

**MINUTES OF THE  
TUPELO PLANNING COMMITTEE**

**April 6, 2009**

A regular meeting of the Tupelo Planning Committee was held Monday, April 6, 2009 at 6:00 p.m. in the Council Chambers of City Hall. Committee members present were: Chairman Michael Gratz, Jr., Vice-Chair Cindy Sanders, Secretary Mitch Ellett, Mr. Russ Wilson, Mr. Dick Johnson, Mr. Bill Smith, Jr., Mr. Rud Robison, Mrs. Judy Brown, and Mrs. Mabel Murphree. Department of Development Services staff present was: Director BJ Teal, City Planner Pat Falkner, Zoning Administrator Marilyn Vail, and Administrative Assistant Nikki Burton.

**CALL TO ORDER**

Chairman Gratz called the meeting to order. Mr. Smith gave the invocation and Mr. Ellett led the Pledge of Allegiance. After an introduction of staff and committee, Mr. Gratz explained the meeting's procedures. He then confirmed the agenda. All applicants were present at this time.

**REVIEW/APPROVED PREVIOUS MINUTES**

Mr. Smith made a motion to approve the minutes. Mr. Ellett seconded the motion, which passed unanimously.

**REPORT ON COUNCIL ACTIONS**

Mr. Falkner stated that Item 2 from the March Planning Committee agenda was a variance request by a restaurant seeking the sale of beer and light wine. Mr. Falkner stated that after the variance was approved by the Planning Committee on March 2<sup>nd</sup>, their decision was appealed to the City Council by surrounding property owners, but then the original variance request was withdrawn by the applicant, thus the item became void. He then stated that Item 3 from the March Planning Committee Agenda was a major conditional use request to allow a dirt mining and excavation pit near Willie Moore Road in the Haven Acres community. He stated that the item was appealed to the City Council by the applicant, after receiving denial from the Planning Committee on March 2<sup>nd</sup> and has been postponed at the applicant's request until the April 7<sup>th</sup> City Council meeting.

**NEW BUSINESS**

1. **Request for an extension of building permits for the proposed Tupelo Place Apartments to be located on McCullough Boulevard in an R-3, Multi-Family Residential Zone.**

Mr. Falkner stated that the Planning Committee had reviewed and approved this project in 2008. He stated that the project had required rezoning approval along with major site

plan approval and the approval of a major conditional use. Mr. Falkner stated that the zoning process was completed and the construction plans were reviewed and approved by the staff and building permits were issued. Mr. Falkner explained that following the issuance of the building permits, the applicant notified the Department of Development Services that the developers of the project would soon require a postponement of construction due to the delay in the Toyota project in Blue Springs, Mississippi. Mr. Falkner explained that the code has a requirement that if construction of a project has not begun within six months of the permit's issuance, then an extension must be granted by the Planning Committee. He then stated that the staff recommends approval of the requested extension and that the project is within the scope of the new Comprehensive Plan and serves its purposes even though it was developed before the finalization of the plan.

Mr. Nathan Waggoner, Cash Waggoner & Associates, 216 West 6<sup>th</sup> Street, Jasper, Indiana, stated that he is the project engineer for the proposed Tupelo Place Apartments, LLC. He stated that the project has received all the necessary approvals, but when the Toyota project decided in December of 2008 to delay its project, the developer of the apartments decided also decided on a delay, due to business reasons. Mr. Waggoner stated that the apartment market is directly tied to the Toyota project. He then stated that he would like to have an extension for the expired building permits so that the developer may be ready for construction when the Toyota project resumes construction.

At this time, Mr. Gratz closed the public input portion of the meeting and opened the meeting to the discussion of the committee.

Mr. Wilson stated that if the code has changed since the approval of the project, the project should now be reviewed and held to the standards of the latest adopted code.

