

**CITY OF MONTGOMERY
PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
MARCH 04, 2025**

OPENING AGENDA

1. Call meeting to order.

Chairman Simpson called the meeting to order at 6:00 p.m.

Present: Commission Member Daniel Gazda, Chairman Bill Simpson, Commission Member Merriam Walker, Vice Chairman Tom Czulewicz

Absent: Commission Member John Fox

2. Pledges of Allegiance.

Chairman Simpson led the Pledge of Allegiance and Pledge of Allegiance to the Texas State Flag.

PUBLIC FORUM:

No citizen comments presented for this meeting.

REGULAR AGENDA

3. Presentation by BCS Capital Group on a proposed new multi-family and mixed-use commercial development on 32 acres, southeast of the intersection at CB Stewart Drive and Buffalo Springs Drive and north of Eva Street.

Mr. Jack Burgher, with BCS Capital Group stated the goal tonight is just to give you an update on the high level plan. As you know, we have a 32 acre reserve at the northwest corner of SH-105 and Buffalo Springs. What they have in vision is a mixed-use project that basically brings in Class A multi-family development that will help us afford what we know the City really wants which is retail, which is their firm's focus. We are retail developers developing all over suburban Houston with a heavy focus on Montgomery County. We love Montgomery County. We love the growth, the incomes, the policy. We have a lot of pro-business policy here.

We have a really fun project in Magnolia on FM 1488, we bought 51 acres next to that HEB across from Magnolia High School, and we have a 24 acre retail development at Arden Woods and SH 99. This would be our third in Montgomery County of size. Very similar to Magnolia with it being a larger tract that has a lot of depth, we have to figure out what to do with the back.

We have two class A multi-family groups that build really high quality products. The reality is we are going to be spending north of \$50 million on the adjacent retail. The last

thing we can do is jeopardize ourselves by putting in some multi-family development that is not conducive and brings in low incomes and things the City does not want.

We have a site plan to do, plus or minus 14 acres on the northern portion for multi-family. We will not market three to four acres next to that for three years and we will only focus on the hotel. We know how much the City wants a hotel. We want a hotel. It helps them and helps their retailers. We will carve this piece out and make it a hotel. We do not have hotel use interest yet, but our hope is that we will be able to get one and are willing to restrict that property for three years to do that.

What we do have that we think is very exciting not only for the project, but for the community and the City, is Academy. We have active paper trading with them. They have approved this market and we are as close to getting the deal done as quickly as we can get a deal with the City. It is plus or minus \$22 million of sales tax coming. What it will really do is kickoff a retail development next to it. We do not know what we are going to do next to it yet. The easy fun would be to do like a TJ Maxx, HomeGoods, Ross, that kind of a soft goods line up next to it. The reality is that is probably the least desirable for us as a developer because the return metrics are not as good as say a restaurant village next to it.

He brought a little inspiration from what they are doing in Magnolia just to give you an idea. A few of these pieces are more set in stone than others. What we do have set in stone is multi-family and the Academy. We have three users we are talking to also. One is a full service restaurant, one is a national automotive use, and one is a bank. The front will be similar to where you are seeing the Chick-Fil-A, Chipotle, Sherwin Williams, Lupe Tortilla, those kind of uses on the front. The front is conducive for banks, credit unions, automotive users, restaurants, QSR restaurants and full service sit down restaurants. What we would like to do is get this Academy done. We will potentially put this retail building over here and get some small shop retail right in Buffalo Springs. Then we will have left over 4.9 acres. What we would like to do is do a restaurant village similar to what they are doing in Magnolia and Arden Woods. It would be programmed with the green space that centers it. Ideally, you have an oak tree or two you can bring in to bring shade and put retailers around it with restaurants, patios, etc. It would really be a destination. We have HEB here, it is kind of a driver, we are doing a restaurant village here, and then they approved a rezoning for multi-family next to it to make it all work. Commission Member Walker said it is kind of like Wood Forest. They have a little green area with concerts and stuff. Mr. Burgher said it is like a town center basically for people to bring their family. We are really excited about this project. We are going to need the City's help to pull it off. The uses we are going to bring in are going to be an amenity for the community. It is a partnership and we want to light interest with you and make this happen.

Commission Member Walker asked what would be on the corner at Buffalo Springs in front of the Academy? Mr. Burgher said we do not know. Mr. Burgher said that piece of property is a valuable piece just because it is on a hard corner. In the past if you look at corners you will see a lot of banks. We have two banks right now that have already reached out to us for this site. We probably will hold that and not do anything on the corner right away. Commission Member Walkers said yes, because that is three more lanes coming out and at Buffalo Springs how many lanes are coming out of that? Is there three there as well? We will have six lanes of traffic trying to get out onto SH-105. Mr. Burgher said we have two more curb cuts with cross access that runs throughout it. We are basically an extension of the Kroger and Home Depot development. If you look at this cross access drive, this

shared driveway, it runs directly into the shared drive of the Home Depot all the way back to Kroger. Vice Chairman Czulewicz asked if that is the retention part in the upper right hand corner? Mr. Burgher said that is a big piece of what we are discussing with right now, the drainage.

