

CITY OF WILLARD
BOARD OF ALDERMEN
NOVEMBER 13TH, 2006
7:00 P.M.

Board present: Mayor Thomas J. Keltner, Aldermen Charles Whitehead, Aldermen Bill Caplinger, Aldermen Gordon O'Quinn, and Aldermen Richard Simpson.

Also in attendance: City Administrator, Fred Gress; City Clerk, Kathy Snyder; CFO, Karen Robson; Director of Development, Randy Brown; Director of Public Works, Charlie Jones; Director of Parks and Recreations, Jill Simmons; Chief of Police, Tom McClain; Planning & Zoning Commission Executive Secretary, Lucille Murray; and City Attorney, Ken Reynolds.

Guest present: Jack Dillingham, Renee Barnes, Ashley Barnes, and Dale and Leota Stafford.

Mayor Thomas J. Keltner led the Pledge of Allegiance.

City Attorney Ken Reynolds opened the PUBLIC HEARING TO CONSIDER A PROPOSED TEXT AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS SECTION 5.3.3 FRONT YARD SETBACK FROM 40' TO 35'.

Ken asked if anyone wished to speak in favor or opposition. No one spoke. Ken closed the Public Hearing.

SPECIAL RECOGNITION (AWARDS, CERTIFICATES AND HONORS)

Chief of Police Tom McClain stated that the City of Willard, the School District, and businesses have embarked upon a mission to recognize character. This month the character attribute that the community is recognizing is the attribute of Caring. Chief of Police Tom McClain presented Ashley Barnes with Letter of Appreciation for her demonstration of caring.

Mayor Thomas J. Keltner called the meeting to order.

Agenda Amendments/Approval of Agenda

Mayor Thomas J. Keltner stated that there was one amendment to the agenda. Item #6 and item #10 will be switched.

Motion made by Richard Simpson with second by Bill Caplinger to approve the amendment to the agenda listed above. All votes yes. Motion carried.

Motion made by Bill Caplinger with second by Charles Whitehead to approve the agenda. All votes yes. Motion carried.

Minutes 10/10/06 & 10/30/06

Motion made by Gordon O'Quinn with second by Richard Simpson to approve the minutes of the Regular Meeting on October 10th, 2006. All votes yes. Motion carried.

Motion made by Richard Simpson with second by Gordon O'Quinn to approve the minutes of the Special Meeting on October 30th, 2006. All votes yes. Motion carried.

Citizens Input

None

Financial Report

Motion made by Richard Simpson with second by Gordon O'Quinn to approve the September Financial Statements. All votes yes. Motion carried.

Karen asked if there were any questions on the October Financial Statements. Aldermen Bill Caplinger asked if on the invoice from Wright Express (gas tickets), if it was divided between Parks, Sewer and Water. Karen stated that it was divided equally. Also Aldermen Bill Caplinger asked if the ink cartridge that was purchased on 10/23/06 for \$330.00, if that was for one cartridge. Karen stated that it was one ink cartridge and it was for the FEMA prints and last for 29,000 copies.

Karen requested approval to pay the outstanding bills. Aldermen Richard Simpson asked what the bill was from Olson and Associates. Karen stated that it was for the Hughes Road engineering.

Motion made by Richard Simpson with second by Bill Caplinger to pay the outstanding bills. All votes yes. Motion carried.

Karen requested approval for a 12 month service agreement for the two time clocks that were installed, one at Public Works and one at City Hall in the amount of \$595.00.

Motion made by Richard Simpson with second by Bill Caplinger to approve the service agreement for two time clocks in the amount of \$595.00. All votes yes. Motion carried. Chief of Police Tom McClain requested to purchase a mobile radio to replace one that has completely crashed, and not to exceed \$1,598.00.

Motion made by Richard Simpson with second by Bill Caplinger to approve the purchase of a mobile radio not to exceed \$1,598.00. All votes yes. Motion carried.

Request implementation of a random selection program for Drug Testing, and have two randomly selected employees tested per quarter.

Motion made by Richard Simpson with second by Charles Whitehead to approve the employee random Drug Testing listed above. All votes yes. Motion carried.

Request approval of incentive pay in the amount of \$150.00 per full time employee and \$25.00 per part-time employee.

Motion made by Charles Whitehead with second by Bill Caplinger to approve incentive pay in the amount of \$150.00 per full time employee and \$25.00 per part-time employee. All votes yes. Motion carried.

Ordinance-Issuance of Certificates of Participation

BILL NO. 06-29

ORDINANCE NO. 061113

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO BASE LEASE AGREEMENT AND A FIRST AMENDMENT TO PROJECT LEASE AGREEMENT AND APPROVING THE

ISSUANCE OF CERTIFICATES OF PARTICIPATION (CITY OF WILLARD, MISSOURI-PARKS AND RECREATION PROJECT), SERIES 2006, IN THE PRINCIPAL AMOUNT OF \$1,555,000, TO PROVIDE FUNDS TO PAY THE COST OF A PROJECT ADDITION TO THE CITY'S PARKS AND RECREATION SYSTEM AND IN CONNECTION THEREWITH REFUNDING CERTAIN OUTSTANDING SERIES 2001 CERTIFICATES; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF SAID CERTIFICATES; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID CERTIFICATES.

First reading by City Clerk Kathy Snyder.