Mrs. Brown stated that the building permits were issued on November 25, 2008 and will expire on August 25, 2009. She then clarified that Mr. Falkner gave the developer a 30 day extension, so the building permit will now expire in September of 2009 if the Planning Committee does not grant an additional extension. Mr. Falkner agreed. Mrs. Brown then stated that according to the letter written by Mr. Falkner to the developer, the staff extension would expire on February 4, 2009, thus an additional extension would need to be requested of the Planning Committee by February 4, 2009. Mrs. Brown then stated that the letter from the developer requesting an additional extension was dated February 19, 2009, past the February 4<sup>th</sup> due date and then asked Mr. Falkner if the permits would still expire in September of 2009. Mr. Falkner stated yes. Mrs. Brown asked what would happen regarding the building permits and their costs if the Planning Committee denied the extension. Mrs. Teal stated that since his building permits have gone past the expiration, technically they could be revoked and the developer could request for a portion of the permit fees be reimbursed. Mrs. Brown stated that according to the Development Code, the permits are still good until September 2009. Mrs. Teal explained that the staff has to adhere to two separate codes: The City of Tupelo Development Code, and the 2006 International Building Code. She explained that building code requires any project to begin work within 180 days of obtaining a building

permit and must obtain the first inspection of the project within 180 days of the beginning of construction. Mrs. Teal stated that the developer has passed all of those requirements as per the 2006 International Building Code. Mrs. Teal further stated that if the Planning Committee chooses to grant an extension, the staff will reinstate the permits and not charge an additional fee.

Mrs. Murphree asked if the committee could place additional conditions on the project with the approval of the extension. Mrs. Teal stated, according to the code, yes the committee may do so and could also charge a reinstatement fee for the permits. Mrs. Murphree confirmed with Mrs. Teal that it is costly for the Department of Development Services to review and reprocess the project. Mrs. Murphree stated that if the extension is granted, the committee should ensure any new codes are being upheld and that a reinstatement fee is issued to warrant the time and effort of the staff. Mr. Johnson asked if the committee could legally charge a fee and asked Mr. Falkner if he had asked for legal advice on such. Mr. Falkner stated that he had not asked for legal advice regarding issuance of fees by the committee. Mrs. Murphree stated that she had asked for legal advice regarding fees and was told that the committee could place conditions on the extension, including fees. Mrs. Murphree then stated that her position would be to vote in favor of a one year approval of the extension of the project with the conditions that the project be subject to the new development code as well as pay a reinstatement fee to offset the cost of the staff having to review and process the project for a second time. The committee then asked Mr. Falkner to seek legal council regarding reinstatement of fees.

Mr. Wilson asked what the committee would do if no work had begun within 24 months. Mrs. Murphree stated that the entire project would need to be reevaluated according to land use in Tupelo.

Mr. Wilson asked Mr. Waggoner for a time frame for the beginning of the project. Mr. Waggoner stated that he speculates construction will begin on the project within the next 12 to 18 months. Mr. Waggoner stated that the 12 to 18 month time frame is the projected start of the Toyota project.

Mr. Wilson then asked how the committee could come up with reinstatement fees.

Mrs. Brown stated that the extension request did not require any notice to the surrounding property owners. Mr. Falkner agreed. Mrs. Brown stated that when the project first came to the Planning Committee in 2007, there was interest from the surrounding property owners due to drainage issues and concerns about the property's use. Mrs. Brown asked if there would be a public hearing if the Planning Committee only granted a one year extension, and no work had begun when the extension expired. Mr. Falkner stated no because the only request that would need to be re submitted would be for a major site plan, which requires no public hearing. He then stated that the granted conditional use had no time limitations.

Mr. Gratz asked if the staff could give an estimate of money spent on the project by the developer to give the committee and idea of the total investment to date. Mrs. Teal stated that the city has received \$24,178.40 in permit fees from the developer. Mr. Wilson asked Mrs. Teal if she had any experience with permit reinstatement fees in other cities she has worked with. Mrs. Teal stated no. Mr. Wilson then asked the staff of a fair opinion of what a reinstatement fee. Mr. Falkner stated that the fee would depend on the scope of whether there were any changes in the plans that are necessary due to code changes. Mr. Falkner stated there would only be cost to the department involved if a new set of construction plans were submitted.

