

Minutes
Planning and Zoning Meeting
April 14, 2014

On this 14th day of April, 2014, at 7:00 p.m., the Planning and Zoning Commission convened in a Regular Meeting, and the same being opened to the public at their regular meeting place; thereof, at City Hall, 303 S. Teel Drive, Devine, Texas. Notice of said meeting having been prescribed in Chapter 551, Government Code, and Vernon's Texas Codes, Annotated, and the following members thereof, being present, namely:

Doug Wilkins, Chairman
Onis Wiemers, Secretary
Darrell Murdock
Rick Maxwell
Jim Lawler

Absent being: Mike Herring and Ed Dougherty; thus constituting a quorum.

Personnel present: William Herring, Mayor; Hal Lance, Councilman District 5; Dora V. Rodriguez, Assistant City Administrator/City Secretary; Denise Duffy, City Accountant; and Darrell Rawlings, Code Compliance Officer.

Others present: Maricella Billalobos, 19436 FM 463, Devine, TX 78016; Marisa Peña, 517 Fullerton Drive, Devine, TX 78016; Bob McGowan, Attorney, of Devine, TX; and, Sonia Lance of Devine, TX.

Commissioner Wilkins called the meeting to order at 7:00 p.m.

The first order of business was to discuss and consider approval of Minutes from meeting on January 13th, 2014.

The Planning & Zoning Commissioners reviewed the minutes.

Motion made by Commissioner Wiemers, seconded by Commissioner Maxwell to approve the minutes from the meeting on January 13th, 2014.

Ayes	--	Five
Nays	--	None
Absent	--	Two - Commissioner Dougherty, Commissioner Herring

Motion carried.

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The second item was to discuss and consider a request made by Robert Lynn McGowan on behalf of Maricella Moreno Billalobos for a variance to all of the ordinances of the City of Devine which restrict her from dividing a 1.34 acre tract located in A0069, J. Brothag Survey 15 at the Southwest corner of Fullerton Avenue and Webb Avenue E. (Block NCB 96A), into three separate tracts for conveyance to the requestor's children, which will include all applicable provisions of the Subdivision Ordinance regarding the Plat form and the required notes, easements, and elevation data required to be thereon, and the applicable provisions of the Zoning Ordinance regarding the encroachment of an existing manufactured home into the side set-back of one of the proposed tracts.

Bob McGowan, Attorney, Maricella Billalobos, and Marisa Peña were present in support of the granting of the requested variance. No one was present in opposition to the granting of the variance. Mr. McGowan addressed the Commissioners on behalf of Mrs. Billalobos, the property owner. Mr. McGowan advised the Commissioners that Mrs. Billalobos was the widow of Chico Billalobos and, with confirmation from Mrs. Billalobos, stated that they had acquired the property at approximately forty-five (45) to fifty (50) years ago. He explained that her children now lived on the property and that they wanted to make it a legal division and stated that each tract would meet the minimum lot requirements and that she and her family are asking for the City's indulgence in granting the requested variance.

Commissioner Wilkins stated that it appears that the manufactured home on the property will be encroaching into the side set-back, almost to the property line. Commissioner Wiemers asked Darrell Rawlings, Code Compliance Officer, how close the manufactured home would be to the side property line between the proposed tracts. Mr. Rawlings referred to the submitted survey which was prepared by Paul T. Carey RPLS #4454 on October 10, 2005 and advised the Commissioners that the manufactured home was two-tenths (0.2) of a foot from the proposed property line. Commissioner Wilkins inquired if the manufactured home was occupied. Mrs. Billalobos stated that her daughter lived there. Commissioner Maxwell inquired if the manufactured home was attached to the property. Mr. Rawlings stated that the set-backs applied whether the manufactured home was personal property or real property. Mr. McGowan stated that the manufactured home was not part of the application and that it had been disposed of several years ago, but that no one would complain about the manufactured home. Commissioner Lawler asked Mr. McGowan if by "no one" he meant the members of the Billalobos family. Mr. McGowan stated that if he recalled correctly it was all family members in that area. Mr. McGowan asked Marisa Peña to state her name and asked her if the manufactured home was hers and if she lived there and how long the manufactured home had been on the property. After stating her name, Marisa Peña stated that it was her manufactured home and that she lived there and the manufactured home had been installed in 1996. Mr. McGowan asked Ms. Peña if she objected to the manufactured home's location with relation to the property line. Mr. McGowan stated that they needed to get the property divided so she could deed it to her children and stated that Ms. Peña does not have a deed to the property where her manufactured home is located.

