

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 12th DAY OF NOVEMBER, 2015 AT 9:00 A.M. AT THE
MADISON COUNTY COMPLEX BUILDING**

BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 15th day of November, 2015 at 9:00 a.m. in the Board Room of the Madison County Chancery and Administrative Building.

Present: William Amadio
Larry Miller
Will Sligh
Dr. Keith Rouser
Rev. Henry Brown

Scott Weeks, Planning and Zoning Administrator

There first came on for consideration the minutes of the October 15, 2015 meeting of the Commission. Upon motion by Commissioner Rouser to approve the minutes, seconded by Commissioner Amadio, with all voting "aye," the motion to approve the October 15, 2015 minutes passed.

There next came on for consideration the Petition of Millcorp Inc. to re-zone certain property consisting of 30.8 acres located on King Ranch Rd. from a Planned Unit Development ("PUD") designation to C-2 Commercial, for a conditional use to erect two (2) billboards in the C-2 zoning and for the Madison County Land Use Plan to be amended to reflect such changes. Brad Sellers appeared on behalf of Petitioner. Mr. Sellers stated that this land abuts I-55 and is currently zoned as a PUD. The landowner, Tom Miller, is requesting that this portion of the PUD be re-zoned to C-2 Commercial for the purpose of erecting two (2) billboards, with the Land Use Map being amended to reflect such change. Mr. Miller is additionally requesting that a conditional use be allowed for the billboards in the C-2 district. Mr. Sellers explained that this is the best use of the property as it will not affect traffic or the residential properties near this area. Commissioner Sligh inquired regarding the appearance of the billboards and whether a buffer would be present. Mr. Sellers stated that the billboards would be consistent with the pictures in the petition packet, using those same type materials, and that there would be a buffer present. Mr. Sellers also pointed out that the C-2 zoning was consistent with the Madison County Master Plan. Upon Motion by Commissioner Sligh to approve the petition, seconded by Commissioner Amadio, with all voting "aye," the motion to approve the petition passed.

There next came on for consideration the site plan of Livingston Chapel. Jonathon McPhail appeared on behalf of Petitioner. He stated that the Mannsdale-Livingston Heritage Preservation District ("MLHPD") had approved the site plan at their meeting on November 9, 2015 subject to the HVAC units being moved closer to the building and the use of "old" brick only (versus any "new" brick). A copy of the letter setting forth these stipulations along with the

revised plan are attached hereto as Exhibit "A." A member of MLHPD, Ken Primos, was present at the Commission hearing and stated that he agreed with these provisions. Upon Motion by Commissioner Sligh to approve the site plan, seconded by Commissioner Rouser, with all voting "aye," the motion to approve the site plan passed.

There next came on for consideration the site plan of Fleetway Fuel Center for a gravel parking lot for the Fleetway Fuel Center to be located on Gluckstadt Rd and Industrial Dr. Bradley Morris with Morris Real Estate, LLC appeared on behalf of Petitioner. He stated this would be an additional parking area only and would consist of crushed limestone with a concrete exit. Commissioners Amadio and Rouser expressed concern with the loose materials being spread into the road and with traffic. Mr. Morris stated that this would be anticipated for truck use only and it would be engineered to the correct depth so that it would be packed down and would be aesthetically pleasing. He further stated that he had done this before and it worked well and he would maintain it to ensure it didn't spread into the road. Those present in opposition were asked to come forward. Walter McKay spoke first and stated that he resides in Germantown Subdivision. He expressed concern over the use of loose material and suggested something like asphalt be used instead of loose material because of safety. He also was concerned about the retention pond and said it didn't appear to be large enough to sufficiently hold any runoff. He thought the County Engineer should review it to be sure it complies with regulations. Mr. Morris stated that Rudy Warnoch, the Madison County Engineer, had reviewed and approved the pond. Lisa Williams addressed the Commission next and stated that she also lives in Germantown Subdivision. She stated that she had spoken to Mr. Morris but expressed concern over the maintenance of this type parking lot and stated that it seemed to be a temporary solution that even the County had used. She sited a place in her neighborhood as an example and stated that the area stayed very dusty and was not aesthetically pleasing. She also expressed concern regarding the rear exit on the site plan. She stated that she had spoken to Mr. Morris and his office numerous times about the project and was told there would be no rear entrance but now this entrance appeared on the new site plan and she was concerned about that. Upon Motion by Commissioner Amadio to deny the site plan because it was inconsistent with the area and would be a hazard to traffic in the area, seconded by Commissioner Sligh, with all voting "aye," the motion to deny the site plan passed.