Mrs. Sanders asked if the committee could include in its motion that a maximum reinstatement fee of 10% of the cost of the permits be collected with the Department of Development Services deciding that if the changes are simple, the fee could be reduced. Mrs. Teal stated that would be appropriate.

Mr. Robison asked which building code was in effect when the permits were issued. Mrs. Teal stated that the 2006 International Building Code was the adopted code by the City of Tupelo in 2008. She then stated that currently the department is beginning reviews of the 2009 International Building Code. Mr. Robison asked if it would be necessary to review the project under the 2009 code, if the code were adopted during the extension. Mrs. Teal stated that the staff would have to wait and see if any changes in the project were significant enough to require a full review under the possible new codes.

Mrs. Brown clarified that Mrs. Sanders would like to cap a reinstatement fee at 10% of the issued building permit fee. She then stated that according to Mrs. Teal, there could be significant changes in the project, thus the Department of Development Services would only receive \$2,400 to do the same amount of work processing and reviewing the project, yet received approximately \$24,000 when the project was first submitted. Mrs. Teal stated that the original \$24,000 fee includes all inspections site visits done by the building department, fire department, and the engineering department. Mrs. Teal then stated that at this point, the changes between the current code and the future codes are not what she would perceive to be as negative to the project.

Mr. Wilson suggested the reinstatement fee not exceed 25% of the original building permit costs and the minimum cost could be \$0, if there were no changes or if the developer chose to not go forward with the project. Mrs. Brown stated that she does not have a problem with an extension of 12 months with fees, but would not want this developer or any future developers from constantly resubmitting requests to the Planning Committee.

Mrs. Sanders suggested giving the developer an extension of 18 months rather than 12 months due to the economical recession. Mrs. Murphree agreed, but stated that she would rather see a minimum cap of \$1,000.

Mr. Wilson made a motion to extend the building permits and the approval of the major site plan for a period of 18 months with a \$1,000 minimum reinstatement fee and

maximum 25% reinstatement fee based on the \$24,178.40 paid to date and at any such point that the project is reinstated, the current Development Code and construction code standards that are applicable to the project at that time will be upheld. Mr. Smith seconded the motion, which was restated by Mr. Gratz, then amended by Mr. Johnson at the suggestion of Mr. Falkner to include the determination of the 25% reinstatement fee be based on the staff's recommendation of the cost to the staff at the time of review. The motion to amend was seconded by Mrs. Sanders. Mr. Wilson agreed to the amendment, followed by Mr. Smith.

Mr. Gratz stated the amended motion as before stated with the added clause to include the statement "that the exact reinstatement fee is subject to the Department of Development Services' evaluation and determination."

The motion carried unanimously.

Mrs. Brown asked if the approved application required action from the City Council. Mr. Falkner stated no, but would verify it with legal counsel for clarification.

**2. Text Amendments**  
**a. 9.65. Minimum Landscape Standards**

Mr. Falkner stated that the City Council had requested a Development Code amendment that would provide some additional language about front yard landscaping and allowing things to grow up and reduce the size of the grass portion of the yard and removing dead trees. He stated that the language was drafted by city attorneys at Mitchell, McNutt, & Sams. He then stated that he has suggested to the City Council that the Planning Committee would need to review the proposed amendment since it is an amendment to the Development Code.

Mr. Wilson stated that the sentence in the proposed amendment reads "these standards shall include the full dimensions of the original yard." Mr. Wilson asked for clarification of the statement, stating that it seemed unenforceable. Mrs. Murphree asked if there were currently any code regulations for yard upkeep. Mr. Falkner explained that according to the Development Code, front yards are required to have some sort of landscaping including grass, shrubs, and flowers can have no more than 35% of the area covered in concrete, and shrubs must be planted along the front of a building. Mrs. Murphree stated that the Development Code also states that shrubs must be kept trimmed and shaped, but then asked if the city has a requirement for lot mowing. Mr. Falkner stated yes, but lot mowing is usually held to those standards of the surrounding area. Mrs. Murphree asked if lot mowing and landscape standards would be revisited when the city decides to rewrite the code. Mr. Falkner replied yes.