Motion made by Richard Simpson with second by Gordon O'Quinn to approve the first reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. Motion carried.

Second reading by City Clerk Kathy Snyder.

Motion made by Bill Caplinger with second by Charles Whitehead to approve the second reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. All votes yes. Motion carried.

Questions for Department Heads

Chief of Police Tom McClain stated that Bob Covington, a former WPD volunteer died recently. The Police Department received \$150.00 in his honor. The Police Department would like to purchase a "Bob Covington Above & Beyond" recognition plaque and a tree with the proceeds.

Motion made by Richard Simpson with second by Charles Whitehead to approve to purchase recognition plaque and a tree in honor of Bob Covington. All votes yes. Motion carried.

Aldermen Richard Simpson stated that Bob Covington was a great guy and always had a friendly thing to say to you. He was a hard worker and as honest as the day is long. The city needs more people like him and we will certainly mourn his loss.

Aldermen Bill Caplinger asked Charlie Jones Director of Public Works how many feet of sewer line is the city viewing with the camera a month. Bill said is there anything set or do we just do it when we get a chance? The camera was not working for a long time. Charlie stated that Public Works just uses the camera periodically.

Aldermen Richard Simpson stated that we have a water loss from 9% to 11%. Charlie stated that Public Works flushed the whole water system last month. Also the city has two subdivisions that they have been trying to get good water samples and have been flushing the lines a lot.

Aldermen Richard Simpson asked Randy Brown Director of Development about the meeting he had with Mettemeyer Engineering discussing routing options for the 12" waterline to extend to Park Estates II. Randy stated that no plan is set in stone at this time. They have discussed moving the waterline on the West side of Highway Z.

Proposed Text Amendment to LDR's-R-1 District, front yard setback 40' to 35'.

BILL NO. 06-30

ORDINANCE NO. 061113A

AN ORDINANCE ADOPTING AN AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS AND DESIGN STANDARDS FOR THE CITY OF WILLARD, MISSOURI; REPEALING OR AMENDING INCONSISTENT ORDINANCES AND PROVIDING FOR PENALTIES FOR VIOLATION HEREOF.

First reading by City Clerk Kathy Snyder.

Motion made by Richard Simpson with second by Gordon O'Quinn to approve the first reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. All votes yes. Motion carried.

Second reading by City Clerk Kathy Snyder.

Motion made by Bill Caplinger with second by Gordon O'Quinn to approve the second reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. All votes yes. Motion carried.

Seatbelts and Child Restraint

BILL NO. 06-31

ORDINANCE NO. 061113B

AN ORDINANCE AMENDING ORDINANCE NO. 020812D AND ADOPTING AND ADDING THERETO CERTAIN REVISED PORTIONS OF CHAPTERS 307 RSMO, AS AND FOR PART OF ITS TRAFFIC REGULATIONS, AND THE USE OF SEAT BELTS AND CHILD RESTRAINTS IN A MOTOR VEHICLE, AND PROVIDING FOR PENALTIES FOR VIOLATION OF THE SAME.

First reading by City Clerk Kathy Snyder.

Motion made by Richard Simpson with second by Gordon O'Quinn to approve the first reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. All votes yes. Motion carried.

Second reading by City Clerk Kathy Snyder.

Motion made by Gordon O'Quinn with second by Bill Caplinger to approve the second reading. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-yes. Richard Simpson-yes. All votes yes. Motion carried.

Bids-Liability/property insurance for all city property

Karen requested approval of the bid from Land O' Lakes for workers comp insurance in the amount of \$44,228.00. Karen stated that this bid was \$1200 higher than the bid from Nixon & Lindstrom but the city feels that the educational benefits that we get from Land O' Lakes are well worth the extra \$1200. (*Land O' Lakes is the city's current carrier*)

Motion made by Richard Simpson with second by Bill Caplinger to approve the bid from Land O' Lakes for workers comp insurance in the amount of \$44,228.00. All votes yes. Motion carried.

The city received two bids for property/liability insurance-Advisor Insurance in the amount of \$44,240.00 and Land O' Lakes in the amount of 39,213.00. Advisor Insurance quoted prices with higher deductibles, so Karen got the quote from Land O' Lakes with the same deductibles.

Motion made by Richard Simpson with second by Bill Caplinger to approve the bid from Land O' Lakes with the lower deductibles in the amount of \$40,237.00. *(these deductibles are the same as the current deductibles)*

Discuss adding another ward and two more aldermen

City Administrator Fred Gress stated that this was a very simple procedure which will only require an ordinance on the board's part. City Clerk Kathy Snyder with staff help will take the city base map and take the number of houses that we have times population factor. We have to try and balance each ward within 10% of each other. Aldermen Bill Caplinger asked what you would do if you had just been elected in a ward and then after adding the new ward you were in a different one. City Clerk Kathy Snyder stated that that aldermen would serve out their term if they still owned the residence that they were moving from, and then if they were going to run for office again they would run for the ward that they currently were in at that time. Aldermen Gordon O'Quinn asked why the city needed another ward. Mayor Thomas J. Keltner stated that the population in Willard is growing and the minimum of aldermen for a fourth class city is four (4).