There next came on for consideration the discussion of Stillhouse Creek, LLC R-2 zoning. On September 8, 2015, pursuant to recommendation by Madison County attorney Mike Espy, the Board of Supervisors requested that this Commission review the re-zoning of the subject property to R-2 Residential that occurred on May 18, 2006, and make a recommendation on whether such re-zoning was proper. Such request was made so the Board could then consider an appeal that was filed by those aggrieved from this Commission's decision on May 7, 2015, recommending that the land be re-zoned from R-2 Residential to a PURD. Todd Burwell, Esq. appeared on behalf of those opposed to the R-2 zoning. He first inquired whether the current discussion was a hearing. Madison County Planning and Zoning Commission attorney, Leah Ledford, stated that there was no Petition currently pending but that it was a hearing to the degree that a recommendation would be issued because the Board had specifically requested such from this Commission. Mr. Burwell stated that he felt public notice should have been posted so any other potential parties could have been present. Mrs. Ledford stated that notice had been

provided and that she had spoken with attorneys for both sides and all interested parties were present today. Mr. Burwell presented a brief to the Commission that is attached hereto as Exhibit "B." He went through the history of the re-zoning of this property that began in 2005. He stated that a petition to re-zone from A-1 Agricultural to R-2 Residential had originally been filed by Michael McElroy in February of 2005. At such time, the Planning and Zoning Commission tabled the petition so all parties could try and work out an agreement on the development. At the next Commission meeting in March of 2005, the Commission denied the petition. This recommendation was affirmed by the Board of Supervisors and Mr. McElroy filed an appeal with the Circuit Court of Madison County, MS. In April of 2006, a new petition was filed with the Commission by McElroy that stated there had been a change in the Madison County Land Use Map and requesting the land be rezoned to R-2. In May of 2006, this petition was heard by the Planning and Zoning Commission and McElroy conveyed he had reached an agreement with surrounding landowners and some provisions were noted in the minutes about buffers and other stipulations. Mr. Burwell stated that the agreement between the landowners and McElroy was attached as an exhibit to those minutes and that exhibit has since gone missing and cannot be found. Mr. Burwell stated that the approval was conditioned upon the stipulations in the exhibit. He went on to state that the appeal was dismissed by the Circuit Court following this commission hearing and the Order contained language allowing him to re-file his petition which he had already done prior to the entry of the Order. The Board of Supervisors went on to approve the recommendation by the Planning and Zoning Commission on June 6, 2006 to rezone the property from A-1 to R-2. Mr. Burwell said that Mr. Crest purchased the property recently and petitioned to rezone the property from R-2 to a PURD. Mr. Burwell stated that the rezoning in 2006 was obtained by fraud. He stated that he had met with all the property owners and none had reached any such agreement with McElroy. He said it was believed he may have reached an agreement with 1 landowner but his clients never reached and/or signed any agreement with McElroy so the R-2 zoning could not stand. He said for that reason, to remove the fraud and lost exhibit issue, the property should be taken back to the A-1 zoning and a true hearing be held on whether there has been a change in the character of the neighborhood, etc. before the property could be rezoned. In the alternative, Mr. Burwell suggested that the property be rezoned to R-1 instead of R-2 because that would be more consistent with the surrounding homeowners' property. He explained his clients all had three (3) acre plus size lots and R-1 zoning would be better suited to those surrounding landowners' property. He additionally stated there was no public need for another high density development because there were so many others nearby with lots and homes for sale. He further stated this zoning would negatively affect traffic since this was already a congested area for traffic. He also pointed out that this would not be fair to his clients because it was smaller lots and would negatively affect their property values. Mr. Burwell further stated that it was not in keeping with the character of the neighborhood since the surrounding properties were large lots. William Smith, Esp. addressed the Commission next on behalf of Stillhouse Creek, LLC and stated that the most important factor was that the Commission was bound by the record which was the Board of Supervisor minutes from June of 2006. He further stated that you couldn't add to or undo what was done nine and a half (9 ½) years ago. He stated that the history was accurate that Mr. Burwell presented other than the Order from the Circuit Court dismissing the appeal in 2006 stated that the petition could be renewed, not refiled. He further stated that his client had withdrawn the PURD request and it was no longer an issue. With regard to the allegations of fraud, Mr. Smith stated there was no evidence to suggest that there was no exhibit

