

**MINUTES OF THE REGULAR MEETING
OF THE PLANNING AND ZONING COMMISSION
OF THE CITY OF ROWLETT, TEXAS, HELD IN THE MUNICIPAL CENTER
4000 MAIN STREET, AT 7:00 P.M., AUGUST 11, 2009**

PRESENT: Chairman Kevin Moore, Commissioner Joe Charles, Charles Alexander, Rick Sheffield, Chris Cigainero, Greg Landry

ALSO PRESENT: Alternate Robert Kittrell (voting member), Karl Crawley

ABSENT: Vice-Chairman Greg Peebles

STAFF PRESENT: Patrick Baugh, Director of Public Works; Erin Jones, Interim Planning Manager; Amy Mathews, Planner II; Kendra Frederick , Senior Administrative Assistant

A. CALL TO ORDER

Chairman Moore called the meeting to order at 7:15 p.m.

B. CONSENT AGENDA

1. Minutes of the Regular Meeting of July 14, 2009.

Commissioner Rick Sheffield made a motion to approve the minutes for the July 14, 2009 meeting. Commissioner Chris Cigainero seconded the motion. Motion passed with a 5-0-2 vote with Alternate Robert Kittrell and Commissioner Joe Charles abstaining from voting since they were not seated at the dais at the July 14, 2009 meeting.

C. PUBLIC HEARINGS

1. Conduct a Public Hearing and make a recommendation to the City Council on a Planned Development (PD) application for the expansion of the Covington's garden center use from the originally approved SUP for limited commercial, retail, and mixed uses. The subject property is located at 5518 Liberty Grove Road and is a part of Thomas Lumley Abstract 789 page 886.

Amy Mathews came forward to present this case. She stated that previously an amended SUP associated with this property came before the Planning and Zoning Commission. The current zoning for Covington's property is an SUP and SF-10 for the rear portion of the property. In 2008, the applicant submitted a request to revise the SUP to include the rear portion and on May 26, 2009, the Planning and Zoning Commission unanimously recommended to City Council to approve the SUP. Prior to staff taking the SUP recommendation to City Council, the City Attorney suggested that the best zoning for this property would be a Planned Development, so the applicant immediately withdrew the request for the amended SUP and applied for the Planned Development. The proposed Planned Development is for limited retail commercial and mixed uses. Currently the property is not platted but will be platted to accommodate the relocation once the President George Bush Turnpike (PGBT) is completed. Thirty two notices were sent out, nine were returned. Three

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notices were returned in favor, and six opposed. Chairman Moore asked if all future development plans, drainage plans, landscaping plans, etc. associated with this site would have to be approved prior to development. Ms. Mathews stated that they would have to meet all the current code standards and PD standards and would have to go through the appropriate planning process but would not have to come back before the Planning and Zoning Commission unless the developer wanted to vary from the code requirements. Chairman Moore opened the public hearing.

Citizen, Jerry Moore who resides at 5200 Flamingo came forward and stated that his property abuts Covington's property. He asked if there was any way the commission can restrict the property to the existing use only. He is also concerned about the current creek flooding. Mr. Moore stated that there is a list of uses proposed for the property and that if the property were to develop; the applicant would have to go through the appropriate planning process including adhering to drainage and detention requirements to prevent flooding on the abutting properties.

Nathan Dunham, Operations Manager of Covington's Nursery, came forward to speak. He stated that the only possible plans Covington's has for the proposed remaining property would to someday put in a café on the front portion of the property. He addressed the flood water by stating they do their best to catch as much water as they can in their pond because they use the water for irrigation.

Mr. Moore asked Ms. Mathews if the commission could restrict some of the uses on the proposed allowed uses list. Mr. Dunham stated that currently there is an office building on the property so they would like to keep that use. Ms. Mathews stated that there is also an existing telecommunications tower on the property. Ms. Mathews stated that P&Z may make a recommendation to City Council to further restrict or add uses to this Planned Development. Mr. Dunham stated that it would be okay with Covington's to limit the uses. Ms. Mathews stated that if any future property owner or developer wanted to amend the PD to add uses, they would have to come forward to the Planning and Zoning Commission and City Council again for approval. With no further discussion, Commissioner Charles Alexander made a motion to close the public hearing. Mr. Sheffield seconded the motion. Motion carried with a 7-0 vote.

Mr. Sheffield made a motion to recommend to City Council approval of the requested Planned Development with the following changes: Only the following uses in the Planned Development shall be allowed; all other uses are prohibited – 1. Restaurant without drive-thru 2. Single tenant office use. 3. General retail. 4. Greenhouse and/or plant sales. 5. Commercial Grower. 6. Existing cellular tower and associated equipment. Mr. Alexander seconded the motion. Motion carried with a 7-0 vote.