Prior Sewer Service Agreement on the Weatherly Property

City Administrator Fred Gress stated that in 1993 the Board of Aldermen agreed to extend sewer service to the Weatherly Subdivision in order to get an easement. This was a verbal agreement and was recorded in the minutes. City Attorney Ken Reynolds stated that this agreement is unenforceable. Also he said if the city would want to honor this verbal agreement that would be o.k. The city would not have to allow other people outside the city limits to connect to city sewer just because they fulfilled this agreement. The property owner is willing to annex into the city limits. Board stated that they would rather see them annex than to allow them to live outside the city limits and be on city sewer.

Discuss Proposed Noise Text Amendment to LDR's

Aldermen Richard Simpson discussed the proposed decimals for sound level. Richard suggested that the sound level limit for residential area be 50 for daytime, and 45 for nighttime. Mayor Thomas J. Keltner asked if the noise was measured for a split second or if it was a continuous sound. Aldermen Richard Simpson stated that it was measured on a continuous sound. Richard also discussed the proposed time for maximum sound level standards. Richard suggested 7:00 a.m. to 7:00 p.m. for the maximum sound level standards. Board discussed the two (2) issues above and all agreed on Aldermen Richard Simpson's changes.

Discuss Amending Zoning Ordinance concerning M-2 Zoning

Aldermen Richard Simpson: O.k.

Mayor Thomas J. Keltner: Fred, are you taking the lead in this?

City Administrator Fred Gress: I'll just quickly.....

Aldermen Richard Simpson: Go ahead.

City Administrator Fred Gress: We have placed in the paper asking that the Planning and Zoning Commission consider a change to the current Land Development Regulations. In the M-2 classification under use limitations and the requested change is that we will add subparagraph H that says that no permitted use or conditional use permitted within the M-2 zoning classification which is your heavy industry zone, shall be allowed to encroach upon those areas designated as residential on more than one side. That we'll conduct a Public Hearing on that and see what the Planning and Zoning Commission believes is the correct procedure.

Mayor Thomas J. Keltner: Ken, if I own three sides of an R-1 property can the city stop me from using that property on three sides?

City Attorney Ken Reynolds: No.

Mayor Thomas J. Keltner: So I can win that in court if I.....

City Attorney Ken Reynolds: If you're grand fathered in?

Mayor Thomas J. Keltner: No. Let's say I have an R-1 property and I'm surrounded on three sides by an M-2 property. Can the city, will it stand up in court if the city says you can only be on one side of them, you can't go all the way around them, even if I own all of the property?

City Attorney Ken Reynolds: Is your ownership prior to this change that we're talking about?

Mayor Thomas J. Keltner: Yes.

City Attorney Ken Reynolds: No.

Aldermen Richard Simpson: Right. But now you look at our city maps and there is no entity, no entity that is zoned M-2 on two sides of any R-1 property as of yet. We've got M-2, but we don't have M-2. It would not be a taking. It would not be, you know, we're talking about alright say, here's what we're looking at. Say somebody goes up here, say 3M, just put one up, goes up and buys the corner of 160 and AB and then goes, what is that Whispering Oaks?

Board: Augusta Heights.

Aldermen Richard Simpson: Augusta Heights, and then buys the property back in behind it. Alright so what we're saying is alright here is this property here. Now again there isn't any property in Willard property that has M-2 already in existence on two sides, alright. Now they own property.....

Mayor Thomas J. Keltner: Well Conco, we've rezoned Conco M-2.

Aldermen Richard Simpson: Not the east half of the Wilson place. We specifically left that out. We specifically left that out. It's in the ordinances, and it is in the land description. They are zoned M-1.

City Attorney Ken Reynolds: Wait a minute. All of Conco when we rezoned is now M-2.

Aldermen Richard Simpson: Not the east part of the Wilson place it's not.

City Attorney Ken Reynolds: Why do you think that? Maybe I'm mistaken but why would we leave that out?

Aldermen Richard Simpson: Well we did. Look at the records. It's in there. We specifically left that out on all that M-2 zoning. Because there was a question about whether or not they were R-1.....

City Attorney Ken Reynolds: Well here Kathy says you are right.

Aldermen Richard Simpson: Yeah, no we did. It is in ordinance that is already in place in an ordinance. We left that out because there was a question about being R-1 and Conco is going, "no we're M-1". Well that's still a question. But the point being is there is no place in the city of Willard at this present time that has M-2 on two sides of it. What I'm saying here is, if we allow that to happen anywhere, then it has to happen everywhere. We're putting in a PDD. Alright we need to set these rules. For one thing you know we can't come up and say you know you've got a nice subdivision here you've been here for forty years. Now 3M wants to come on two sides of you and go M-2 and destroy the value of it. Alright you go on one side. We're allowing you to do that. We'll allow you to go on the other side with say, with steps, you can have M-2, M-1, commercial, and then residential butting up next to it. But if you allow M-2, heavy manufacturing, chemical plants, rock quarries, to go on two sides of R-1 property that doesn't already you know have permission to do it's going to set a precedence for this whole town.

City Attorney Ken Reynolds: That I can argue. You can ask a legal question to that.

Mayor Thomas J. Keltner: Will that stand up in court that you can restrict them to one side. If I come in and buy the property here you know and I want to do M-2 here, and here, can the City of Willard legally tell me no I can't do that?

City Attorney Ken Reynolds: I think the answer is yeah. I would have to verify it, but I think the answer is yeah you can.....

