Minutes
Planning and Zoning Meeting
August 10, 2015

On this 10th day of August, 2015, 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
Mike Herring

Absent being Commissioner Ed Dougherty; thus, constituting a quorum.

Personnel present: William Herring, Mayor; Hal Lance, Councilman, District 5; and Darrell Rawlings, Code Compliance Officer.

Others present: Brittney Whitley of Hutton, 736 Cherry Street, Chattanooga, Tennessee 37402; Carlos Garcia, 406 Wilkins Way, Devine, Texas, 78016; and, Porfirio Deleon, 513 Corley Drive, Devine, Texas, 78016.

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 May 11th, 2015.

The Planning & Zoning Commissioners reviewed the minutes.

Motion made by Commissioner Lawler, seconded by Commissioner Herring to approve the minutes from the meeting on May 11th, 2015.

Ayes	--	Six
Nays	--	None
Absent	--	One – Commissioner Dougherty

Motion carried.

The second order of business was to discuss & consider a request for a variance made by Robert Garcia for 406 Wilkins Way, which is described as Green Meadows Addition, Block 7 (NCB 177), Lot 4, to Appendix A., Article 4 (Class B. Single-Family Residence District, Section 1 (Use Regulation), Subsection 3 (Accessory Buildings) of the Devine Code of Ordinances which states,

"No accessory building shall be…less than five feet from any other street line…" to allow a detached open carport to encroach into this setback and may include an encroachment into a street right-of-way (Corley Drive).

Mr. Carlos Garcia was present to represent Robert Garcia and speak to the Commissioner's in favor of the granting of the variance.

Commissioner Wilkins asked Mr. Darrell Rawlings, Code Compliance Officer, if the carport in question had already been installed. Mr. Rawlings explained that Mr. Carlos Garcia obtained a permit to install a pre-fabricated carport at 406 Wilkins Way. Mr. Rawlings stated that, while processing the permit, Mr. Carlos Garcia had asked where he needed to measure from for the set-backs because there was a curve where Wilkins Way and Corley Drive intersected and that he had informed Mr. Garcia that the set-backs were to be measured from his property line and not from the curb or edge of the paved street. He also informed Mr. Garcia that he would need to locate his survey pins to determine the location of the property lines. Mr. Rawlings also explained that, in processing the permit, Mr. Garcia was erroneously advised that the required side set-back from his property line on Corley Drive to the carport was 3-feet instead of 5-feet; however, the permit was issued because there was adequate area for the installation of the carport in conformance with the required set-backs. He informed the Commissioners that after the carport was installed, an inspection was conducted by an inspector from Bureau Veritas, who gave the installation a "Partial Pass" status pending city approval of compliance with set-back requirements because of the proximity of the building to the improved portion of Corley Drive. Mr. Rawlings informed the Commissioners that, following this, he had visited the property along with two workers from Public Works and measurements were taken of the pavement widths. Corley Drive has a pavement width of 30-feet and a platted right-of-way width of 50-feet. Mr. Rawlings stated that no survey pins were observed at 406 Wilkins Way, and that he was unable to definitively determine the location of the property lines at 406 Wilkins Way, but that the carport was located 3.5-feet from the curb on Corley Drive. He stated that, assuming the paved portion of Corley Drive was centered in the right-of-way, the carport was encroaching 6-feet into the street right-of-way; however, it was possible that the paved portion of Corley was not centered in the right-of-way. He explained that the carport was installed over an existing concrete parking pad, which had not previously been an issue because paving is allowed to extend past property lines in the street right-of-way and cited driveways and sidewalks as examples. He also stated that parking vehicles in the street right-of-way was also allowed unless prohibited by ordinance. He also informed the Commissioners that American Electric Power's (AEP's) distribution lines along Corley Drive were located above the carport. Mr. Rawlings told the Commissioner's that he had asked Mr. Carlos Garcia and Mr. Robert Garcia why the carport could not be installed over the existing driveway and was told that Mr. Robert Garcia parked in the driveway and that Mr. Carlos Garcia had purchased the carport to protect his own vehicle and Mr. Robert Garcia was not willing to trade parking spaces.