Mr. Jonathan White, L Squared Engineering said it is part of the access. If you take that east, it is directly across from the cross access to where Kroger and Home Depot are. He thinks the goal also to move it west is to be able to have another connector to Plez Morgan. We should have a ton of access in and out of that. In terms of the drainage, we did submit a drainage study to the City yesterday. This is part of the overall drainage study that was conducted by Carter & Burgess back in 2008. The Kroger development and the Home Depot development was part of that drainage study. It has been amended a couple times, but we have taken that and amended it for this to get it to Stewart Creek which is where the Kroger is on Lone Star Parkway. The strategy that we have is subject to city engineer review and approval. We will take all the drainage to TxDOT, TxDOT will approve. We will redirect it up north of Home Depot and north of Kroger. To get it to Stewart Creek, we have to go through land owners easement and make some improvements. It is a little bit of an untraditional drainage concept. Vice Chairman Czulewicz asked is this different than what we saw before where you did have a retention pond? Mr. White said yes, they have done a couple different thoughts on this. This strategy has to come into play with the property owner. A lot of coordination has to happen there and a lot of improvements to get that to work. Original concepts showed a couple different iterations, potentially losing three to seven acres, most likely seven acres of commercial property on these 32 acres to accommodate a detention that would service it. We did onsite detention as opposed to the strategy that we pitched. Vice Chairman Czulewicz said he would be really concerned about that. If you look at Town Creek for instance, every time we have storms that thing is washing out. What will you do to prevent Stewart Creek from doing the same thing when you have all that runoff water in a down pour? Mr. White said that is what we are doing is proving that we are not having those adverse effects. We actually get the water out before the storm and so we are not showing any increases on our beat flow. We are not increasing the deep flow based on our drainage study. That is a drainage study that was approved back in 2008 as well. We are just mimicking updating it to current conditions to prove that the drainage study still works today based on new criteria. Mr. Burgher said it has to work so that would be a piece that we want to prioritize. Mr. White said he does not recall hearing any recent concerns about Stewart Creek with the shops development, the Chick-Fil-A, Home Depot and Kroger. He does not think you are experiencing the same issues with Town Creek than you are with Stewart Creek and he has not seen or heard any issues with that. The Kroger development, Home Depot, the shops, the CVS, all of that have been working on the chain drainage study since the developers have been in the City. This tract was a part of the original drainage from the beginning. We are not adding something to try to make it work. It is just reproving it with current criteria. Vice Chairman Czulewicz asked why the change from the original presentation that we had last month where you had a retention pond to not having a retention pond? Mr. White said we were able to develop a better strategies to be able to accommodate drainage. Vice Chairman Czulewicz said 32 acres is a whole lot of permeable surface. That is an awful lot of water in a down pour where you may have two inches of rain in 24 hours. Mr. White said there are different ways other than just traditional to be able to do this.

Commission Member Walker asked are you going to put a light at that next street? Mr. White said he is not familiar with what TxDOT has or has not studied. City Engineer

Roznovsky said any access onto C.B. Stewart, most of the access is going to be on Buffalo Springs because it already has a light on the roadway improvements. Mr. White said there is a lot of developments coming through these intersections over the years, a lot of drainage. It is not like we are doing something that has not been developed so far. Mr. Burgher said all he asks is that we work together to try to come up with whether we can or not with solutions and get everyone comfortable because he does not have a lot of time with the seller. You all probably all know the seller. It either works or it does not work. Vice Chairman Czulewicz asked what is the cost differential between a retention pond and rerouting it to Stewart Creek? How does that hurt your pocket book? Mr. Burgher said we lose seven acres, we lose this entire area, we lose the Academy. We lose all of that. It is like a \$5 million loss. Vice Chairman Czulewicz said the drawing shows it being off to the right hand side. Mr. Burgher said we had three acres which would be a lot more doable, but he is telling me if we have to detain onsite it would be seven acres. Mr. White said with three acres it was assuming we could do some offsite drainage and require some offsite, and some onsite. When we did the study we actually were able to reveal we can do the entire thing with offsite. Again, it is just mitigation. Mr. Burgher said they have it estimated at \$1.7 million because we are drawing these massive storm pipes that are going to run from our property all the way through to Rumpy Lake and out. This is not like we are not doing anything. It is a big infrastructure project. We are increasing the size of the box culverts. Mr. White said speaking of value, seven acres of lost commercial land on SH-105 is not his forte about knowing the value. One, the City is losing property value, ad valorem value, sales tax, but also the value that is lost on the sale and purchase of property. That is why we try to have a strategic area to try to make it work with something more offsite. Mr. Burgher said engineers are very good at proving this up. Right now this has to be proven which he thinks they have done. Mr. White said we should be able to. Taking what was done before and also bringing you up to current standards.

Vice Chairman Czulewicz asked at what point does the water enter Stewart Creek? Mr. White said along Lone Star Parkway and Stewart Creek at that intersection. Basically where all the development Kroger goes. The drainage study of the Kroger development was actually supposed to develop flow from this tract so their onsite storm sewer should have been sized to take on this flow and it was not. So now we have to be able to try to get it which is also in the agreement. He has got to get with another landowner which is going to cost. There is \$1.7 million of infrastructure they have go to put in just to be able to get it from their tract to Stewart Creek. If all that was done in the beginning, it would already be allocated to go through the Kroger development through their storm sewer and into Stewart Creek.