Commissioner Maxwell inquired about the property line that passed through the middle of a structure labeled “One-Story Residence (dilapidated)” on the October 10, 2005 survey prepared by Mr. Carey. Mr. Rawlings informed Commissioner Maxwell that this particular structure had been demolished since the survey had been done. Mr. Rawlings stated that all of the property to be divided was located in Class I. Light-Industrial District and that multi-family use was allowed in this zoning classification. He explained that when the manufactured home was installed in 1996 there was not an encroachment on the set-back line because the property was not divided; he stated that by dividing the property, there would be set-back requirements in relation to the property lines in accordance with the Zoning Ordinance which the manufactured home would be encroaching on.

Commissioner Wiemers asked if the encroachment of the manufactured home was the only issue which would require a variance. Mr. Rawlings stated that all of the proposed lots were over the minimum area requirement of 9,000 square feet for residential use in this zoning classification. Commissioner Wiemers inquired about the variances to the Subdivision Ordinance. Mr. Rawlings explained that the City Subdivision Ordinance, which the city was authorized to adopt under Chapter 212 of the Local Government Code, required that a subdivision plat be prepared as specified in the ordinance with an exception for the division of land into tracts that were five (5) acres or larger in area for agricultural use. Commissioner Wiemers confirmed that this would be a subdivision. Mr. McGowan stated that it was a subdivision in a manner of speaking, but that it was a family division of land and that Ms. Billalobos was not trying to develop a subdivision and money was an issue for her. He stated that her children needed to have their property before their mother passed away. Commissioner Wiemers asked about the normal procedures of the city for a subdivision plat. Mr. Rawlings stated that the plat would be an 18-inch by 24-inch document that would contain the required topography, site map, notes, signature and seal of the surveyor and required city officials and describe the property by Subdivision name, block number and lot numbers and would be ultimately recorded at the City of Hondo. Commissioner Wiemers asked why the procedure would be bypassed if that is what the ordinance required. Mr. McGowan stated that the law gave the city the authority to grant a variance, especially in a hardship case. He stated that this was Chico Billalobos who worked in the city for fifty (50) years or more, and that these people were our neighbors and that it would be rather mean-spirited to put a financial burden on a family that was not trying to establish a subdivision when they were merely trying to take the land and divide it to the children, one of which is already living on the property and has been for many years without objection. He stated that if the Commissioners did not want to give the family any consideration it was up to them.

Commissioner Lawler inquired what the fees would be to have this property platted according to the ordinance. Mr. Rawlings stated that he was unaware of the surveyor’s fees, but that the city fees for the filing and recording of this subdivision plat would be approximately \$289.00, which included the City Engineer’s review and the recording of the plat in the County Courthouse. Commissioner Wiemers asked if the City Engineer’s review was for flooding issues. Mr. Rawlings stated that the property was not located in the Special Flood Hazard Area denoted on the city’s Flood Insurance Rate Map and that the City Engineer’s review was to verify compliance with the City’s ordinances including the Subdivision Ordinance. Commissioner Wiemers asked Mr. McGowan if he knew

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what the cost would be to have the plat done according to the City's ordinances. Mr. McGowan stated that he did not know but that he assumed it could cost between \$2,500.00 and \$3,500.00 or more; he also stated that he did not see the relevance of any flooding issues as there would be no changes to the land and all of the children accept it as it is. Commissioner Wiemers stated that there was a possibility of someone else at a later date acquiring one of the properties and there were potential issues that could be created by not following the ordinance. Mr. McGowan stated that he did not know if the City required someone to re-engineer a piece of property but that this was a neighborhood that they had lived in their entire life and that he would like them to be given some consideration.

Commissioner Maxwell asked Mr. Rawlings if the city had waived platting requirements before. Mr. Rawlings stated that he did not recall any time that the Planning & Zoning Commission and City Council had granted a variance in the time that he was employed by the City. Commissioner Wilkins stated that they had approved a division for Caddell's property on Renfro Drive and divided it into three lots but that it was years ago when that was done. Commissioner Maxwell asked if there would be change to the property lines of the land. Mr. Rawlings stated that Mrs. Billalobos wants to divide the land into three separate pieces of property, which will create new property lines for each piece of property. Commissioner Maxwell confirmed that this was all within their current property. Commissioner Wilkins stated that he did not think it would hurt anything to grant the variance. Commissioner Lawler stated his main concern was the location of the manufactured home in relation to the property line and stated that if someone purchased or acquired the property in the future that it may create problems. Mr. Rawlings stated that this would need to have a variance for the encroachment unless the property line was relocated. Commissioner Wiemers stated that the encroachment of the manufactured home would be grandfathered and if the manufactured home was ever removed another structure could not be placed in the building set-back. Commissioner Maxwell stated that he did not see any problems with granting the request. Commissioner Lawler stated that he was looking at the future and the possibility of ownership changes. Mr. Rawlings stated that he had spoken with the City Administrator and that there was some concern about the granting of this variance setting a precedent to waive the Subdivision Ordinance due solely to financial hardship in future cases. Commissioner Wilkins stated that variances were determined on a case by case basis.

