

Minutes of City Council Special Meeting

The City Council City of Richwood

A City Council Special Meeting of the City Council of City of Richwood was held Saturday, October 27, 2018, beginning at 11:00 AM in the Richwood City Hall, 1800 N. Brazosport Blvd. Richwood, Texas.

I. CALL TO ORDER

The meeting was called to order at 11:02 a.m.

II. INVOCATION

Michael Coon led the invocation.

III. PLEDGES OF ALLEGIANCE

Pledge of Allegiance & Texas Pledge

Mark Guthrie led the pledges.

IV. ROLL CALL OF COUNCIL MEMBERS

Mark Guthrie, Mayor

Mike Johnson, Council member

Frank Blanks, Council member

Sarah Reed, Council member

Mark Brown II, Council member – ABSENT

Katy Johnson, Council member

Others present: Michael Coon, City Manager; Giani Cantu, City Secretary; Clif Custer, Public Works Director; Brett Schilhab, Sergeant; Caleb Villarreal, Associate City Attorney with Cordoba Law Firm

V. PUBLIC COMMENTS

All public comments will be subject to the following rules: all speakers will be permitted to speak no longer than 3 minutes; all speakers will only be permitted to speak once; speakers cannot defer their 3 minutes to another speaker; the first five individuals who sign up for the public comment section will be permitted to speak
There were no public comments.

VI. CONSENT AGENDA

A. A resolution approving the 2017 Brazoria County Hazard Mitigation Action Plan

- B. Approval of interlocal agreement to continue Richwood's participation in the regional stormwater management program

On motion by Sarah Reed second by Katie Johnson with all present members voting “aye” all consent agenda items were approved.

VII. DISCUSSION AND ACTION ITEMS

There were no items moved to discussion.

VIII. EXECUTIVE SESSION in accordance with Subchapter D of the Open Meetings Act, Texas Government code Section 551.001, et. Seq., to review and consider the following:

- A. Under authority of Section 551.074 to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or a charge against an officer or employee: Lindsay Koskiniemi as Finance Director

Executive session was called at 11:04 a.m.

IX. RECONVENE FROM EXECUTIVE SESSION and take action on the following:

- A. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or a charge against an officer or employee: Lindsay Koskiniemi as Finance Director

Open meeting reconvened at 11:15 a.m.

On motion by Sarah Reed second by Frank Blanks with all present members voting “aye” Lindsay Koskiniemi was appointed as Finance Director.

X. WORKSHOP - CITY ZONING REGULATIONS

Workshop began at 11:17 a.m.

Michael Coon stated the purpose of this workshop is to (1) learn about the history of zoning and why it was created, (2) discuss State laws regarding zoning, and (3) discuss potential changes to the current zoning regulations and their potential impact on the City. He gave an overview of the history of zoning in the United States.

Mark Brown II arrived at 11:25 a.m.

Caleb Villarreal present the following:

Definition of Zoning

- *Zoning is the regulation by a municipality of the use of land.*

- *Thus, it is the division of a city or area into districts and the prescription and application of different regulations in each district generally.*
- *Zoning is the exercise of the police power by a municipality.*

Purpose and Scope of Zoning in Texas

- *Promote “the public health, safety, morals, or general welfare”*
- *Zoning must be in accordance with a “comprehensive plan”*
- *Examples include lessen congestion in the streets, secure public from fire, panic, and other dangers, promote health and general welfare, prevent overcrowding of land, etc.*

General zoning regulations

- *SECTION 211.003 OF THE TEXAS LOCAL GOVT. CODE*
 - *The governing body may regulate*
 - *Height, number of stories and size of buildings / other structures;*
 - *Percentage of a lot that may be occupied;*
 - *Size of yards;*
 - *Population density; and*
 - *The location and use of buildings and other structures*

The Zoning Commission

- *Authority is limited to recommending boundaries*
- *Zoning commission conducts public hearings*
- *Both the zoning commission and city council must follow the posting requirements contained in the Texas Open Meetings Act*

The City Council

- *After the zoning commission acts on an application, the matter goes to city council for consideration.*
- *A public hearing is required*
- *City council has several options when considering a zoning request.*

The Zoning Board of Adjustments

- *Zoning board of adjustment must act within parameters established by state legislature and municipal ordinance.*
- *According to state law, a zoning board of adjustment may hear and decide appeals from the administrative decisions made by zoning enforcement officials, special exceptions, variances and other matters authorized by ordinance.*