Aldermen Richard Simpson: There are several places, several, and even in Springfield. I've talked to people in this that said now is the time to set a, if you don't have anything in place now, if there is no M-2, there is no taking and everybody I've talked to say's now is the time to set it up. Because what that does is that avoids lawsuits in the future, that avoids all of this complication if somebody moves some place else like if 3M goes on two sides of R-1. They can go alright its allowed to do down there so we have the right to do it anywhere else in this town.

City Attorney Ken Reynolds: I assume this is all generated from the Conco issue?

Aldermen Richard Simpson: This is from the PDD. We are setting in a city wide Planned Development District that anybody that wants to gets on to. We need to set firm rules with sound, and our distances in place and then anyone that wants to come into that PDD come up and say, "these are our set rules". There is nothing wrong with the city to have set rules to protect the surrounding.

City Attorney Ken Reynolds: You have industrial now on two sides of your property.

Aldermen Richard Simpson: But it is not M-2. It is M-1. One is M-2 the other side is M-1.

City Attorney Ken Reynolds: Well actually it is A-1 on the Carlock property.

Aldermen Richard Simpson: Right. Actually I don't, I don't have M-1 there.

City Clerk Kathy Snyder: No you don't. He doesn't have M-1. It is A-1 and R-1.

Aldermen Richard Simpson: It's A-1 and R-1.

City Attorney Ken Reynolds: Well they would disagree with you on the R-1.

Aldermen Richard Simpson: Well right, but they could go M-1. It's still A-1 and M-1. There is no M-2 there.

City Attorney Ken Reynolds: But you're A-1 that is now in effect is M-2 because it is heavy manufacturing based on the old book.

Aldermen Richard Simpson: Right. So all we are trying to do is avoid this mess the years and years it has taken to straighten this out in the future. And we can legally do this without it being a taking. We simply say, "look in order to protect the citizens we aren't going to allow heavy, heavy manufacturing on two sides of them.

City Attorney Ken Reynolds: Well you still got a lawsuit on your hands if you are trying to limit any mining from occurring on the east half of the Wilson property totally you going to.....

Aldermen Richard Simpson: They can put up there processing plants there. They can do anything they want there but open pit mining.

City Attorney Ken Reynolds: I'm just telling you what they would actually disagree with you one hundred percent. Me and you have talked about that issue, do they have a right to mine there and so forth you know and I already expressed to you my thought about the east half of the Wilson property verses the Marlin property down below. What I thought obviously you would win on that. That's my opinion on that. I think it is something that needs to be discussed in closed session. Not.....

Aldermen Richard Simpson: Right, but you're bringing it all back to Conco. What I'm trying to do is in, if we set it in the regs. in our city policy now, right now there is no M-2 on two sides of any residential neighborhood.

City Attorney Ken Reynolds: Well if you think that is going to stop litigation from occurring around you or on the Conco issue, its not going to stop it.

Aldermen Richard Simpson: Well the question is, are we setting up this PDD strictly for Conco or are we going to set this PDD up for anybody else any industry else that comes in there. And if we're setting up strictly for Conco we're in bad trouble cause we cannot set specific rules on that and just go we can do it for you, but we can't do it for you.

Mayor Thomas J. Keltner: I agree with Richard.

City Attorney Ken Reynolds: Right it has to be the latter of the two. It has to be.

Aldermen Richard Simpson: The latter of the two. And this is what we're going to be setting up we need.....alright put it this way. Springfield spent two years working on this PDD. Planning and Zoning passed it without even discussing hardly. We need to set down and discuss what we are putting in here. For one thing if you're talking about the PDD, let's just take Conco for an example. Conco is 1/3 of the land mass of Willard. Now do you think Springfield would of said, alright go ahead and just pass that through knowing 1/3 of their land mass was going to be effected? We have to take our time and set these basic rules in properly. Not to hurt anybody, not to keep anybody out but to blanket everybody coming in for the future, twenty (20) years ahead. Cause we are going to have other industries want to come in here and do that. And we come up and say no the City is going to protect it's citizens and not allow it to be on two sides, heavy industry. For one thing everybody.....

City Attorney Ken Reynolds: I think we're making.....ask me a question.....you want to ask me a question?

Aldermen Richard Simpson: Well.....

Mayor Thomas J. Keltner: Is it legal for the city to restrict M-2 property to just one side of an R-1 property?

City Attorney Ken Reynolds: I think you can do that.

Mayor Thomas J. Keltner: Will it stand up in court? That's the question, correct?

City Attorney Ken Reynolds: I can give you my opinion later, but my gut reaction is yes. But I don't want you to think that that answer is going to do something to the Conco issue because.....

Aldermen Richard Simpson: No this is city wide Ken. See that's the problem where setting up this PDD we've got to set it up city wide and Conco would follow into it.

City Administrator Fred Gress: What you're talking about is the philosophy of how you want the community to develop. Planning standards is what you're talking about. If you're concerned that a Planned Development District is going to circumvent that philosophy I personally believe you're wrong. I believe that a Planned Development District in fact puts in place the ability to be more strict with more determination to set in place all of your planning philosophies. Because it gives you the ability to set down with a development that's typically large in size. Not Conco specifically, any other use, a multi mix of residential with commercial in it is a perfect example for PDD. All of your planning philosophy that you have in your standards is going to become part of that discussion.

Aldermen Richard Simpson: If you read that content it supercedes our ordinances.