Commission Member Walker said she has seen these groupings and when you come up to Buffalo Springs everyone has been building and it is kind of a hodge podge. Are you going to build in accordance to what our town is going to look like? Have we set out anything that says how you need to have brick, you need to have rock, you need to have cedar, posts, and an angle? Chairman Simpson said the design specifications are in the ordinance. Commission Member Walker said right, but what are your plans? Are the buildings going to look like the hodge podge that is across the street up the way from you? Chairman Simpson said we cannot dictate the brand. Commission Member Walker said no you cannot. Chairman Simpson said the only thing we can dictate in the ordinances is the materials they use. Commission Member Walker said yes. What materials will be used? Mr. Burgher said we create a declaration that governs the entire property. On a large development you create design guidelines that creates flow, and it creates quality. The

reality is we only have five pads. We are going to get high quality users. Commission Member Walker said she does not want them to be hodge podge. She would like to see more green. She wants to make sure it is going to flow. Mr. Burgher said there will be architectural guide lines within a declaration. What Kroger did we did not like either. Mr. Burgher said he could have done a lot better job because what they did they did not have any design guidelines. Mr. Burgher said we are in the business of creating relationships with communities, doing what we say we are going to do, and looking back, it is a win-win. He knows saying that now does not carry a lot of weight, but he is saying it now and is going to back it up. The reality is we have the most to lose if it is not a quality project then you are devaluing your asset.

Commission Member Gazda asked who is your potential multi-family developer? Mr. Burgher said the Morgan Group.

Commission Member Walker asked what price range are you trying to target in multi-family? Mr. Burgher said the highest in the market.

City Engineer Roznovsky said the next step is for Council next week to review a draft of a memorandum of understanding regarding terms of the development agreement with the developer, regarding infrastructure improvements, roadway improvements, and other items in there as well as the drainage study.

Chairman Simpson asked what did you say the first two on the ticket would be? The Academy and the hotel? Mr. Burgher said multi-family and that is the piece that actually needs to be rezoned. Commission Member Gazda asked if the hotel would be in three years? Mr. Burgher said yes, but they do not have one right now. Commission Member Walker asked if he was talking about a three-story hotel? Mr. Burgher said yes. Commission Member Walker asked for multi-family will it be homes or apartments? Mr. Burgher said apartments. Commission Member Walker asked how many apartments and how high are they? Mr. Burgher said they are looking at 25 units an acre with a three-story garden style. Mr. White said he knows you may have some concern with the traffic. A traffic study will be required.

Mr. Burgher said we will do Academy immediately and may do a multi right away trailed by six months We will probably not do anything next to the Academy other than multi-tenant building, similar to what you see where Chipotle is. Those buildings can bring in a lot of sales tax. We will put in a couple restaurants on the end caps and some users in the middle and leave the 4.9 acre reserve and see what we can do there. They have a restaurant they are talking to, Texas Roadhouse. Commission Member Walker asked if you are moving the Academy over? Mr. Burgher said just slightly about 30 feet. Small users have to have direct access and visibility to the main roads so we would shift this Academy over and put a retail building on the side of the front of Buffalo Springs. Academy likes that because their customers can be parking in front of their store. By putting it on the side, their front door faces the side so their parking is collaborative. Vice Chairman Czulewicz said so there is going to be a cut from Buffalo Springs to that? Mr. Burgher said they have three cuts planned. One for service behind, one for the main entrance to Academy, and the cross access drive that lines up with Kroger. Vice Chairman Czulewicz asked where that other retail is going to be facing Buffalo Springs, there is not going to be a cut in the middle? Mr. Burgher said no.

Commission Member Walker asked if the back side of Academy is going to be on the back side of the hotel? Mr. Burgher said that is right. The way the topography works is this portion north of the line is elevated so it will sit above it.

Commission Member Gazda said they said the same thing to Home Depot and they did not listen, but we would love some wider parking spots.

Commission Member Walker asked how much illumination are you bringing because now when you pull on that hill coming down there by Wendy's it is just lit up like the fourth of July. Is it the same as Home Depot? Mr. Burgher said it would be similar to that. This little pocket is like the most conducive for these big users just where it sits.

Commission Member Gazda said next time we will see you back is when plats come or rezoning requests.

4. Consideration and possible action on the proposed installation of a privacy fence along the west property line at 606 College Street.

Code Enforcement Officer and Planning/Zoning Administrator Tilley said she will be speaking on behalf of the property owner. The owner apologizes that she was unable to attend tonight. 606 College Street is located in the residential zoning district and the historic reservation district. This property owner proposes to install a six-foot high privacy fence along 87 feet of the rear and side west property line and a four-foot high privacy fence along 63 feet of the west property line towards the front of the property. It would just be on one side of the property. Code Enforcement Officer and Planning/Zoning Administrator Tilley said she went through a list of the findings in reference to fences and found that all of them were met and some of them did not apply. It is a wooden fence, it is not metal, it meets the height guidelines, and also the location of the fence. She did include a few pictures on neighboring properties that show wooden fences. She thinks most of them are along the rear yard. She thinks there is one property letter, letter C where the six-foot high wood privacy fence is behind the Caroline two-story white house. They have a six-foot high privacy fence that is in the rear yard, but it happens to be along the front yard of the pet business on Pond Street. There is one more right across the street that is a six-foot high privacy fence. It is along the rear yard. Also, another historic Caroline house along Pond Street and it is on the front side yard of the residential house also on Pond Street.

