponement. If an after-the-fact variance was filed for and withdrew, we want to make it clear that we will take legal action against them. They have to come to agreement with the city administrator. That's all I have for the site ordinance amendment.

Commissioner Harwell: What is a 1445 agreement?

Assistant City Attorney Mueller: We are required by law to have an agreement with the County for ETJ regulation. We are required by law to have an agreement.

Commissioner Swanson: What is the review process that happens when a document is created?

Assistant City Attorney Mueller: This was a little different. Time was more limited. I finalize the document.

Commissioner Swanson: My concern is that reading this, I've spent many years writing for state agencies, it was sloppy in places that there is no way we can recommend adoption to city council. If we have confusing language in our code I think we're going to get sued. It is surprising to me there is contradictory language. I think it needs to be sent back to the law firm and look at this and recognize this is unacceptable. I think ZAPCO needs to look at this again before it goes to city council.

Assistant City Attorney Mueller: I'm happy to meet with anyone.

Commissioner Swanson: There have been problems with the documents.

Commissioner Pledger: There is not a lot that has been amended here.

Commissioner Swanson: 28.03.95 disapproval by the city administrator. If the site is disapproved, can the approval be conditionally approved? That would be one small example 28.03.035 notice of hearing. With the deletions there are not requirements for public notice. I'm concerned and I hope I'm wrong. I'm concerned about confusion. We're going to start to run into trouble under 28.03.033. There are a lot of problems in this area now. Some of them probably existed before now. No application shall be deemed officially submitted until the city administrator has approved. So failure to make the certification within 15 days shall result in deemed complete. That earlier definition needs to reference what happens after 10 days and needs to be codified. Submission should be a defined term.

Assistant City Attorney Mueller: I'm open to all of that. If it's confusing to anyone it deserves clarity.

Commissioner Swanson: 28.03.152 – approval process.

Assistant City Attorney Mueller: Maybe the approval process needs to be defined.

Commissioner Swanson: When does the fee get paid?

Planner Naini: At the beginning.

Assistant City Attorney Mueller: Before an application be deemed complete, the fees have to be paid.

Planner Naini: Letter (B).

Commissioner Swanson: This needs to be clear and easy to use.

Assistant City Attorney Mueller: I'll look at all of that. We are developing a development manual because they also review this.

Commissioner Swanson: I would think a firm like yours would have a drafting manual.

Assistant City Attorney Mueller: I try to be consistent with what you have on Franklin. If that is the recommendation that we capitalize.

Commissioner Swanson: Let's look at the next document. On page 4, that's all new language. There are a number of problems. For one example is the use of the term "units". Units is all over the place. The word is used in different ways and capitalized versus not capitalized and should be used consistently in the code. For the last 3 ½ years, members of ZAPCO have spent countless hours in correcting errors submitted to ZAPCO and the council and the law firm have been dealing with that. We shouldn't have delays like this. Because the work submitted by the law firm isn't usable.

Commissioner Pledger: There are sections on the process use to come to the city. When something is filed it needs to be consistent. We ought to prioritize what we need to work on.

Commissioner Swanson: I'm not asking for a re-write of the code, when we get a document it ought to be consistent and that has not been the case the last 3 ½ years. These matters can't be getting delayed because the law firm isn't doing its job.

Assistant City Attorney Mueller: I'm going to look at this. All these ordinances are set for city council. I will review the items for clarity. I will make sure the cap and increase the number of terms. The fact you couldn't understand the first time that is an issue. My only other question is the after-the-fact variance that is what we are entering in all the ordinances.

Chairman Meisel: Packet No. 6.

Commissioner Pledger: There is language on the last paragraph of the sign ordinance.

Assistant City Attorney Mueller: Page 11.

Commissioner Harwell: A comma needs to be added.

Assistant City Attorney Mueller: How do you want to move forward? The amendments will be revised before going to council with the information requested. The minor plat thing, I have no reason otherwise for that.

Commissioner Swanson: Every time we had code come to us it's been delayed.

Chairman Meisel: That's all we've got. It gets really important.

Commissioner Swanson: I would expect more from a law firm.

Chairman Meisel: We've made clear our concerns. Let's tie this off.

COMMISSIONER PLEDGER MOVES TO RECOMMEND MOVING FORWARD WITH REVISIONS AND RIGORIOUS REVIEW. COMMISSIONER HARWELL SECONDS. (2-1) COMMISSIONER SWANSON OPPOSED DUE TO PROPOSED CODE BEING FULL OF ERRORS

- b. Public Hearing: All persons wishing to speak for or against shall be heard.
- c. Deliberation and action.

5. Land Use: Discussion/recommendation regarding City Code amendments to Chapter 36, Subdivisions to bring into compliance with Chapter 212 of Local Government Code.