City Administrator Fred Gress: That's right Richard but it only does that after you have gone through public hearings, after you have met with neighborhoods, of all of the owners in the neighborhoods the proposed PDD applicant has to conduct meeting with the area neighbors or their not going anywhere. They have to go through a Planning and Zoning Public Hearing. They have to go through staff review. They have to agree to limit that potential uses of those area if they suggest staggered development and then they have to come back later to be able to do a final on it. So you get additional shots at them. What standards do you use? You use standards like your talking about. O.k. you going to be a massive development here, well your neighbors are residential in character. How are you going to mitigate the potential harm that this huge development is going to create? How do you mitigate that? You're going to have to meet noise standards. You're going to have to meet lighting standards. You're going to have to meet in the event of a heavy industrial and they blast, you're going to have to meet blasting standards. You're going to have to create buffer zones, buffer zones of either wide spaces or landscaping etc.

Aldermen Richard Simpson: That's all in there. That's basically Fred, that's all in there but you said your going to have to take light standards, noise standards, dust standards you know, everything is in there. Why not put a distant standard on it just standardize it and say look if you want to go in this PDD fine you come on in but we have some base rules set up already set up. We have noise and we have for the protection of the people. I mean anybody, anybody looking at M-2 heavy manufacturing you know and you're allowed to go on two sides that's ludicrous.

City Attorney Ken Reynolds: Richard, Fred sent me over this language that he just read at the very beginning of all of this and I asked Ralph Rognstad ahead of Planning and Zoning over Springfield, is that the appropriate place for it. His response is no you don't put in that perspective or deal with it that way. He said you deal with it, what Fred is saying you deal with those restrictions and it may actually be more restrictive put in the PDD itself.

Aldermen Richard Simpson: But we don't have the staff that Springfield has on that. We do not have.....

City Attorney Ken Reynolds: Understand that he says that's why you deal with that so you can get a more restrictive of.....

Aldermen Richard Simpson: From who?

City Attorney Ken Reynolds: From the review process, because it all has to be passed through P&Z and you guys. That's what he said. And again he volunteered to come out here and give you his thoughts if you want.....

Aldermen Bill Caplinger: The PDD is a blank slate.

Aldermen Richard Simpson: It is, it is a blank slate, and we don't like that.

Aldermen Bill Caplinger: They have to come to us and say this is what we want to do and they have to go through P&Z. It has to be approved there. It has to go through the Public Hearings and it has to go through the meetings with the citizens around where the PDD is. And then when all of that is met then it comes to the BOA and this get's approved. If it doesn't pass any of those it doesn't get to BOA, correct? So the PDD is a blank slate we've got....

City Attorney Ken Reynolds: I don't know what blank slate means.

Aldermen Bill Caplinger: Well I mean.....

Mayor Thomas J. Keltner: A blank form.

Aldermen Bill Caplinger: It's a blank form. It's, what do you want to do on that property? What do you want to do on that 160 acres?

City Administrator Fred Gress: The proposed PDD is a skeleton process of you submit, we review, you review, we submit or we review your process. We're going to look at all of these standards that we're going to put on you. So how do you go from this piece of property to a finished product? And the PDD provides a skeleton process for that to happen. You add meat to that skeleton all the way through it, all the way through it.

Mayor Thomas J. Keltner: A hypothetical question. If I had a property owner, Richard an example, so I was going to put in a M-2 business on two sides of him and Richard says I trust you, I don't care go ahead and do it, you know. That could happen. It's a possibility. If we limit it to one side then we no longer have that option? That's the question.

Administrator Fred Gress: If you put a standard in in the use limitations of the M-2 zone one of your use limitations would be that an M-2 could only, only about one side of any area that is residential.

Aldermen Richard Simpson: That's all were asking is to put that in the PDD, and to put that in our ordinances. Right now there is no piece of property that is M-2 on two sides of R-1.

Aldermen Bill Caplinger: We wouldn't put it in the PDD we would actually put it in the ordinance for M-2, right?

Aldermen Richard Simpson: That's what I'm asking to do now.

City Attorney Ken Reynolds: You've got to understand that you say there is none right now. Conco would absolutely disagree with you one hundred percent depending on what book you were looking at.

Mayor Thomas J. Keltner: Let's don't get into the Conco issue.

City Attorney Ken Reynolds: I'm just trying to....it does occur here you know maybe....

Aldermen Richard Simpson: Look anything, put it this way. And we need to talk about Conco in closed session but I will say this no matter what we do unless Conco gets ever single thing it wants you know there going to come up and go "boo we're going to sue you". Well I'm tired of people going "boo". We need to stand up for our citizens, that's all it is.

City Attorney Ken Reynolds: I'm just trying to tell you though when you say it doesn't occur I think it probably in their thoughts in.....

Aldermen Richard Simpson: They can think that all they want. Let them try and prove it. All I'm saying is this will help try to protect the citizens so the city won't have to spend all this time and effect on some other person that say's, "Conco got to do it so we get to do it". And that's what's going to happen if we don't set something in place firm

now. All I'm asking the board is to recommend to the Planning and Zoning that there is no M-2 zoning on two sides of residential property.

City Attorney Ken Reynolds: Well.

Aldermen Bill Caplinger: Well I think it needs to be more than M-2, then we're just picking on M-2, I mean.....