Code Enforcement Officer and Planning/Zoning Administrator Tilley said it is her recommendation to approve the privacy fence as long as it is completely installed within its own property. Even the posts will have to be within her property. The owner thought she would be able to put it on the property line, but Code Enforcement Officer and Planning/Zoning Administrator Tilley advised it has to be completely within her property. It does meet the design guidelines. According to her findings and if there are any modifications to the plans that you approved tonight, that she would resubmit and come back to the Planning and Zoning Commission. Chairman Simpson asked is it going to be standard cedar wood? Code Enforcement Office and Planning/Zoning Administrator Tilley said yes. Commission Member Walker asked why is she picking that one side because once we say yes then that means she can go along the back side and at the other side which is very open? That would mean her and her next door neighbor would have to come to some

type of agreement I would assume. Do you know why she is just doing one side? Code Enforcement Officer and Planning/Zoning Tilley said she would like to reduce the amount of trees, shrubs, and brush that is coming through the existing chain link fence. Commission Member Walker said her only suggestion is what we did in our neighborhood is they had the six foot fence up, but from that one point coming forward where she is talking about the four foot, I would like for it to be white as the one that is next door to her even though it has been there for years. I would suggest painting it white and more picket, but I understand if it is solid and that is what she is trying to go for. There is that picture right there of the picket that is beside her and then where her cyclone fence is going to come down, she is going to put her four foot fence in there. I would suggest that. Code Enforcement Officer and Planning/Zoning Administrator Tilley asked are you thinking the exact same type of picket or are you okay with the four foot high wood privacy just painted white? Commission Member Walker said she would like it to be picket because she is directly across from historical homes that have the historical plaques on them and they do have the white picket. Even though that land is undeveloped, it is in that area and they even tried to keep white picket on it as well. Code Enforcement Officer and Planning/Zoning Administrator Tilley asked if she can have it so that they are right next to it so there is not a space in between each picket? Chairman Simpson said he does not see a problem with the solid privacy four foot wall in that area. Commission Member Gazda agreed and said yes, a solid four foot white picket fence. Code Enforcement Officer and Planning/Zoning Administrator Tilley asked if you would like for her to come back to show you? Chairman Simpson said he does not believe they need to do that. You all can use your judgement on what we discuss. Code Enforcement Officer and Planning/Zoning Administrator Tilley asked where would she start that picket fence? Would it be equal to the front side of her house? Commission Member Walker said yes.

Motion: Commission Member Gazda made a motion to approve a privacy fence along the west property line at 606 College Street with the exception that the front portion starting at the front porch on the west side down toward College Street be a white solid picket fence and to align with the existing picket fence. Commission Member Walker seconded the motion. Motion carries with all present voting in favor.

5. Consideration and possible action on the Planning & Zoning Commission to make a recommendation to City Council for a variance request related to lot minimum frontage and side yard setbacks of lots 27 & 28 for the Hills of Town Creek Section 5 development.

City Engineer Roznovsky said on page 19 of your packets you see a copy of a memo from us, followed by an application by the developer's engineer, and finally on page 24 you will see an exhibit which is where I will pull your attention to.

At Hills of Town Creek section five in the back corner closest to the Montgomery ISD driveway to the stadium, they have a reserve that is in that back corner. The development was put together and the reserve was off by itself. The two lots closed it off so you could not access that reserve from the neighborhood. The developer has come back and decided

that he wants to make that an amenity space to add a reserve between the two lots in order to access that green space behind the lots. This is for modifying these two lots. What this does is it pushes their minimum widths at the 30 foot set back line, the 45 feet versus the 50 foot that was previously approved back in December of 2021. Both lots will still exceed the minimum lot period that was approved at that time being roughly 10,000 square feet and 8,000 square feet on those two lots, 85, 25, 10, and 774 respectively. Previously it had been approved. It was down to 5,500 square feet within this development back in December.

We do not have any objection to what they are proposing. The reason makes sense to access green space which is what the City wants. If you all recommend approval, Council will then make the decision and then after that they will have to go through the replat process. They first need to get the change approved and then go through and do the partial replat of this section. Chairman Simpson asked if the reserve back there is usable? City Engineer Roznovsky said correct. There is a waterline easement that runs through it. A representative for L Squared Engineering, Mr. Nick Hemann said they are proposing a playground area with green space around it and fenced in to keep that safe. As City Engineer Roznovsky mentioned the waterline easement. It is a win-win for the City as well. There is currently a waterline easement that goes through that reserve strip. That way it will be an unencumbered access point for the City's water. Vice Chairman Czulewicz said this will basically be over the easement itself. Mr. Hemann said correct. Commission Member Walker asked if the lot owners are aware of this as well? Mr. Hemann said they will be. City Engineer Roznovsky said the builder currently owns the lot. Mr. White said they are reserving these two lots until this is done. Vice Chairman Czulewicz asked if the building setbacks will still apply? Mr. White said yes.

Motion: Commission Member Gazda made a motion to approve a recommendation to City Council Commission for a variance request related to lot minimum frontage and side yard setbacks of lots 27 & 28 for the Hills of Town Creek Section 5 development. Vice Chairman Czulewicz seconded the motion. Motion carries with all present voting in favor.