Commissioner Lawler asked about any feedback from property owners within 200-feet of the property being considered for the variance. Mr. Rawlings stated that notices had been sent to all property owners within 200-feet as required by ordinance and while he received a few calls for clarification on the request, he was unaware of any objection raised by the neighboring property owners. Commissioner Maxwell questioned if they would have a say in the matter anyway. He stated that city ordinance required notice when a property owner asked for a variance to the ordinances that apply to all other property owners.

Mr. Rawlings advised Bob McGowan and all present that the matter would be heard before the City Council at a meeting on Tuesday, April 22, 2014 at 6:00 p.m. at the Devine City Office.

Motion made by Commissioner Wiemers, seconded by Commissioner Maxwell to recommend that the City Council approve the request made by Robert Lynn McGowan on behalf of Maricella Moreno Billalobos for a variance to all of the ordinances of the City of Devine which restrict her from dividing a 1.34 acre tract located in A0069, J. Brothag Survey 15 at the Southwest corner of Fullerton Avenue and Webb Avenue E. (Block NCB 96A), into three separate tracts for conveyance to the requestor's children, which will include all applicable provisions of the Subdivision Ordinance regarding the Plat form and the required notes, easements, and elevation data required to be thereon, and the applicable provisions of the Zoning Ordinance regarding the encroachment of an existing manufactured home into the side set-back of one of the proposed tracts.

Ayes	--	Five
Nays	--	None
Absent	--	Two - Commissioner Dougherty, Commissioner Herring

Motion Carried.

The fifth item of business was Informational Items.

Darrell Rawlings, Code Compliance Officer, informed the Commissioners that there would be some more zoning classification changes coming before the Planning & Zoning Commission in the near future due to an inability to locate ordinances for zoning changes done in the past.

Commissioner Wiemers asked about the progress on the work at 703 Zig Zag Avenue which recently had a change in zoning classification for office use. Mr. Rawlings stated that the permits had been re-issued and the final inspections were all that was left pending before the building could be used as an office.

Mayor William Herring inquired about the status of work at 327 West Malone Drive which David Tumbarello had purchased. Mr. Rawlings informed Mayor Herring and the Commissioners that he had not observed any work being done to the property for several months and that the permits, which had already received a six-month extension were nearing expiration. Commissioner Wiemers asked if any work had been done on it. Mr. Rawlings stated some interior framing work had been done under the issued permits, but that it appeared that a fire place had been built on the East side of the dwelling that permits were not issued for. Mr. Rawlings also commented that Mr. Tumbarello had a lot on Live Oak Drive that a manufactured home was moved onto and a meter loop built on it without city permits about a year ago. Commissioner Wiemers asked what was done in situations where work was done without the required permits. Mr. Rawlings stated that the permit fees are doubled if work is done without the required permits and explained that utility service is not authorized to be connected until the inspection is conducted and approved. Mr. Rawlings stated that he would meet with the City Administrator on these matters.

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Commissioner Lawler inquired about the status on the unsightly property at 416 S. Teel Drive and 514 S. Teel Drive. Mr. Rawlings advised the Commissioners that charges had been filed in court on the property owners.

Commissioner Lawler inquired about the status on the apartments being built next to the Medina County Annex Building at 381 State Highway 132 N. Mr. Rawlings informed him that the mechanical contractor is working on obtaining the mechanical permit to start the work on the heating and air-conditioning system. He stated that next inspections on the building would be the rough-in inspections and framing inspection. Commissioner Maxwell commented on how close the apartments were going to be to the railroad tracks.

Commissioner Lawler asked if anyone knew what was being done on the Cashion's property between N. Teel Drive and Devine Drive across from the cemetery. He stated that the field had been plowed and that there were several flags that looked like they were marking the property line. Mr. Rawlings informed the Commissioners that he had not received contact from anyone regarding any proposed improvements or subdivision of the property and stated that the owner may be having a survey done or someone might have called for line locates and the flags may be marking utility lines.

Commissioner Maxwell asked about the status of Wal-Mart at 175 IH 35 N. Mayor Herring informed the Commissioners that construction was scheduled for completion on August 17, 2014. He stated that if they visited the site they needed to check in at the construction office and that they would need a vest and hardhat to enter the work area. He stated that they installed the sub-roof two weeks ago and that they were working on installing the insulation and the roof and that they were starting to pour the floor slab this week.

There being no further business to come before the Planning and Zoning Commission, Commissioner Wilkins called for a motion to adjourn the meeting.

Motion made by Commissioner Wiemers, seconded by Commissioner Lawler to adjourn the meeting.

Ayes	--	Five
Nays	--	None
Absent	--	Two - Commissioner Dougherty, Commissioner Herring

Motion Carried.

Chairman

Secretary