Aldermen Richard Simpson: Alright M-1, but then whatever then you getting into that. We need to have buffers. Any industry coming up these are you know, you know, the case of the neighbors that I'm talking about they were there in 1966 before the quarry bought the land next to them this isn't a case of the neighbors moving to the quarry that is a case of the quarry moving to the neighbors. Neighbors can't pick up their houses and go.

City Attorney Ken Reynolds: I think your defeating the propose.....and I'm not a Planning but I think your defeating the purpose of the PDD though. Am I wrong?

City Administrator Fred Gress: Well I understand what you are saying but in my way of thinking what you are proposing is a form of mitigation of adverse impact. The purpose of the M-2 zone is that the district is intended to accommodate those heavy industries which cannot entirely eliminate objectionable features and impacts of which with reasonable care will be able to comply with the standards of this district. Now you're saying that a standard, a very base standard should be an M-2 use can only encroach upon one side of a residential area.

Aldermen Richard Simpson: For that statement that you just previously read before that, for that reason alone right there.

City Administrator Fred Gress: I'm not a lawyer and I'm not practicing law here but if I'm an industry, if I'm a 3M and I come out here and I find some property. Let's say Bunch Greenway's property right next to Augusta Heights where I happen to live, in a single family large lot development. And I'm convinced being an industry like 3M that that is the site that I need for specific reasons. I apply to the city, or worse yet, I apply to the county and asked for that area to be designated heavy industry. The theory is that the Planning Commission and the supportive staff, be it one person, two people, or thirty are going to look at the land and their going to look at the existing land use development around that no matter where it is and their going to say well wait a minute here you're bordering a residential area. You're bordering a subdivision that has large lots, single family homes. How in the world are you going to mitigate any adverse impacts on that development? That's the question. That's the question that you have to set standards for and that's the question that the lawyers are going to say well you've restricted us unfairly because you did not set standards that provided for mitigation attempts. Ken's going to have to answer from a legal point of view but everything I've seen mitigation is the name of the game. Set your standards so that you can mitigate adverse impacts. I could argue that if Bunch wanted to build a high density residential unit, area, development next to

that same Augusta Heights that I don't like that as a property owner because you're going to increase vehicular counts, you're going to increase the number of people per square acre its going to be huge. The buildings are going to be three or four stories high it's going to be ugly. It's going to affect my property value. So it's not just an M-2 that we need to worry about. It's not just the M-2 that you need to worry about. It's how do you mitigate the potential adverse impact. That's the purpose of this district.

Aldermen Richard Simpson: Isn't M-2, my goodness, acid manufacturing plants, chemical plants, you know rock quarries. Those are huge, huge industries that have diverse affect on people. What we have is an opportunity now is too at least try to set it up where you know like alright you got McDonalds other places coming in and the first thing they look at is our Land Regulations. They look at our ordinances and if we have strong ordinances and you look at the stats those people like to come in with strong land use and strong ordinances they like to come in there because for that reason they can come in and build that ten million dollar place out there and they don't have to worry about a strap yard being right next to them or whatever. That's why they like it. Well by the same token if you have neighborhoods and everything and all of a sudden you know they say " oh the city is going to let them go M-2 around two sides of you" now that land that was worth ten thousand dollars an acre is only worth five hundred an acre now. I mean it's a flip of a coin both ways on that.

City Administrator Fred Gress: I can't disagree with Richard. It's a flip of a coin two ways but.....

Aldermen Richard Simpson: Flip of a coin, and I'd rather go on.....

City Administrator Fred Gress: When a development comes in it's typically a raw piece of ground, typically. It may be setting next to something. It may be out in the middle of nowhere setting next to something. We....I think it was Cozard, Cozard, Nebraska. They had a hog lot within a few miles of the city limits. Well that city took off and grew, grew around that hog lot. Well they got tried of the smell they bought it and moved it another fifteen or twenty miles out. Things change over time. We can't avoid that. The particular issue now is you have an industry that has been there how long, they are growing, right or wrong and we can argue some of those points. And you either find ways to mitigate the adverse impact to the best of your ability or you put up with the problems, or the other option is to move the industry.

Aldermen Bill Caplinger: So where are we best off to make this change in the PDD process or in the ordinance process?

City Administrator Fred Gress: I think if we're specifically looking at an M-2 worrying about an M-2 use coming into town the best place to put it is the place I proposed which is in the use limitation section. You're saying you know....the other ones that are here, "no use or operations shall disseminate dust, smoke, fumes, gas, vibration, noxious odors, yadda, yadda, yadda.

Aldermen Richard Simpson: But the city hasn't done anything on those.

City Administrator Fred Gress: We don't enforce those. Do we need too? Yes we do. But we need to enforce them on all uses not just one in specific.

Aldermen Richard Simpson: That's what I'm trying to get here.

City Administrator Fred Gress: B, no use or operation shall produce noise exceeding yadda, yadda, yadda, intensity level. No use or operation shall create fire hazards on surrounding property, and on down the list. Then in addition to that you have open space requirements, you have design requirements that sight buffer yard landscaping requirements that's true of several districts. That's true from residential to commercial. I think the standard that is being proposed is a standard that needs to be included in the M-2 district. Now what happens to that standard when you go to a PDD concept? All of those standards come right in to the skeleton. You start putting those restrictions on that that structure.

Aldermen Richard Simpson: There still going to argue.....

City Administrator Fred Gress: Is it legal? Nothing is legal as long as someone wants to challenge it.