6. Discussion of Utility and Economic Feasibility Study for the KHR Properties Commercial Tract (Dev. No. 2415).

City Engineer Roznovsky said this is the Jack in the Box development and has been discussed for months with the City. At the last City Council meeting, this feasibility study was presented to them. There are two items on your agenda tonight related to the same development.

This property is located on the hard corner of the southeast corner of SH-105 and FM 149. This is what used to be the auction house. You will see in your packets copies of proposed site plans for the development which is a Jack in the Box with two drive-thru lanes going into it with an access point on to SH-105 and FM 149, as well as cross access into the Brookshire Brothers parking lot.

On page 28 of the executive summary there is an estimated development cost regarding their escrow account which are plan reviews, city attorney time, etc. The water and wastewater impact fees based on the estimated size of the meter totals to approximately \$52,000. This is only the ad valorem portion so nothing in this report talks about sales tax. A Jack in the Box based on their proposed values is \$750,000 which is about \$33,000 a year in ad valorem tax. That does not include sales tax which we would assume to be a much larger number.

The property is currently zoned B and will remain B. Code Enforcement Officer and Planning/Zoning Administrator Tilley will talk about the special use on the property and then we will get into the water capacity.

One thing we did differently on this exhibit of the feasibility study that we will do going forward, is we consolidated the massive table of different development into an exhibit and showed as it is going through the different stages of the development. Right now, you have about a 2,500 connection limit and 560,000 gallon a day capacity in your water system. Today you are running about 475,000 gallons a day. You are currently in design of the water plant number three improvements which is expected to bid in March or April of this year. That will raise the capacity up to 730,000 gallons a day with the same connection count by that project.

What has also occurred, at the last Council meeting, Council approved the engineer for the water plant number four project, which is the future water plant that is connected to the Briarley development over on Old Plantersville Road and Old Dobbin-Plantersville Road. That project includes a new water well and has already been permitted with the Groundwater Conservation District, as well as the elevated storage tank. Once that project is complete, the City will have a capacity of roughly 5,000 connections or 1.2 million gallons a day. That is all based on average daily flow. The way TCEQ requires facilities for an average daily flow, you have to factor in a 2.4 time peak. This is for a 10 hour period. Essentially, take your facility you run for 10 hours a day. That is what you have to design toward is your average daily flow to be able to count for 2.4 times that you ran in 24 hours a day. These numbers are all based on that average daily flow capacity, but your actual flow is much higher. This development itself does not provide a lot of additional flow. Based on their estimates and other development like them, they are about 1,500 gallons a day in water and sewer in the grand scheme of things, a relatively small user. There are a lot of additional developments that obviously the City has that are either ready to connect as they have approved agreements, the plats have been approved, and they have been accepted by the City and ones that are in design, and feasibility, etc. There is a lot of potential. As the City continues to expand and as developments continue to go, capacity starts getting very tight in future years as these projects are completed. A couple things to note. We build our projections conservatively, so what we show in our projections versus the average daily flow, we build a buffer to that as well as the projected demands from these developments. We use industry standards that will say this type of development is estimated to use this amount. Typically, those are very conservative industry standards. Most of them were made when the average single family home used around 360 gallons of water a day. Today with low fluid fixtures and everything else, we are seeing single family home use close to 200 to 220 gallons a day. Nonetheless, there is a lot of development coming into the City. There is a lot of need in continuing to push, which the City is on all these improvements, to stay in pace with these developments which is key. The City has done a lot of things, some long weed items and getting permits in place will help with that.

As far as the linear utilities, in order to actually get water to this property, there is already existing water there. It was already served so there are no public extensions required. The sewer side is essentially the same. The City has contracted with Halff Associates to begin the design of the wastewater treatment plant expansion. That has been going on for about a month or so. The estimated time lines that you see for the increases in capacity are based on the time lines that we have for the design and construction of those projects. This development itself will not use a ton. Today, you are only running about 58 percent of the capacity of that plant, however, when you look at all the projected developments and their projected growth, that adds to it. One big caveat to note is we have roughly a 70,000 gallon a day buffer in our projections which accounts for a lot of flow, but there are some that we are seeing lag behind on developments connecting, but not fully using. With others, that is based on the estimated usages that are coming in lower, but we are still basing it on these estimates to make sure. We would rather be a little oversized than undersized as development continues in the City.

There are a lot of concerns about drainage and traffic with this property being on a hard corner. What they are currently proposing for drainage is underground detention and they have already submitted that to TxDOT for approval. As of about a month ago, they have not heard back or received any plans, but they are working through the process. TxDOT is the governing entity on those. Chairman Simpson asked how does TxDOT look at a piece of property like that and consider if they can get cut approvals? City Engineer Roznovsky said they are going to look at spacing and they are going to look at their traffic counts. They will be required to prepare a traffic impact analysis to show what their impact will be on those surrounding roads. TxDOT is going to have concerns with the proximity to the intersection. There is not a lot of space from their driveway on FM 149 to the intersection of SH-105 and it is going to be going into that turn lane. Our concern is based on their land plan. Their queue for the drive-thru heads out toward that entrance so there is a backup that that is queuing on to FM 149. We told them they have to include that in their study and bring that to TxDOT's attention. If we do not see that, we will discuss with TxDOT as well. Vice Chairman Czulewicz asked where does the water from the underground retention go? City Engineer Roznovsky said it will go in to the TxDOT right-of-way. There is some existing storm sewer in the TxDOT's right-of-way that is TxDOT's south of FM 149. They will have to detain it underground and then slow release it into the TxDOT storm sewer with the amount of the capacity they allow.