Mr. Carlos Garcia addressed the Commissioners and stated that he came into the office three times before the permit was issued with the diagram of where the carport was going to be installed. He stated that he did not want any issues after the carport was installed. He stated that he spoke with Mrs. Ofilia Pedroza, City Clerk, because Mr. Rawlings was busy doing something else. He stated that on the day the permit was issued he spoke with Mrs. Pedroza and Mr. Rawlings and was advised that everything appeared to be in order and in compliance. He stated that when Ms. Shannon Trieber, an inspector with Bureau Veritas, came to inspect his carport on July 22, 2015, that she was only there for about 5-minutes. She stated that she did not see any survey pins and told him that she would give him a "Partial Pass" until the City approved the set-backs. He stated that after Ms. Trieber left his property he contacted Mr. Rawlings at the City Office regarding the set-backs and that the next day Mr. Rawlings was there with two other men and that they took measurements and told him that the carport would need to me moved. Commissioner Wiemers asked Mr. Garcia if the carport could be moved. Mr. Garcia stated that the carport could not be moved because there were 3-foot long spikes driven into the ground and that there were water lines next to the carport and that the back yard was too soft and the carport could blow away. Commissioner Lawler disagreed that the carport could not be moved. Mr. Garcia stated that there wasn't anywhere else on the property where it could be placed.

Commissioner Herring asked Mr. Rawlings to clarify the encroachment into the street right-of-way. Mr. Rawlings explained that a definitive answer to the amount of the encroachment could not be provided because the location of Mr. Garcia's property line could not be determined, but that it was estimated that the encroachment into the street right-of-way was 6-feet. Mr. Herring stated that we don't know if the street is in the right location. Commissioner Wilkins stated that Corley Drive dead-ends at the rear of 406 Wilkins Way. Mr. Rawlings informed the Commissioners that the property owner behind 406 Wilkins Way has been talking to the City about platting and developing their property. Mr. Garcia stated that no one was going to buy the property behind his because a pipeline crossed it. Commissioner Lawler confirmed that the carport was only 3.5-feet from the curb on Corley Drive.

Commissioner Maxwell asked Mr. Rawlings if there was any feedback from the property owners in the area. Mr. Rawlings stated that notices were mailed to all property owners within 200-feet of 406 Wilkins Way ten days prior to the meeting and a notice was posted in the Devine News. He stated that he had received a few calls to clarify what the notices were for and had only received one written statement regarding the variance request from Abram and Bicenta Vargas who live at 401 Wilkins Way. Commissioner Wilkins read the letter from Mr. and Mrs. Vargas and informed all present that they did not have any objection to the location of the carport.

No one else present spoke regarding the requested variance.

Motion made by Commissioner Maxwell, seconded by Commissioner Herring to recommend that the City Council grant the variance request made by Robert Garcia for 406 Wilkins Way, which is described as Green Meadows Addition, Block 7 (NCB 177), Lot 4, to Appendix A., Article 4 (Class B. Single-Family Residence District, Section 1 (Use Regulation), Subsection 3 (Accessory Buildings) of the Devine Code of Ordinances which states, "No accessory building shall be…less than five feet from any other street line…" to allow a detached open carport to encroach into this setback and may include an encroachment into a street right-of-way (Corley Drive).

Ayes	--	Five
Nays	--	One – Commissioner Lawler
Absent	--	One – Commissioner Dougherty

Motion carried.

The third order of business was to discuss and consider changing the zoning classification of approximately 39.89 acres of land located between E. Hondo Avenue and Rossville Avenue, and create a Preliminary Report regarding changing the zoning classification of this area from Class A. Single-Family Residence District to Class H. Commercial Business District which is proposed to include any or all properties described as follows: 603 E. Hondo Avenue (R58795); 607 E. Hondo Ave. (R59638); 613, 619 & 615 E. Hondo Ave. (R62613); 625 E. Hondo Ave. (R66551); Rossville Ave. – 11.58 acres (R56806); 610 Rossville Ave. (R61528); E. Hondo Ave. – 18.943 acres (R56807); 641 E. Hondo Ave. (R2191); 620 Rossville Ave. (R2147); and, E. Hondo Ave. – 1.00 acres (R2146).