- a. Staff Briefing.

Assistant City Attorney Mueller: This is the subdivision ordinance. Platting is when you change the plat of the land. It's something we do in city and ETJ. If someone meets our requirements we have to approve it. If not, a variance is needed. We added the info about condos on how we view them. We don't have any issues with that. ZAPCO will be reviewing plats. That is required by 212. Amending plats is something that will be approve administratively. Once again, variances will be handled first. Another issue changed is we talk about plat vacation, going to be reviewed and no longer accepting plans for separate approval. It will be part of the submission. The 30-day item has been added to this. We do most of them digitally and don't require many paper copies anymore. The big one, they need to get variances before they come back and ask for a plat application. That's what the subdivision changes are.

Chairman Meisel: 5 or less lots. We don't have discretion on that?

Assistant City Attorney Mueller: If council could say they want to look at plats those can be delegated to someone. We are not required to.

Commissioner Swanson: Who made the choice to not have the commission look at those?

Assistant City Attorney Mueller: That's an easy fix. We would transfer that language. I did the most streamlining we could.

- b. Public Hearing: All persons wishing to speak for or against shall be heard.
- c. Deliberation and action.

6. Land Use: Discussion/recommendation regarding City Code amendments to Chapter 32 Signs for efficient review.

- a. Staff Briefing.

Assistant City Attorney Mueller: If you look on Page 11 that is where the changes are. The after-the-fact variance again because we've had that issue

in the past. We will prosecute if they don't fix the issue. That's the main change.

Commissioner Pledger: The one postponement is statutory?

Assistant City Attorney Mueller: Not statutory. You can't postpone, approve it, disapprove or with conditions. They could request extensions. The postponements are trying to get everything on a stricter schedule.

Commissioner Pledger: Will the city issue something that says this is accepted in writing?

Assistant City Attorney Mueller: Yes. We're working on the application and forms right now. The applicant has as long as they want to make changes. When they come back we only have 15 days.

Commissioner Swanson: I think there was language stating that an extension could only be granted to the next meeting? There is a code language?

Assistant City Attorney Mueller: For the plats?

Commissioner Swanson: If someone asks for extension, we don't have to set the next meeting?

Assistant City Attorney Mueller: Our goal is to have it complete before it hits the desk.

Commissioner Swanson: If it is clear an applicant needs more time, they won't be able to have everything the next month?

Assistant City Attorney Mueller: One postponement. That's something you have a different recommendation on. You would like to not have the postponement language?

Commissioner Swanson: If it takes more than a month?

Commissioner Pledger: Like a date certain or more flexibility?

Chairman Meisel: That date saves them the issue of re-noticing. I was concerned about the 30-day thing.

Assistant City Attorney Mueller: Are you looking at a limit to postponing?

Chairman Meisel: If they want to keep postponing until it goes away, that's fine.

Commissioner Swanson: We've seen instances they need more time.

Assistant City Attorney Mueller: That's a recommendation I can take to council.

Chairman Meisel: Where did this come from?

Assistant City Attorney Mueller: We're trying to get uniform.

Commissioner Pledger: Are we talking about the limitation of one postponement? I can see a situation where you have 1 postponement, whatever takes place before that postponement you have to address everything. If somebody comes back and ends up raising another issue and don't have the opportunity to postpone, that's limiting the ability of ZAPCO to be able to insist the quality in approvals.

Commissioner Swanson: It's just what happens.

Chairman Meisel: Once you've spent your dime, then if we hit a problem, all we can do is slam the door.

Commissioner Pledger: There are things you can't postpone? We need flexibility.

Commissioner Swanson: These are people in our community.

Assistant City Attorney Mueller: We can update staff reports. We always put in the staff report your recommendations.

- b. Public Hearing: All persons wishing to speak for or against shall be heard.
 - c. Deliberation and action.
7. Land Use: Discussion/recommendation regarding City Code amendments to Appendix A, Fee Schedule to handle after-the-fact variances.
- a. Staff Briefing.

Assistant City Attorney Mueller: The fee for work started without obtaining a no-fee permit was increased to \$100.00. That's the only change we made at this point. This the big one. Acknowledge more denials for plats, we don't think it's appropriate to make them pay the full fee again to resubmit. We didn't want it to be the full fee as long as a resubmittal is turned in within a reasonable amount of time. If they wait a year to re-submit, we'll charge again.

Commissioner Pledger: We're talking about G.

Assistant City Attorney Mueller: In lieu they are going to pay the \$500.00.

Commissioner Swanson: We've been through all the documents.

- b. Public Hearing: All persons wishing to speak for or against shall be heard.
 - c. Deliberation and action.
8. Adjournment. Chairman Robert Meisel.

Chairman Meisel adjourns at 8:13 p.m.