Chairman Simpson said in regards to parking, it looks like a smaller Jack in the Box then usual and it looks like there are only 14 or 15 parking spots on site. Even though it is a smaller building, it does not mean there are going to be less customers. City Engineer Roznovsky said they are going to have to follow the City ordinance on parking spaces. We have not reviewed that yet. As of right now, they have not identified any variances that they would be requesting from the City. We have not checked the calculations at this point at this stage of the process to determine. Commission Member Gazda said they have 24 for 2,4000 square feet so it is pretty close. Chairman Simpson said he hopes TxDOT comes at 5:00 p.m. or 5:30 p.m. to do their traffic study. He said he was coming from Conroe today to come here and it was right around 5:30 p.m. and the traffic heading north on FM 149 to SH-105 was already backed up to First Financial. If someone is coming south from FM 149 wanting to turn into that cut on FM 149, they are going to block traffic all the way up on SH-105 and FM 149. That property was purchased to decrease traffic, but now we are going to increase traffic. There is nowhere else to put cuts at that intersection. Commission

Member Walker asked how is it in going in and out of Brookshire Brothers? Is that the entrance off of SH-105 into Brookshire Brothers and then feed into that lot, or are they going to have a space directly from them? City Engineer Roznovsky said there are two drives into Brookshire Brothers. One at the very south of the property and one on the northern end of the property into the Brookshire Brothers parking lot. Their driveway onto FM 149 does not directly line up per this land plan with that access. In order to go all the way through and make it over to Brookshire Brothers, they would come in, have to jog, and then make their way over to Brookshire Brothers. They have talked to Brookshire Brothers and have agreements on shared use. Commission Member Walker asked is that going to be submitted to us in writing? City Engineer Roznovsky said yes. If they are connecting they have to show the paper just like we would for any type of utility easement, etc. should prove they have that access easement across the property. Commission Member Walker said they are just here to hear the feasibility and to hear our concerns, but City Council is the one that says yes or no. City Engineer Roznovsky said there are a handful of steps that are remaining. One, is what Code Enforcement Officer and Planning/Zoning Administrator Tilley will talk about on special use permit. Two, is once they obtain that, they need a development agreement with the City. There are no utility extensions, but we are just papering up all the developments and if there are any type of variances. This property will have to plat. It will be a minor plat because they are not subdividing so it will go through on the staff level. Any other changes, if there are variances, will come back to this Commission and City Council. The next major step of City approval that would come to a Board, either you or Council, will be the permit that Code Enforcement Officer and Planning/Zoning Administrator Tilley is going to talk about and/or any variances, and the development agreement. Vice Chairman Czulewicz said that they said they are going to have dual drive-thru lanes. City Engineer Roznovsky said correct.

7. Presentation of the zoning determination by the Planning/Zoning Administrator for the restaurant with drive-through service (KHR, Properties – Jack in the Box 4947).

Code Enforcement Officer and Planning/Zoning Administrator Tilley said this zoning determination was made based on the use of the property. They are going to use it as a restaurant which it is a permitted use in the B zoning district that it is located in. However, with a restaurant, not all restaurants have it, but this time there is a drive-thru service component added to it. Typically, the drive-thru service is like an accessory to a traditional restaurant. If you look in our zoning ordinance, we have no definitions for any of these types of uses. I looked online. The first dictionary that popped up was the Oxford dictionary and it lists on there exactly what I found in the dictionary. A restaurant is a place where people pay to sit, eat meals that are cooked and served on the premises. Now you add fast food to it. It is something that is kept hot, it is partially prepared by a snack bar restaurant so that it can be served as a quick meal or taken away. Then you add the drive-thru component. That is where customers would stay in their vehicles and not actually go into the restaurant and get their food that way. I consider that to be as an accessory use. According to the zoning regulations, any time that you have an accessory use it would require a special use permit. Also, if the specific use as in restaurant with drive-thru service is not actually listed in the table of uses, it would also require a special use permit. That is the determination that she made in order for this specific use, the restaurant with drive-thru service requires a special use permit. They do have the ability to appeal that decision and possibly point out where an error has been made in that decision. She has heard they want to appeal, but has not seen an appeal. This letter went out on February 21st so they still have time.