City Attorney Ken Reynolds: Why don't you....a suggestion. The question is about where is the appropriate spot and everything why don't you ask someone like Ralph Rognstad who volunteered to come back, you know if you wanted to hear it from a guy who deals with this all the time. He would be glad to come over and talk with you about it. Is that something you guys want to do?

Aldermen Richard Simpson: Well we could do that. But I'm a firm believer that if you put something in place before something is in you have a lot better chance of holding up to it. This is simply an attempt to protect neighbors.

Mayor Thomas J. Keltner: Are we talking about something we're putting in, or where we are putting it?

Aldermen Richard Simpson: We're talking putting in M-2 amending our regs. of saying no M-2 can go on two sides of R-1.

City Attorney Ken Reynolds: Well more information says....then less information.

Mayor Thomas J. Keltner: But what you're saying is that it goes into the use limitations and not the PDD?

City Administrator Fred Gress: I'm suggesting that what we're creating here is a standard, a planning philosophy. Ken is saying that Ralph say's it should not become

part of the language in the PDD, it should become part of the standards if it is going to be considered a standard. So which means you put it into the M-2 classification.

Aldermen Richard Simpson: That's what I'm asking.

City Administrator Fred Gress: It becomes part of the review process. It's part of that thing that's going to add meat to the skeleton if you will. But remember.....

Mayor Thomas J. Keltner: The use limitations in the M-2 is where it....

City Administrator Fred Gress: The language that I wrote, the language that has been published for Public Hearing amends the use limitations section of the M-2 zoning classification.

City Attorney Ken Reynolds: I think you misunderstood. I think what Ralph had said, Ralph said that you shouldn't even have it, cause that particular issue rather or not it should surround residential property on two sides or whatever that should not be set forth in your Land Development Regulations at all. He's saying that that should be a consideration that the City of Springfield would look at when they have a Planned Development proposed to them. That it shouldn't have been in anything at all, that's part of your Planned Development District review process. They would look at it then. That's what he said.

Aldermen Richard Simpson: Planned Development says it supersedes any ordinance so what's the difference if we put it in our ordinance?

City Attorney Ken Reynolds: Well I think it is saying that you don't specifically say that he is saying that.....

City Administrator Fred Gress: It becomes part of the review process.

Aldermen Richard Simpson: Right, but what the problem that we have is that the city has never been able to enforce any ordinance what the review process going to do if somebody says hey I'm going to do anything I want.

Aldermen Gordon O'Quinn: That's what the purpose of the PDD is.

City Administrator Fred Gress: Well but understand also that you have approved the budget that allows for a code enforcement division, a building codes inspector and I can guarantee you that a building codes inspector for the City of Willard is going to get heavy involved in zoning reviews, enforcement of standards, the decimal standards that I think are appropriate and certainly appropriate restriction will have to be monitored. And you got to have a body to go out and monitor those.

City Attorney Ken Reynolds: You understand what I was saying a minute ago?

City Administrator Fred Gress: Yeah I understand what you were saying.

City Attorney Ken Reynolds: Alright I just wanted to make sure cause I wasn't very clear on that.

City Clerk Kathy Snyder: Did you put the M-2 section in the paper?

City Administrator Fred Gress: Well I sighted the section of the ordinance.

City Clerk Kathy Snyder: Of the M-2 zoning?

City Administrator Fred Gress: Yes. Section 5.10.4.

Aldermen Richard Simpson: We have ordinances on everything else. You know all this is just amending this to protect the neighbors, R-1. Otherwise you're going to have lawsuits all over the place. The question is does the city want to protect R-2 neighborhoods?

Mayor Thomas J. Keltner: R-1 you mean?

Aldermen Richard Simpson: R-1, yeah, pardon me.

City Administrator Fred Gress: Zoning has always been built around the philosophy that.....

Aldermen Richard Simpson: We've had a big problem with that lately.

City Administrator Fred Gress: that residential areas are the premier land use. Agricultural is always first, then residential, then business, then industry. That has always been part of the principal of planning.

Aldermen Richard Simpson: It has but.....

City Administrator Fred Gress: And even under PDD you won't lose that principal. You don't lose that principal.

Aldermen Richard Simpson: True. But so you're saying though that you think it's a bad idea to amend our zoning ordinances to say that the city will not permit on two sides of residential?

City Administrator Fred Gress: Aldermen I'm not saying that it's a bad idea I'm wondering, one is it defensible. I think you can argue from a planning philosophical point of view that that's already part of the review process. That when you look at a raw piece of ground one of the first things that you look at is what's it abutting? What kind of impact is it going to have on that ground around it? If it say on one side is residential and commercial here, what kind of things can you do to mitigate the impact of the proposed

use on the surrounding properties. And environmental concerns haven't been addressed as much as they need to be addressed. What kind of mitigation can you do? Buffering. I mean you require that now you have buffering and land.....now I know and I agree with you they haven't always been enforced even to any degree whatsoever.

Aldermen Bill Caplinger: That's what it boils down to Richard, one hundred percent.

Aldermen Richard Simpson: Well that's right.

Mayor Thomas J. Keltner: Enforcement.

Aldermen Richard Simpson: Well enforcement, I'm sorry to say I can only go with the past record of the city and they have not enforced it, and we're very derelict in that, extremely derelict in that.

City Administrator Fred Gress: I can't disagree with you on at.