Mrs. Brown clarified that anyone can initiate an amendment to the Development Code, whether a citizen, a member of the Planning Committee, or a member of the City Council. She stated that after the initiation of the amendment, two public hearings are required, of which the first is held by the Planning Committee and the second will be held

by the City Council. She then asked if proper notice was given regarding the public hearing on the Planning Committee's agenda. Mr. Falkner stated yes. Mrs. Brown then stated that the Planning Committee would be reviewing three separate amendments in the meeting, two of which were suggested by the Department of Development Services, and one of which was suggested by a member of the City Council. Mr. Falkner agreed. Mr. Gratz asked Mrs. Brown if a vote on an amendment requires a two-thirds vote, or a simple majority vote. Mrs. Brown answered that it required a simple majority. Mr. Wilson clarified that the Planning Committee's approval of an amendment would be a recommendation to the City Council, who would then have the final vote. Mr. Falkner agreed. Mr. Gratz asked the staff to clarify with legal counsel that an amendment requires a simple majority vote rather than a two-thirds majority vote before it can be forwarded to the City Council. Mr. Falkner stated that according to the Development Code, a simple majority vote is all that is required to pass an amendment, but would asked for legal council regarding variances.

Mr. Gratz then explained that the Department of Development Services and the Planning Committee are in the beginning stages of drafting a new Development Code. Mrs. Murphree asked the point of making several amendments to the code when a new code would be reviewed for adoption within the next nine to twelve months. Mrs. Teal stated that the International Property Maintenance Code has currently been adopted by the city and addresses issues like landscaping and the Code Enforcement Division of the Department of Development Services has mechanisms in place to monitor overgrown vegetation and other landscaping problems.

Mrs. Brown stated that as the staff and committee reviews a new development code and amendment, the points that are made about governing bodies, and normally a two-thirds majority vote for an amendment, should be strongly considered as revised codes are reviewed.

Mr. Wilson stated that, according to the current Development Code, if the Planning Committee does not make action on a text amendment within 30 days of the first public hearing, the City Council may make action as they choose. Mr. Gratz then asked for a motion.

Mr. Johnson made a motion to defer the proposed landscaping amendment until some point in time when it is considered in conjunction with the total revision of the current Development Code. Mrs. Sanders seconded the motion, which passed unanimously.

**b. 11.1.2 Off Street Parking Space Requirements**

Mr. Falkner asked the Planning Committee if they would like to discuss the remaining two proposed amendments or defer those two, also, until a later time. Mr. Wilson and Mr. Johnson stated that they were both of the impression from the Planning Committee's work session held one week prior to the public hearing, that the Planning Committee was ready to take action on the remaining two proposed amendments. Mrs. Brown stated that if the Planning Committee follows the line of reasoning of the past motion, then they

have to defer the two remaining proposed amendments. She then stated that she did not understand how the committee could justify the motion that had just been passed deferring the proposed landscaping amendment based on the fact that they wanted to wait until the code was re-written. Mr. Wilson disagreed. Mrs. Murphree stated that it would be prudent for the committee to use their time wisely and wait to act on the remaining two proposed amendments, which could easily be handled by variance until a new code is written. Mr. Falkner agreed, but stated he would like the committee to discuss the proposed amendment for off-street parking because it could conceivably have an effect on life and safety.

Mr. Falkner stated the material in the proposed off-street parking amendment came about as a result of several departments, including police and fire, review of a proposed business that was allowed to open based on the current parking standards. Mr. Falkner stated that the current Development Code uses the size of a building to determine the parking standards for it. He stated that the staff had recently reviewed a night club with an open unobstructed floor plan that, according to Fire Marshall Jason Cross, could accommodate approximately 700 people, but the current parking area would not support that many parking spaces, which would cause patrons to park in restricted areas or on other properties. Mr. Falkner explained that there is no provision in the current code that allows parking spaces to be determined by occupancy limit, only the size of the footprint of the building. He stated that because of the way the current code is written, the staff had no choice but to allow the proposed nightclub, even though if the building is ever filled to capacity, the parking will not be adequate. He then stated that the lack of parking could cause a problem for emergency vehicles entering the property if they are needed on the premises.