Vice Chairman Czulewicz asked if City Engineer Roznovsky and Code Enforcement Officer and Planning/Zoning Administrator Tilley are going to take action to get the definition of restaurant and drive-thru into our regulations? Code Enforcement Officer and Planning/Zoning Administrator Tilley said she is hoping to get a lot of definitions into the regulations because if you look at our table of uses, there are some really old uses that are in there that she does not know that they would ever be using. She almost added food to go as one of the listed uses in the table of uses because it sounds like a quick, fast food type restaurant, but it was food to go with no curbside service that would be allowed in a B district. This is kind of curbside service because a person does not leave their vehicle. Again, there is no definition, but there is a lot of definitions that are missing from there. Our definition list is definitely going to be longer, but it would help to go through all of the list of uses, see what can cover certain things, and see what definitions are missing. Chairman Simpson said that would eliminate the special use permit they would need. Vice Chairman Czulewicz said also he understands they are lacking in the table of uses, but it is also lacking in definitions. The beginning of chapter 78 we have a whole definition section and neither restaurant nor drive-thru or special use are there. We are in the process of fixing that so are you and City Engineer Roznovsky going to take action to get with our contractor and put it in there? Code Enforcement Officer and Planning/Zoning Administrator Tilley said she is working through and writing her notes in on chapter 78, and knows they took care of the engineering and the development in subdivisions. City Engineer Roznovsky said between the lack of definitions, both of us were working closely with KKC. We have a call with them tomorrow in continuing the process on interims being done, including the full table of uses being updated that define all these gray areas between fast food and drive-thru, and many other things that are not defined to make sure it is all clear. Commission Member Walker asked if this one thing can be all clear so that if a decision is made, it will not come back and say you do not have a definition? Can we expedite this for this definition? City Engineer Roznovsky said as far as this property goes, this determination is the rule. They have their 30-day period to appeal it and then it goes to the Zoning Board of Adjustments which is Council to appeal the decision. Or, they can apply for a special use permit and order to put in the drive-thru. Anything that is done now will not apply to this property, but as soon as it is done, it will be published. If Council approves it, it will get published, and then there is a two week period from the new ordinance being published. Vice Chairman Czulewicz said there is wording in chapter 78 that says anything not listed in the table requires special use permit. City Engineer Roznovsky said exactly and that is what Code Enforcement Officer and Planning/Zoning Administrator Tilley is referencing is that since it is not defined in the table, it is not that you cannot do it, it is just you have to get a special use permit because the table does not automatically define it. Part of the larger ordinance amendment is upping the table and getting more uses that fit today versus what it was when that table was put together and providing the definitions because it says restaurant, but it does not define it. Code Enforcement Officer and Planning/Zoning Administrator Tilley said just as a clarification, it is chapter 98 where the zoning code is located. That is what will have to be removed and notification has to go out, so you will see the revisions. She thought they were going with UDO and is trying to see how a unified development ordinance will change how our zoning ordinance looks and how it will read, but you will see all that before it actually goes into place. Also clarification with the appeal, it is actually 20 days when it comes to an administration decision, so they actually have 20 days from the 21st to be able to file that appeal. Again, this zoning determination was not to indicate that they are denied, it is just saying there is an extra step like the special use permit that we are asking for them to apply for in order to do this.

8. Consideration and possible action on the Regular Meeting Minutes of February 04, 2025.

Motion: Vice Chairman Czulewicz made a motion to approve the regular meeting minutes of February 04, 2025. Commission Member Gazda seconded the motion. Motion carries with all present voting in favor.

COMMISSION INQUIRY

Chairman Simpson said regarding the email they received from the gentleman on FM 149 south, he saw where their ETJ was and then saw Conroe's. Is that piece of property in our ETJ or Conroe's ETJ? Code Enforcement Officer and Planning/Zoning Administrator Tilley said that is a clarification that she needs to make and hopefully with the help of the engineers. The ETJ that goes south of SH-105 on FM 149 that makes that J hook, that ETJ was created a long time ago where we had an easement along the west side of FM 149. That was the reason why we have that ETJ just because of that easement that goes down there and comes across in onto Spring Branch. She does not know how it was decided that because of that easement that the ETJ all of a sudden also goes way out on the other side of FM 149 also, but she thinks that easement is actually gone now.

City Engineer Roznovsky said a couple years ago they researched this because it was confusing. There is a development off the Spring Branch Road. There is a neighborhood off to the side on the west side of Spring Branch Road. It was originally annexed by the City and it was going to receive service. At that time, the state law allowed strip annexation. There was a strip that went down FM 149 and Spring Branch over to get to this property. That is how that property was able to be annexed. They then subsequently requested and were approved to de-annex that property so that when you look at the ETJ map, that property is not in the City. Based on the research at the time, and again we will clarify with Code Enforcement Officer and Planning/Zoning Administrator Tilley and the city attorney, when the de-annexation was done, it was only of that subdivision, not that strip. That is why the map shows it that way. There is a one foot strip that exists. An annexation of the neighborhood, a de-annexation of the neighborhood, but the ETJ remained. The ETJ is automatically pushed to one half mile of the city limit line after every annexation. Essentially, east of FM 149 the City of Conroe today is bounding the City so all the way down and then it wraps around the north. As a larger city and the type of city they are, they have a larger than half mile extension of their ETJ. When you go to the west side of the City as we are annexing Red Bird, that is pushing up the ETJ because there is not an ETJ on that side. City Engineer Roznovsky said the chapter 78 ordinance still applies. Chairman Simpson asked if they have to come for plan review? City Engineer Roznovsky said no, but when it comes to plat, yes. The City reviews and the County will still sign off on the plats within the ETJ. The City reviews in chapter 78 the plats. Chairman Simpson asked if they need to go by our lot? He believes the lot width is in chapter 78 and setbacks, etc. are in chapter 98 so those would apply, but again, they have not had a chance to deep dive into this and loop in the attorney to make sure that is okay. Vice Chairman Czulewicz asked are you going to answer the letter? Code Enforcement Officer and Planning/Zoning Administrator Tilley said yes. She will put together some notes in reference to what is in chapter 78 and what we can review and what we cannot. We will make sure we push it through the city attorneys first and make sure we are correct on that. She said she agrees with City Engineer Roznovsky. Chapter 78 will cover that development, but chapter 98