at the time of the Planning and Zoning Commissions' decision in 2006. But he said even those the exhibit cannot be found now, the minutes themselves specifically listed out the agreement between the parties. He said the minutes reflect specific lot size, home size, addressed the buffer, when the HOA would take over the development, and other covenants which were all spelled out in the minutes. He further pointed out that nine and a half (9 ½) years had passed without a word on this issue. He stated that the proper appeal time is ten (10) days from the date of the decision or one waives their right to appeal. He said you couldn't wait 9 ½ years and then argue a missing exhibit should undo a long-standing re-zoning, especially when the agreement is outlined in the Commission minutes anyway. He pointed out that the land had been on the zoning map as R-2 for 9 ½ years, that the Zoning Administrator had written letters stating that the land was zoned R-2. With regard to the fairness issue, he stated that his client was sympathetic to those in opposition's position about their property value but his client had purchased the land under the notion that the property was zoned R-2 and he stands to lose a large investment. He stated that his client does not intend to devalue the land but will develop nice homes. He further stated that there is a great need for similar developments in this area as they are in high demand. He also stated the traffic concerns were not a Madison County issue but an MDOT issue. He stated that there was no real evidence suggesting that the property was not R-2. He said the minutes from the Board of Supervisors approve the request outright with no contingency listed and those are the minutes that must stand. Commissioner Sligh inquired regarding the PURD petition being withdrawn. Mr. Smith stated that he thought the PURD would allow for more green space and be a prettier plan but he had decided to just develop it as R-2. He said the proposed plat complies with the covenants as referenced in the minutes from 2006. Those in opposition were asked to respond. Jim Harreld came forward and stated he lives at 492 Stribling Rd. He said he was the only property owner present when this occurred. He said he worked with McElroy to try and reach an agreement but they never reached a final decision and he never signed anything. He said he thinks McElroy went behind their backs and maybe got one signature. He said the property was bought and sold by McElroy a number of times prior to Blake Cress purchasing the property. He said Mr. Cress had prior bad dealings with McElroy and should have checked into the property more closely before purchasing it. Tammy Harreld addressed the Commission next and she also resides at 492 Stribling Rd. She stated that she and her husband have been there for thirty (30) years. They have done additions and renovations to their property over the years to make it their forever home. She said their daughter intends to build her home on their property in the coming years. She said McElroy lied and committed fraud to get the property rezoned. She said that when the matter was denied in 2005, they didn't know anything further about it. They thought he would have to reach an agreement with them before he could have it rezoned which he never did. She said that she felt sorry for Mr. Cress but he should have checked the property better and he made a bad business decision. She said they want to work something out with him to do something different because there are already too many small residential developments in the area. Anna Harreld Wright addressed the Commission next. She stated that she was the Harrelds daughter and she currently lives in Harvey Crossing neighborhood. She reiterated that no agreement was reached with them. She also stated she was speaking for her generation and that there were others who were affected by this decision, not just the adjoining landowners. Mr. Smith addressed the Commission to respond to those in opposition and stated that the Board of Supervisor minutes were clear and without any reference to covenants. He also stated that he felt sympathy for their position but that it was all a home no matter what size and most of the general

population wished they could live next to large acreage lots and homes but that was not possible. Mary Newman addressed the Commission next and stated that she did not own property there but had a vested interest. She felt Mr. Smith was rude and inaccurate with his presentation. Walter McKay addressed the Commission next as a concerned citizen. He said that the county had a comprehensive plan and according to page 9 dealing with residential goals, the county should only allow higher density areas where the infrastructure allows it and this area is already overrun with these developments so he didn't think the property should be R-2. He further expressed concerns about the traffic. Mr. Gary Crest, Blake's father and business partner, addressed the Commission and stated that they had done their due diligence prior to purchasing the property and were told the zoning was R-2 and the county map reflected such zoning. He further stated that some of the landowners were in support of the development and they were not present today. He said they should not be penalized for relying on county records and maps. Mr. Burwell spoke next and stated that there were no winners in this situation but his clients had no recourse against McElroy while Mr. Crest did because he purchased the property from him. Commissioner Sligh noted that the county attorney, Mike Espy, was present and inquired regarding the request by the Board of Supervisors. Mr. Espy stated that he was only present to listen, and could not speak for or against either side.. He then reiterated the history of the petition and stated that before the Board could consider the PURD request, the fraud issue needed to be addressed. Since he anticipated litigation from this matter, he thought it best the Planning and Zoning Commission to review the issue and make a recommendation which was what was happening at this meeting. Commissioner Brown stated that this issue originated from 2006 and he was the only person still sitting on the Commission and despite any personal feelings on the matter, they had to make a decision that was in the best interest of the County. Commissioner Rouser reiterated that they were in a tough position but that they had to make a decision based on the minutes and evidence and his recommendation and was that the property was properly zoned as R-2 and should remain as R-2. Upon motion by Commissioner Rouser to recommend that the property remain zoned as R-2, seconded by Commissioner Amadio, with all present voting "aye," the motion regarding the R-2 zoning recommendation passed. It must be noted that Commissioner Miller was not present during the discussions and abstained from voting due to a conflict of interest.

There next came on for discussion the issue of attorney fees for October, 2015. Upon Motion by Commissioner Sligh, seconded by Commissioner Amadio, with all voting "aye," the motion to approve the attorney fees for October passed.

There next came on for discussion the setting of the December, 2015 meeting. December 10, 2015 was discussed. Upon motion by Commissioner Sligh, seconded by Commissioner Amadio, with all voting "aye," the motion to set the December, 2015 meeting for December 10, 2015 passed.

With there being no further business, the November 12, 2015 meeting was adjourned.

Date

12/10/2015

(Chairman)