Duties of the Zoning Board of Adjustments

- *Make special conditions that are in harmony with the ordinance’s general purpose and intent.*
 - *Examples – permit variances or modifications of height, yard, area coverage and parking regulation; hear and decide special*

exceptions (reconstruction of non-conforming buildings, expansion of non-conforming buildings, discontinuance of nonconforming uses)

Variances

- *Not defined by Chapter 211 of Texas Local Govt. Code.*
- *Variance is defined by Black's Law Dictionary as "permission to depart from the literal requirements of a zoning ordinance by virtue of a unique hardship due to special circumstances regarding a person's property."*
- *Texas court has stated – "essential inquiry is whether the circumstances the specific application of the general regulation would constitute an unnecessary an unjust invasion of the fundamental right of property." Board of Adjustment v. Stovall, 218 S.W.2d 286, 288 (Tex.Civ.App.-Fort Worth 1949, no writ).*
- *A variance may only be granted if there exists an unnecessary hardship. Although state law does not define the term "unnecessary hardship" it does NOT include:*
- *Property that cannot be used for its highest and best use. See Board of Adjustment of the City of San Antonio v. Wille.*
- *Financial or economic hardship. See Southland Addition Homeowner's Ass'n v. Board of Adjustments of City of Wichita Falls; Bat'tles v. Board of Adjustment and Appeals of the city of Irving.*
- *Self-created hardship. See Currey v. Kimple.*
- *The development objectives of the property owner are or will be frustrated. See, e.g., Willie.*
- *A Texas treatise, titled, "Texas Municipal Zoning Law" defines "unnecessary hardship" as a "hardship that is self-induced or that is common to other similarly classified properties will NOT satisfy the requirement."*

Special Exceptions vs. Use Variances

- *Special Exception: uses that a zoning ordinance permits, but that are screened and specially approved by the Board of Adjustments. Do not require a "showing of hardship", unlike variances.*
- *Use Variances: A zoning board of adjustment may not grant use variances. Variances may be granted from dimensional requirements such as "setbacks".*

Enforcing Zoning regulations

- *FINING*
- *IMPRISONMENT*
- *OR BOTH*
- *ZONING ORDINANCE IS A MISDEAMEANOR MAY PROVIDE CIVIL PENALTIES FOR VIOLATIONS. CHAPTER 54 OF THE LOCAL GOVT. CODE PROVIDES FOR ENFORCEMENT THROUGH CIVIL ACTIONS AND MAY RECOVER CIVIL PENALTIES UP TO \$1,000.00 PER DAY.*

Specific zoning issues

- *Specific Use Permits (Conditional Use Permits)*
- *Ex. – helicopter landing pad permitted in a industrial zone; however, due to safety concerns, overhead power lines and other issues, a city would not desire that every parcel zoned “industrial” be entitled to a helicopter landing pad. Thus, a specific use permit is method by which a city may regulate such uses.*

Discretion in zoning matters

- *Decision making body is afforded considerable discretion in its zoning decisions.*
- *The appropriate inquiry is whether there was a conceivable or even hypothesized factual basis for the specific zoning decision made. Shelton v. the City of College Station.*

Legal Challenges to zoning ordinances

- *Just Compensation Takings Claim*
- *Due Process Takings Claim*
- *Arbitrary and Capricious Substantive Due Process Claim*
- *Equal Protection*
- *Procedural Due Process Claims*

Practical pointers in zoning matters

- *Ensure the city staff is made aware of the need for, and importance of, creating and maintaining a record*
- *Document the harmful impacts of the proposed project*
- *If zoning matter is one that is likely to be controversial, consider retaining experts.*
- *Educate the planning and zoning commissioners ahead of time. Ask them to frame comments and written questions in objective terms.*
- *Prior to voting, do NOT go to site in question – Texas law is clear – members of zoning board act in quasi-judicial capacity.*

Council recessed at 12:30 p.m. for lunch. Meeting was recalled at 12:50 p.m.

Discussion was held regarding potential changes for some of the specific areas in the zoning code such as property setbacks, minimum and maximum lot sizes, maximum lot coverage, refining and adding definitions for key terms.

XI. CITY MANAGER’S REPORT

Michael Coon reported that Kenny Williams was injured on the job and would likely be out for a while.

XII. FUTURE AGENDA ITEMS

There were no agenda items presented.

XIII. COUNCIL MEMBER COMMENTS & REPORTS

There were no Council reports.

XIV. MAYOR'S REPORT

The mayor did not report.

XV. ADJOURNMENT

There being no further business the meeting adjourned at 1:21 p.m.

These minutes were read and approved on this ____ day of _____,
20____.

Mark Guthrie, Mayor

Attest:

Giani Cantu, City Secretary