

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 14th DAY OF JULY, 2016 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 14th day of July, 2016 at 9:00 a.m. in the Board Room of the Madison County Chancery and Administrative Building.

Present: Walter McKay
 Larry Miller
 Dr. Bill Howard
 Don Drane

Scott Weeks, Planning and Zoning Administrator

Absent: Rev. Henry Brown

The meeting was opened with prayer by Commissioner Larry Miller, and those present participated in pledging allegiance to our flag.

There first came on for consideration the minutes of the June 9, 2016 meeting of the Commission. Upon motion by Commissioner Howard to approve the minutes, seconded by Commissioner Miller, with all voting "aye," the motion to approve the June 9, 2016 minutes passed.

There next came on for consideration the petition of Morris Real Estate for a variance for to the maximum sign square footage of 125 square feet total to 156 square footage. This is for the Fleetway Fuel Center located at 1227 Gluckstadt Rd. Mr. Bradley Morris appeared on behalf of the Petition. Commissioner McKay explained to him that the square footage allowed by the ordinance was for the total amount which includes both sides and the sign on the building. Commissioner McKay informed him that his calculations only included one side so the proposed calculation was off by 57 ½ square feet. He said the correct square footage to be requested was for the ordinance allowed 125 square feet plus 81 square feet, or 206 total. Commissioner Drane inquired why this was not caught before today and Zoning Administrator Weeks explained that he had just seen the actual drawing for the first time that day. It was explained to Mr. Morris that he would need to come back requesting the proper amount. Upon motion by Commissioner McKay to deny the request for a variance of 31 square feet for improper calculations, seconded by Commissioner Howard, with all voting "aye," the motion to deny the variance passed.

There next came on for consideration the petition of Albert Redmond for a conditional use for a 4 acre or less mining operation. Zoning Administrator Weeks explained that the Board of Supervisors had already approved this petition because of the time constraints for the project but petitioner was going through the proper legal process in the meantime. Mr. Redmond was present to represent the petition. Upon motion by Commissioner Howard to approve the conditional use, seconded by Commissioner McKay, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the petition of MAK LLC for a special exception/conditional use to excavate a four (4) or less acre mining operation and build a pond. The property is zoned A-1 Agricultural District and is located on 3024 Hwy 22. Marcus Kirby appeared on behalf of the Petitioner. He explained that this was the wedding/bed & breakfast venue that was approved in 2015. He said they had utilized the dirt for the lake but there would be some left that would need to be removed. He said the contractor had estimated approximately 12,000 to 15,000 yards would need to be removed. He said it was a 3 acre lake and explained how there would be proper water available for the lake. Mr. Kirby confirmed that it would be a nice lake and they were going to take the remaining dirt off site. He agreed to limit the hours of operation. Upon Motion by Commissioner Howard to approve the conditional use subject to the following conditions: that the hours of operation be limited for safety purposes from 8 to 2, and after 4; that no operations would be conducted after dark or on Sundays; seconded by Commissioner Drane, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the petition of Wendon Moore to rezone R-1 Residential District to C-2 Residential District. This petition was properly advertised and promoted and the Commission held the public hearing regarding this matter. Mr. Moore was present on behalf of the petition which was originally continued from the June, 2016 meeting because Mr. Moore was not present. Mr. Moore explained that this rezoning request was to move his business from one side of the road to the other side. He confirmed that the land across the road was zoned Industrial and used for commercial purposes. Zoning Administrator Weeks explained that he had not received any calls in opposition to this Petition. No one was present to voice any concerns or opposition. Upon Motion by Commissioner Drane to approve the petition, seconded by Commissioner McKay, with all voting "aye," the motion to approve the petition to rezone passed.