Mr. Gratz opened the meeting to discussion among the committee. Mr. Wilson stated he felt the committee should act on the proposed parking amendment. Mrs. Murphree asked Mr. Falkner if the staff and committee had ever spent any time re-writing parking requirements found in the current code. Mr. Falkner stated that parking requirements have been changed with variance application in the past, but the code has never been amended. Mrs. Murphree asked if there was another ordinance or code that could address parking requirements until a new code is adopted. Mr. Falkner stated no, the Development Code is the only code the city has that requires parking. Mrs. Murphree asked what other facilities in Tupelo have a 700-person capacity. Mr. Falkner stated that Benjamin's on Main possibly has a large capacity, but is located in the Downtown District, thus they are not required to provide off-street parking. He further stated that Benjamin's and other nightclubs are the types of establishments that would need more off-street parking. Mrs. Murphree stated that she would like to know of other facilities in Tupelo that could accommodate 700 people. Mr. Falkner stated that the Summit on North Gloster, or the Furniture Markets on Coley Road, could hold a large number of people, but both facilities also have adequate parking.

Mr. Falkner then stated that the aforementioned proposed business that was reviewed and approved by the staff is located in a retail building that does not have adequate parking for this type of use. Mrs. Murphree asked Mr. Falkner to describe the scenario of the

business to the committee again, and discuss the alleyway. Mr. Falkner stated that the facility is actually the backend of a retail strip that has a Subway and a beauty supply store and one other retail store. Mrs. Murphree asked for clarification of “backend.” Mr. Falkner described the “backend” as a facility located in the rear of the building. He stated that the facility had previously been used by Mail Managers as a sorting facility that had practically no customers and did not need a large parking area. Mr. Falkner explained that when Mail Managers moved out of the building, the proprietors of the building decided it was a good place for a nightclub, even though the Department of Development Services felt that the parking was inadequate and it’s relationship to the other businesses around it.

Mr. Wilson asked Mr. Falkner if fuel or any type of flammable liquids stored in the building adjacent to the nightclub. Mr. Falkner stated that he did not know. Mr. Wilson stated that he knew that an oil company is located next door.

Mrs. Brown stated that she had attended the plan review meeting where the staff and other departments had discussed the nightclub. She stated that the staff had required the owner of the nightclub to provide letters from the nearby businesses, one of which is open at night and has the same hours as the nightclub. She asked Mr. Falkner if all of the business had provided the required letters, giving permission to the nightclub to use the parking areas of the adjacent businesses. Mr. Falkner stated that the Department of Development Services had given the nightclub a Certificate of Occupancy based on minimum number of parking spaces being available in front of the building. He stated that the staff had reviewed at other options, including off-site parking, but patrons would then cross adjacent properties to access the nightclub. Some property owners gave permission to use their parking and some did not.

Mrs. Murphree asked if parking spaces are specified in the lease agreements for the adjacent property owners. Mr. Falkner stated that he did not know. Mrs. Murphree asked if parking spaces were usually allotted by the square feet of store frontage. Mr. Falkner stated that the staff normally reviews this type of parking arrangement as “shared” parking. He stated that during the day, or normal business hours, there is usually an agreement between tenants about the parking that is adequate for their customers. He then stated that the nightclub had operating hours opposite two of the three other business located in the retail strip. Mrs. Murphree clarified that the nightclub does not open until 10:00 p.m. Mr. Falkner stated yes. Mr. Smith asked the closing time of the nightclub. Mr. Falkner stated 2:00 a.m. Mrs. Brown asked the closing time of the Subway Restaurant located in the strip. Mr. Falkner stated 2:00 a.m. and stated that there is some conflict with the Subway patrons. Mrs. Murphree then clarified that the nightclub is located near North Mississippi Medical Center. Mr. Falkner stated yes. Mrs. Murphree then stated that parking could become a problem and restated the fact that emergency vehicles could have a problem entering the property.