does not. Vice Chairman Czulewicz said this is from a third party. Are you obligated to contact the developer about the questions or is that like you said, they go through the County for the permitting? Code Enforcement Officer and Planning/Zoning Administrator Tilley said her email came from a council member so she will be responding to the council member. City Engineer Roznovsky said they will look into the requirements and make sure they take it to the attorney and if that means the City does have jurisdiction, contact will be made through the appropriate channels to make sure developers are notified and Council is responded to.

Vice Chairman Czulewicz said in regards to definitions, he really thinks they need to include municipal utility district (MUD) and public improvement district (PID) in the definitions in both chapter 98 and chapter 78. They are not in there. It came up at the City Council meeting and people do not know what they are. They know what MUD is, but they did not know what PID was. He thinks it is important if they are going to have a system where a developer or someone goes in and they can search for something which is a part of the plan that we should have as many of these typical definitions as we can. City Engineer Roznovsky said we will talk with Kendig Keast Collaborative (KKC), the attorneys, and staff and see if there is a way to put in some of the City's requirements for the creation of a special purpose district within the ordinances that lay some of that out.

Vice Chairman Czulewicz said he has a technical question regarding plan development. In discussions for this one that we had today, in the original discussions and everything beforehand, there was some discussion about covenants and restrictions. Do all approved plan developments come with covenants and restrictions? City Engineer Roznovsky said this one is different. He is not going to say all, but will say how this one works. When this one was created, it covered a large area of the City. It covered Buffalo Springs, Lake Creek Village, Town Creek Crossing, and all those properties along there, including the northern portion of this. When that was created, the Architectural Control Committee of Buffalo Springs was designated to have architectural control over that entire area. As developments come through, the Architectural Control Committee should be reviewing them. The Architectural Control Committee has not been and so we are working through that process to make sure that they are reviewing these documents. It does not change plan use, city code, or building setbacks, but just architect control elements and a little bit on the use of the property as it aligns with the overall plan development district. Vice Chairman Czulewicz said but they have to comply with the City's requirements, right? City Engineer Roznovsky said correct. Those kind of suggestions were adopted around 2004. Vice Chairman Czulewicz said he was under the impression from Mr. Phillip Lefevre that the planned development (PD) expired. City Engineer Roznovsky said his agreement expired. The 2004 development agreement between the City and Mr. Lefevre was a 20-year agreement that expired in January 2004. The PD zone still remains. That is a zone district by the City. It is not tied to the development agreement. These architectural controls were over the land area. It was not tied to the agreement, it was tied to what was zoned PD. Everything in this PD zone falls under the same architectural control unless the bylaws would have to be changed to remove that. On this property as you point out, the very low portion of the property is PD. Then you have the commercial and the rest of it is commercial zone, so they would have to rezone the commercial zone portion with the multi-family zoning multi-family and the rest of it can stay commercial with likely restaurants and things like that.

Vice Chairman Czulewicz asked what do we need to do to get more teeth in compliance with the violations like the plastic up there? They did that last year. They just blew us off and said I do not care and then took it down when the weather got warm. Nobody said anything. Code Enforcement Officer and Planning/Zoning Administrator Tilley said in this case, specifically for that one there, they do have the right to appeal the decision and they do have the time frame to appeal the decision. Vice Chairman Czulewicz said that was a month ago. They had 30 days. Code Enforcement Officer and Planning/Zoning Administrator Tilley said she will get on that tomorrow and remind him. She was out there last week reminding him when it needs to come down. She has not seen an appeal.

Vice Chairman Czulewicz asked if they have any parking enforcement codes? Code Enforcement Officer and Planning/Zoning Administrator Tilley asked in what sense? Vice Chairman Czulewicz said if the City has a no parking at any time sign, who enforces that? Code Enforcement Officer and Planning/Zoning Administrator Tilley said that would be the police department (PD) because that is in the right-of-way, unless it is private parking. Vice Chairman Czulewicz said no. He is talking about over in the historic district across from Maiden. The one whole side has no parking, but people park there all the time. Code Enforcement Officer and Planning/Zoning Administrator Tilley said she will definitely look at that and see. Vice Chairman Czulewicz said there are signs for no parking any time all the way down that side. The problem with it is that the other side of the street has angle parking. When people park illegally on the other side, people cannot back out very easily. City Engineer Roznovsky asked if he was talking about behind Cozy Grape? Vice Chairman Czulewicz said yes. The whole street there has no parking any time signs there. It does create a real problem.

CLOSING AGENDA

9. Items to consider for placement on future agendas.

No items were brought forth to consider.

10. Adjourn.

Motion: Vice Chairman Czulewicz made a motion to adjourned the regular meeting of the Planning and Zoning Commission at 7:25 p.m. Commission Member Gazda seconded the motion. Motion carries with all present voting in favor.

APPROVED:



Bill Simpson, Commission Chairman

ATTEST:



Ruby Beaven, City Secretary