There next came on for consideration the petition of Madison County Schools Transportation and Maintenance Facility for a conditional use for a public/quasi public facility. The property is zoned I-2 Industrial. Ryan Florreich, architect, appeared on behalf of the petitioner. He explained that this was located on 16th section land and would be a maintenance facility. Lisa Williams from Germantown Subdivision addressed the Commission and stated that she was not in opposition but she expressed concerns

regarding traffic and if a deceleration lane might be possible for safety reasons. Mr. Florreich stated that he was not an engineer and could not address that question. It was discussed that this would be suggested as part of the Motion to the Board of Supervisors that the Commission would like the County Engineer to take this issue into consideration and potentially involve MDOT if necessary for this request. Upon Motion by Commissioner Howard to approve the request for a conditional use with the added request to the Board of Supervisors to have the county engineer address any traffic concerns with the roadway (including a potential deceleration lane), seconded by Commissioner Miller, with all voting "aye," the motion to approve the conditional use passed.

There next came on for consideration the site plan for a C-Store located near Aulenbrock Drive and Yandell Road. The property is currently zoned C-2. Alton Clingdon, architect, appeared on behalf of the petitioner. He stated that the property is located just to the west of the Dollar General Store. Commissioner McKay stated that there were already 2 gas stations in the immediate area and he didn't see a need for the station and Mr. Clingdon stated that they were aware of the other stations in the area. Mr. Clingdon stated that the hydraulics had already been submitted.

The hours of operation would be 6AM to 10PM and this was discussed as a condition to the approval of the site plan. Questions were taken from those in attendance. Marshall Jackson appeared and stated that he resides in the nearby neighborhood of Bradshaw Ridge. He presented a list of concerns which is attached hereto as Exhibit "A" for reference. He stated that he had concern about the proximity of alcohol sales to the nearby child care facility. He also expressed concern about the food service proposed within the gas station, signage, canopy and lighting, as well as other concerns. Mr. Clingdon stated that the grease trap would run underground.

Mr. Clingdon stated that the lighting would be downward facing with nothing outwards or upward. However, the lighting schedule does not have that type fixture specified. Mr. Clingdon was requested to make that correction to the plan.

As for the service of food, there would be a display cooler with sandwiches but no plans for a restaurant or seating within the store. Zoning Administrator Weeks explained that the liquor issue would need to be addressed by Alcohol Beverage Control for MS.

John Shows, Esq. addressed the Commission next and stated that he was noting his objection to the petition because if its in the large piece of land that other things on today's agenda were on, he wanted a chance to review it to see if it met the potential restrictive covenants from 2006.

Mr. Clingdon stated that there was an easement for an overhead powerline so if any sign

is placed, it would definitely be within what is currently allowed by the ordinances. He said he would have to work with Entergy to determine what type of sign would be allowed. Jim Harreld addressed the Commission next and stated that he lives off of Stribling Road. He stated that the plans should include the sign and you can't just rely on the minutes on what is going to be allowed. Mr. Clingdon stated that he has been doing these plans for fifty (50) years and he had never had a problem and he felt like his plans were complete. He said if he was required to go ahead and seek a sign permit without approval for the project, it was asking his client to spend money out of pocket unnecessarily.

Commissioner Drane stated that they had an obligation to the community to insure the plans were complete. Mr. Clingdon stated that the sign would be within what is already allowed by the zoning ordinance so he didn't see what difference it would make. Upon Motion by Commissioner Howard to table the site plan pending additional information from the Petitioner, seconded by Commissioner Drane, with Commissioners Howard and Drane voting "aye," and Commissioners McKay and Miller voting "nay," the motion was tied.

Further discussion was had regarding the request. Upon Motion by Commissioner McKay to approve the site plan with Petitioner agreeing to update the site plan prior to the Board of Supervisor approval with better description of the lighting and sign, seconded by Commissioner Howard, with all voting "aye," the motion to approve the site plan passed with the condition that the site plan and lighting schedule be updated prior to Board of Supervisor approval.