Mr. Darrell Rawlings, Code Compliance Officer, addressed the Commissioners and advised them that the City was proposing a zoning classification change of these properties from Class A. Single-Family Residence District to Class H. Commercial Business District. He informed the Commissioners that some of the properties included in this zoning change have current uses that are not in conformance with the Class A. zoning classification. He explained that the zoning changes of some of these properties were previously brought to the Planning & Zoning Commission and City Council and that the city had approved changing their zoning classification; however, there is no record of public hearings, notification, or ordinances as required by law for zoning changes. He stated that the non-conforming uses in this area consisted of a dance hall, adult day care, two restaurants, an office, an ATM, a contractor storage yard with an office, and a retail store that also sold construction materials. He also stated that a developer is interested in the property at 641 E. Hondo Avenue. Mr. Rawlings informed the Commissioners that he had met with City staff including, Gary Pelech, City Administrator, Dora Rodriguez, City Secretary, Tom Cate, City Attorney, and Billy Grote, Public Works Director and all were in agreement that these properties should be rezoned to a Class H. Commercial Business District and feel that doing such will alleviate non-conforming uses that do not have an adverse impact on the area and minimize delays and developer concerns which may reduce businesses coming to Devine. Therefore, the City is asking the Planning & Zoning Commission to give consideration to this Zoning Change and create a Preliminary Report for a Public Hearing on changing the zoning classification of these properties.

Commissioner Lawler asked Mr. Rawlings if there had been any feedback from the business owners or adjoining property owners. He replied that notices would be mailed and a notice published in the paper later this week for the Public Hearing, but as of the time of the meeting, the owners and neighboring property owners have not been notified.

The Commissioners held discussion with Mr. Rawlings regarding the current zoning classifications of the area. It was discussed that the Class H. zone was being extended to the East from the area previously changed for Wal-Mart, and that the area included two single-family residences, which could not be excluded from the change because of potential "spot zoning" issues. Mr. Rawlings explained that the City's zoning allowed for residential uses in all zoning classifications and that the change would not create any non-conforming issues for any of the affected properties.

Commissioner Wiemers stated that it appears that some to the properties to be zoned as Class H. are indicated as Class G. on the City's Comprehensive Plan and asked Mr. Rawlings if this would create any issues. He responded by stating that he had contacted Mr. Cate regarding this and it was concluded that the Comprehensive Plan is a guide for the City to follow and that it doesn't establish zoning boundaries; furthermore, this change would still be in conformance with this plan because it was an extension of an existing less restrictive boundary to the area and in the best interest of the City. If the City were to adhere to the boundary line established by the Comprehensive Plan, it would cause non-conforming use issues for one or two of the existing businesses, which have been in operation without creating any issues regarding traffic, density, noise, or other items that zoning seeks to control for the welfare of the community.

All Commissioners present indicated their approval for changing the zoning classification of the indicated properties from Class A. Single-Family Residence District to Class H. Commercial Business District.

Motion made by Commissioner Wiemers, seconded by Commissioner Herring that the minutes of this item serve as the Preliminary Report in favor of the zoning classification change from Class A. Single-Family Residence District to Class H. Commercial Business District which is proposed to include any or all properties described as follows: 603 E. Hondo Avenue (R58795); 607 E. Hondo Ave. (R59638); 613, 619 & 615 E. Hondo Ave. (R62613); 625 E. Hondo Ave. (R66551); Rossville Ave. – 11.58 acres (R56806); 610 Rossville Ave. (R61528); E. Hondo Ave. – 18.943 acres (R56807); 641 E. Hondo Ave. (R2191); 620 Rossville Ave. (R2147); and, E. Hondo Ave. – 1.00 acres (R2146) for a Public Hearing to be held on August 31st, 2015 to create a "Final Report" to present to City Council.

Ayes	--	Six
Nays	--	None
Absent	--	One – Commissioner Dougherty

Motion Carried.

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 Herring to adjourn the meeting.

Ayes	--	Six
Nays	--	None
Absent	--	One – Commissioner Dougherty

Motion Carried.

Chairman

Secretary