D. ITEMS FOR INDIVIDUAL CONSIDERATION

- 1. Consider and take appropriate action on an application for a Tree Survey/Preservation Plan on 5.506 ± acres of land located at 7301 Liberty Grove Road (DP09-433).**

Erin Jones came forward to present this case. She stated that the property is zoned mixed use north shore, adjacent to the future PGBT. The property is currently vacant and there are no plans for

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development in the near future. The applicant has been presented with an opportunity to receive fill dirt from NTTA due to the current PGBT construction and would like to be able to accept it at this time to prepare for possible future development. Ms. Jones stated that part of the intent of the Rowlett Development Code is to prevent the indiscriminate clearing of trees off properties. The applicant is requesting to remove 249 caliper inches of protected trees that are located within property owned or leased to a governmental entity or public utility, which per code, does not have to be mitigated for, however, the applicant would have to provide staff with proof of the property being owned or leased by a governmental entity or public utility in order for the fees to be waived. At this point, the applicant has not provided documentation so there would be mitigation fees assessed. The fee will be adjusted in the future if documentation is provided. The applicant is also proposing to remove 1,193 caliper inches of protected trees not located within property owned or leased to a governmental entity or public utility. They are preserving 41 caliper inches of protected trees. Taking all of the above into consideration the mitigation fees will be a total of \$170,460.67 to be paid prior to the issuance of a building permit. Ms. Jones recommended that the commissioners consider the following when making their decision to approve or deny the proposed plan:

1. Does the request meet the intent of the RDC as it pertains to tree preservation requirements,
2. There is no current development planned for this site and since the code will not allow staff to collect the fees until the building permit is issued, staff sees potential problems that could arise in the future. The trees could be removed and no development could take place for years, thus there will be no immediate mitigation for the removed trees. The property could be sold and staff would have no control over if the mitigation fee requirement is conveyed to future property owners but staff will be required to collect the fee from potentially unsuspecting future owners at a critical time in the development process. There is also inevitably staff turnover throughout the years and requirements such as mitigation fees can easily fall through the cracks. It would be best to have the fees collected at the time of removal, however, per code that is not an option at this time.

Mr. Sheffield asked if there was a map showing the flood plain area as it relates to the property and Ms. Jones stated that Patrick Baugh, Director of Public Works provided her with a flood plain map prior to the meeting which shows a portion of the property being in the flood plain. The applicant did state that they were not planning on filling in the portion of the property in the flood plain.

Matt Costrell, the Civil Engineer associated with Greenway/Merritt and responsible for preparing the grading plan for the site came forward to speak. Mark Hardaway, Investment Company, owner of the property also came forward to speak. Mr. Costrell stated that the whole intent was to not go within the flood plain line but to start at the flood plain line in order to gain access to the frontage road. They are trying to meet PGBT's elevation which is about 8 to 10 ft. above the parcel elevation at the property line. Mr. Sheffield asked if there were any development plans in the works and the applicant stated that they had purchased the property with the anticipation of commercial on this site but right now there are no plans. Mr. Cigainero stated that he has a problem with so many lost trees and the applicant does not seem to be offering new ones and asked if the applicant would be willing to plant trees on the property once the land is filled and the applicant stated that they think

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there is an opportunity to do this along the frontage, roughly about 352 caliper inches and pay the balance of the mitigation fees.

Mr. Sheffield asked the applicant if they had looked at any alternatives if the plan was to be denied. The applicant stated that they had spent a lot of time with Alaina Ray, previous Assistant Director of Development Services, coming up with a plan that works and is doing everything possible to get this property ready to develop in the future. Mr. Sheffield stated that looking at the Tree Preservation section of the RDC at the top of list is to prohibit indiscriminate clearing of trees on property and to the greatest extent possible to preserve and maintain protected trees. The proposed tree preservation plan does not meet the intent of the code. The applicant stated that they are open to the idea of placing some trees along the frontage so that the property does not look vacant. Mr. Alexander asked why the applicant could not pay the mitigation fees up front and the applicant stated that it was a significant amount to pay. Mr. Cigainero stated that the applicant is requesting to remove 1,400 caliper inches and preserve 41 caliper inches and asked if the applicant would be willing to put roughly 350 caliper inches of trees back once they have packed and filled the property. Mr. Cigainero stated that this is a nice piece of property and the applicant wants to fill it to prepare for commercial use but if permitted to clear the trees the property will be void of any landscaping until something is developed in the future which could be years away. Ms. Jones clarified that on the tree preservation plan it states that there will be future planting at time of development. If the tree preservation plan was being proposed along with a development plan, the applicant would be able to use some of these trees towards the landscaping requirements but since that is not the case, the mitigation fee is required. All future development of the property will have to meet the landscape requirements in the RDC. Placing additional trees on the site now will not reduce the landscaping requirements in the future.