There next came on for consideration the site plan of Cedarstone Commercial for a new business located on Aulebrock Drive. This was last tabled from the May, 2016 meeting. Mr. Jason Weeks, Esq. appeared on behalf of Petitioner. He explained that this had been tabled at both the April and May meeting. He said the Commission had asked that they try to work something out with the nearby homeowners who were opposed to the development. He said they had exchanged multiple correspondence with the homeowners' attorney (all of which were provided as exhibits to his request to be on July's agenda and copies of which were posted online and provided to all Commissioners) but they had not been able to reach an agreement.

Mr. Weeks further stated that there was still the outstanding issue of the restrictive covenants that were part of the original petition to rezone from 2006. He said it was undisputed that the covenants were not recorded and because they were not recorded, he felt that they were not proper and never took effect to bind his client as a subsequent purchaser. He referred the Commission to Mississippi Code Annotated §89-5-5 (also provided as part of his request) which in summary states that covenants not properly recorded are not in effect and do not bind subsequent property owners.

Mr. Weeks also informed the Commission that they had checked on the rear-facing materials as requested and it would cost over \$75,000 and would not be economically feasible for them to use that material on the back side of the building. Commissioner McKay stated that he appreciated their attempts to try and reach an agreement. He stated that the letters referenced an agreement on a few aspects and he inquired if those were still agreeable to the parties. Mr. Weeks stated that he would have to consult with his clients but at this point, he would want to go through each point by point to make sure the record was clear on what was being agreed to and not agreed to by the parties.

Commissioner Howard stated the he understood the law but he felt they had a moral obligation to the homeowners under the circumstances and that certain things were agreed on and he would like to see them adhered to out of fairness to the parties.

John Shows, Esq. addressed the Commission next and explained that he represented some of the homeowners that lived near this property. His arguments were summarized in a handout he gave to each Commissioner at the meeting and a copy of which is attached hereto as Exhibit "B." He first questioned the legality of the original rezoning from 2006 and whether proper notice was posted in the paper and if an actual public hearing was held because he didn't think the minutes reflected same. He also stated that he felt the restrictive covenants that were part of the original petition in 2006 do apply because they were conditions on the rezoning of the property. Commissioner McKay stated that he disagreed the rezoning was improper and pointed out that there was no reference to the restrictions in the minutes. Zoning Commission Attorney Leah Ledford stated that there was no evidence that the original rezoning was improper and it had followed the proper legal process to be rezoned and that the public hearings were always held as part of the monthly Planning and Zoning meeting.

Commissioner Miller inquired regarding the ownership of the property in 2006 and a discussion was had regarding the proper owner at the time the property was rezoned. Jason Weeks addressed the Commission next in response and said any potential fraud regarding the ownership of the land in 2006 would be between the original owners and homeowners and not his client. He reiterated the code and that it was there to protect property owners who did their due diligence in running a title search and not binding them by property documents that were not legally recorded. He also pointed out that the property was zoned C-2 but this was a proposed office park which is allowed by C-1 so they were choosing less zoning than is allowed on the property.

Upon Motion by Commissioner Miller to approve the site plan as having met the requirements under the law and that because of Mississippi law the old covenants did not run with the land, seconded by Commissioner McKay, with Commissioners Miller and McKay voting "aye," and Commissioners Drane and Howard voting "nay," the motion did not passed. It was explained by Commission attorney Ledford that they could either pass the petition without a recommendation since there was a tie vote, or they could

discuss further and try to reach an agreement. Commissioner Drane inquired whether they could go back and undo the old zoning and Jason Weeks stated that it would create more legal issues because other businesses have already been allowed and currently operate commercial businesses on this land. Commissioner Howard inquired again whether an agreement could be reached between the parties on some of these issues. Jason Weeks stated that because Mr. Shows only represents a few homeowners in that area and not all of them or the Bradshaw Ridge HOA, he was not comfortable advising his client to put any kind of covenants on the land because that would potentially open them up to claims by other homeowners as well. He stated that he would like a decision one way or the other and if the Commission turned the petition down, he wanted to know on which zoning ordinances they were basing their decision.