Mr. Falkner stated that the staff had encountered a similar situation with another business, but the project had been dropped by developers before it had to have approval by the Department of Development Services or the Planning Committee. He explained

that the similar nightclub had technically met all development code requirements, and there is no provision in the building code to address the lack of adequate parking.

Mr. Gratz stated that he felt the committee had heard relevant comments by Mr. Falkner about the immediacy of the safety issues of the nightclub issue and asked for a motion.

Mr. Wilson made a motion to approve the proposed parking amendment as presented for the safety concerns discussed. Mr. Smith seconded the motion, which passed 7 – 1, with Mrs. Brown opposing the motion.

### **c. 12.2.4 Permanent Signs**

Mr. Gratz asked Mr. Falkner to explain the amendment. Mr. Falkner stated that he thought the Planning Committee had decided to table the amendment during their work session. Mr. Gratz stated that since the committee had taken the other two text amendments had been voted on separately, the committee must have a discussion before making a motion.

Mrs. Murphree stated that the staff and committee have spent a lot of time working on writing a sign ordinance. She stated that she felt that sign issues could be handled on a case by case basis with a variance until a new code is written.

Mrs. Brown stated that the new wording in the proposed sign text amendment makes a statement of “grant administrative variance.” She then stated that there is nothing in the current code that allows an administrative variance and asked Mr. Falkner for an explanation. She further stated that all variances require the Planning Committee to vote by two-thirds majority. Mr. Falkner stated that the staff has the authority to pass administrative variances for such things as setbacks within a limited scope, per Chapter 10 of the current Development Code.

Mrs. Murphree stated that she hopes the Department of Development Services staff is keeping a running list of variance application so that when the Development Code Sub-Committee begins re-writing the code, they can address those to avoid similar problems in the future. Mr. Gratz agreed.

Mrs. Murphree made a motion to table the proposed permanent sign amendment until the new code is written. Mr. Smith seconded the motion, which passed unanimously.

## **OTHER BUSINESS**

### **1. Historic Preservation Committee Report**

Mr. Smith stated that there was nothing to report from the Historic Preservation Committee.

### **2. Candidate Education Forum Committee Report**

Mr. Gratz stated that the Candidate Education Forum has been scheduled for Tuesday, April 28, 2009 from 7:00 – 8:00 p.m. in the Council Chambers on the second floor of City Hall. Mrs. Teal confirmed. Mr. Gratz stated that the sub-committee consists of himself, Mrs. Sanders, and Mrs. Brown. Mrs. Brown stated that she and Mrs. Sanders and met earlier in the evening and had determined that Mr. Gratz will be doing a presentation and Mrs. Teal and the Department of Development Services Staff will also be presenting during the forum. She stated that they also discussed the Comprehensive Plan annual report, which is due in September, and worked out a time-line for it and will be working with the staff to get it ready for the Planning Committee's review in August and the City Council's review in September. Mrs. Teal stated that she and Mr. Falkner will be meeting on Tuesday morning at 10:30 a.m. with pertinent staff to discuss presentations and formats for the forum.

Mr. Wilson asked if the forum will be televised by Comcast. Mrs. Teal stated that the staff will follow through with Comcast to determine if the meeting may be televised.

Mrs. Brown then reminded the committee of the importance for all members to be present at the forum. Mrs. Murphree stated that she has a conflict the evening of the scheduled forum and will not be able to attend. Mr. Wilson stated that he plans to be at the forum, but will arrive late.

Mrs. Teal stated that invitations have been mailed to the current council, Mayor, and all candidates.

### **3. Development Code Re-Write Subcommittee**

Mr. Gratz stated that the next meeting of the Development Code Sub-Committee will be Monday, April 13, 2009 at 5:00 p.m. He stated that the members of the committee are Mr. Smith, Mrs. Murphree, Mr. Robison, and himself.

### **ADJOURN**

There was no further business and the meeting was adjourned by Mr. Gratz.