Mr. Cigainero asked if the applicant had a time table on how long it would take to fill the property and the applicant stated that it would be up to contractor and they currently have not received any bids to do the work but they also cannot proceed until the process of going through Planning and Zoning is complete. Mr. Landry asked, with the way that the property is graded, if there is still potential to develop the front half of the property at Merritt and Liberty Grove without fill. He also stated the area in the back is flat and there is a drainage swale coming through the middle. The applicant stated that the setback off of PGBT would be 50 feet so there would be a building potentially that close to the service road. The applicant stated that not only are the trees a challenge, the flood plain and the shape of the property are as well. Mr. Landry stated to the commissioners that he can see both sides of the debate. This site is one of the few in Rowlett that does have trees on it but removing trees to potentially develop the site could improve the tax base for the city as well. He questions if the potential to develop the site is a greater need than trying to save the trees? Mr. Landry stated that he would be in support of the applicant mitigating the trees by planting them elsewhere throughout the city or planting them along the edge of the property as long as they can protect from erosion. Mr. Cigainero agreed with Mr. Landry stating that this piece of land, without fill, would not be useful even though he has a problem with the trees being removed. He would also like to see some trees planted once the property is filled. Alternate Robert Kittrell also agreed. Mr. Cigainero questioned how the trees would be managed, watered, etc if they were to be replanted after the fill is placed in the property as there is no development planned at

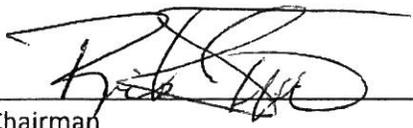
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this time. He stated that as it is now the property cannot be used commercially nor are there any pending plans so it's a balancing act, to approve the plan would allow the applicant to prepare for commercial development but he cannot see how wiping out all the trees without any compensation at the time of removal is to the City's benefit. Mr. Moore asked; if there are new trees planted on the property, who would maintain them. Mr. Landry stated that when residential developments get started, developers typically install irrigation systems along the front ten feet without knowing where the drives will. The commission could condition that any new trees added be kept in good repair. He went on to state that the caliper inch ratio is the big issue. There will be mature trees at 16 and 20 caliper inches being removed and any trees that the applicant would replant would be 4 caliper inches; so, while the caliper inches may be mitigated for the maturity of the trees, it is not equivalent to what would be removed. Mr. Cigainero asked how the applicant would ensure survival of the trees. The applicant stated that they were not sure at this time. Mr. Alexander stated that the only way he would be willing to approve this item is if they were willing to pay mitigation fees up front. Mr. Landry stated that he does not think the money is the issue; the issue is no trees on the site for the months or years prior to development. Ms. Jones interjected that there was not time to research the possibility of placing a lien of the property to ensure future owners would be informed of the mitigation fee requirement. If that is a possibility that the commission would like further information on she recommended tabling the item so staff can speak to the City Attorney.

Mr. Cigainero made a motion to approve the tree preservation plan with the condition that the applicant installs 300 caliper inches of similar trees after fill and compacting is complete and ensures the survival of the replacement trees. Mr. Sheffield seconded the motion. Mr. Moore stated he was concerned with how the mitigation fees will be calculated based on the proposed 300 calipers of trees to be added. Mr. Landry stated that the applicant would go back to the planning department to recalculate the mitigation fees and the plans would be revised to show the difference. Mr. Landry recommended tabling the item until staff has documentation from the applicant regarding the type of trees, caliper inch per tree, spacing, etc. for the proposed 300 calipers of replacement trees. Mr. Moore asked Mr. Cigainero if he wanted to move forward with his motion or withdraw the motion. Mr. Cigainero stated he would like to move forward with his motion and Mr. Sheffield stated he would also move forward with his second. The motion was denied with a 3-4 vote. Mr. Moore asked that the applicant be provided with a copy of the minutes from the meeting and stated that if the commission's concerns are addressed a revised submittal would be considered if brought back in the future.

A. ADJOURNMENT

Chairman Moore adjourned the meeting at 8:20 p.m.


Chairman


Secretary