Commissioner Miller made another motion to approve with the same tie vote resulting. Commissioner McKay made a motion to pass the site plan to the Board of Supervisors without a recommendation due to the tie vote. Upon substitute motion by Commissioner Drane to table the site plan until the next meeting when a majority vote would be present, seconded by Commissioner Howard, with all voting "aye," the motion to table the site plan passed. Jason Weeks inquired regarding an assurance of a majority vote at the next meeting and was told by the Commissioners that they could not offer an assurance that all would be present. Commissioner Drane noted the Commission's duty to all involved to not pass things to the Board of Supervisors without a recommendation.

There next came on for consideration the site plan of Building D at Livingston which will be used for office space. This was approved by the MLHPD at their June 13, 2016 meeting. A letter from the MLHPD is attached hereto for reference as Exhibit "C." Andy Clark, Esq. appeared on behalf of the Petitioner. Commissioner McKay stated that he did not think the site plan in their material met all of the specifications required for a site plan review. Zoning Administrator Weeks stated that this was an ongoing project and the specifics were included in the original master plan that had been approved, and this was just for the building itself. He presented a site plan showing the location of the proposed building within the previously approved site plan. Upon Motion by Commissioner Howard to approve the site plan contingent upon the things requested in MLHPD's letter attached as Exhibit "C," seconded by Commissioner Miller, with all voting "aye," the motion to approve the site plan passed.

There next came on for consideration the petition for a storage facility on Aulenbrock Drive. This petition was last tabled from the April meeting. Andy Clark, Esq. appeared on behalf of Petitioner. He explained that his client had negotiated and reached a tentative agreement on this matter but negotiations stopped once the issue of the potential original restrictive covenants came into play (which were discussed at length earlier in the meeting). He reiterated the arguments set forth earlier by Jason Weeks and the MS Code that doesn't bind subsequent property owner as to unrecorded covenants.

He also stated that the Madison County Zoning Ordinances actually provide that an approved site plan then becomes law once approved by the Board of Supervisors. He pointed out that with a rezoning approval, the language does not state that so he felt like the change in rezoning on this property from 2006 had no restrictions or conditions listed in the minutes and therefore, it did not become the law. He stated that his client had met all the requirements under the ordinances for a site plan and he was asking for approval. Mr. Clark further stated that the owners were present and they could attest to the meeting and agreement reached with the adjacent homeowners before a stale mate was reached over the potential covenants issue.

Mr. John Shows, Esp. appeared on behalf of the three adjacent homeowners. He stated that he felt that the original rezoning in 2006 was a conditional rezoning and cited a Mississippi Supreme Court case, *Old Canton Hills Homeowners Ass'n v. May & Jackson*, 749 So.2d 54 (Miss. 1999), which states that conditional zoning is legal and can be done by the local municipality. Commission attorney Ledford explained that conditional rezoning was legal and discussed the distinguishing factor of this situation where the conditions were not part of the original rezoning minutes. Mr. Shows said his clients had met with and come to a tentative agreement but they wanted to see what the Commission was going to do on the covenants issue. Commissioner Howard stated that he would like to see the parties reach an agreement. Upon motion by Commissioner Howard to table the petition until a majority vote is present but stating that he would encourage the parties to work out an agreement, seconded by Commissioner McKay, with all voting "aye," the motion to table the petition passed.

There next came on for discussion the payment of attorney fees for June, 2016. The Commissioners requested more specific entries to which Commission attorney Ledford agreed. Upon Motion by Commissioner Howard, seconded by Commissioner McKay, with all voting "aye," the motion to approve the attorney fees for June, 2016 passed.

There next came on for discussion the setting of the August, 2016 meeting. The second Thursday of the month is August 11, 2016 and all agreed to this date. Upon motion by Commissioner Miller, seconded by Commissioner Drane, with all voting "aye," the motion to set the August, 2016 meeting for August 11, 2016 passed.

With there being no further business, the July 14, 2016 meeting was adjourned.

8-11-16

Date

Walter McKay

(Chairman)