Aldermen Richard Simpson: In fact we're liable for that.

Mayor Thomas J. Keltner: We need to have our own code enforcement department.

Aldermen Richard Simpson: Well we need to do something but the point being is I can only go by what has happened in the past and if it's going to continue to happen that way, I mean I spent four (4) years trying to change something, trying to get protection for the people and it hadn't happened. And all I'm asking is to try and put this in place to give us a little bit more clout on that. If it goes to court fine, anything we do is going to go to court eventually with Conco probably anyway.

City Administrator Fred Gress: Do you agree with the wording that I, I wrote? It says, "no permitted or conditional use as allowed by section 5.10.2 or section 5.10.3" which is the listing of permitted uses and the listing of conditional uses within the M-2 classification, "shall encroach any land area zoned for the purpose of residential use on more than one boundary". Does that accomplish what.....

Aldermen Richard Simpson: That basically accomplished it. Now if they want to fight that let em fight it. But the thing about it is if somebody else comes in say, "look we got this in our regs. 3M you want to come in here fine". That doesn't mean you can't buy that land and go M-2 like, you can go M-2 solidly up against one guy with a buffer. But if you want to go M-2 on the other side you got to M-2 a little bit further away and then step it into it. That doesn't deny them the right to be able to go M-2 on two (2) sides it's just they can't abut right next to it. They have to have a different zoning at it like R-3 or C-1 or C-2.

City Administrator Fred Gress: Which in effect brings in sound planning principals.

Aldermen Richard Simpson: That's exactly what we're talking about here. This follows suit in here because we're going look we're not saying that you can't do it. Here's the property here you've got M-2 here we can't say you can't go M-2 here we're just saying you can't go M-2 right up next to it.

Mayor Thomas J. Keltner: I agree, but it's in the M-2 limitations not the PDD. Is that what I'm hearing you say Fred?

City Administrator Fred Gress: That's what you're hearing me say but in the same breath I'm also saying that it will be an internally part of the review process the PDD is established in.

Aldermen Richard Simpson: Right.

Mayor Thomas J. Keltner: Do you think that would be legal?

City Attorney Ken Reynolds: That language?

Mayor Thomas J. Keltner: Yeah.

City Attorney Ken Reynolds: Yeah I think.....

Mayor Thomas J. Keltner: Would it be defensible in court?

City Attorney Ken Reynolds: Again I would research it but I think the gut feeling is yes. But you know ultimately I know you know Richard's comments are that I know he is referring to Conco.....

Aldermen Bill Caplinger: We're not referring this just to Conco. I'm worried about 160 and AB.....

Aldermen Richard Simpson: True, but if Conco's allowed to do it then anybody's allowed to do it. This is what we're trying to avoid.

City Attorney Ken Reynolds: To answer your question Bill from what I, and I'm not a planner I just you know but listen to the whole concept here the whole purpose of this PDD is to allow to adjust and change, and work around make land more useable and you may put more restrictions then what Richard's talking about or maybe less but by putting it in here you're kind of defeating the purpose of a PDD.

Aldermen Bill Caplinger: The PDD gives us the flexibility?

City Attorney Ken Reynolds: Yeah that's the whole purpose of it.

Aldermen Richard Simpson: We're talking about putting just in our regs., not in the PDD right now.

City Attorney Ken Reynolds: I understand but as Fred just said though that's going to restrict what you do with a PDD.

Aldermen Richard Simpson: Well look at it this, our Land Development Plan that we have passed. It states that that is suppose to be a green space of Parkway over there. Well they can argue the same thing and go, oh, gee, no. But we passed that. Planning and Zoning passed it. Board of Aldermen passed it. What's the difference? What's the difference?

City Attorney Ken Reynolds: I don't know what you're talking about. I'm not familiar.....

Aldermen Richard Simpson: Our new map that we got when Ryan comes in and we had public, will we didn't have, advertise Public Hearing but we had public input on them. Planning and Zoning passed it. Board of Aldermen passed it last year. You look at that map and it shows anywhere in the city that no M-2 is going to go around it. There is definitely, huge blocks of buffering to protect the citizens. We put that in our plan.

City Attorney Ken Reynolds: O.k. I mean.....

Aldermen Richard Simpson: Well what's the difference? I mean if we can do that why can't we do this?

Mayor Thomas J. Keltner: Do we need a recommendation from the board one way or the other on this Fred?

City Attorney Ken Reynolds: I'm not trying to ignore you I'm just trying to think what, if we can do what.

Aldermen Richard Simpson: I know Comprehensive Plan Ken that you have, the new one that Ryan updated. The new map, look at that new map and see everywhere in there they aren't allowing heavy industry an anywhere on any two (2) sides of any R-1 neighborhood. That's put in there.

City Attorney Ken Reynolds: I take your word for it but I don't know if it's on the map.

Aldermen Richard Simpson: Well that's what we passed.

City Attorney Ken Reynolds: I don't set and restudy that map I don't know.....

Aldermen Richard Simpson: Well it's the new map. Is that the new map or the old map?

City Administrator Fred Gress: I think this is the new one. What he is referring to is this is the Wilson property and it's zoned, its land use planned it is restricted to agricultural which provides the buffering.

Aldermen Richard Simpson: And we passed this fella's.

City Attorney Ken Reynolds: Well the only problem with your map is that it's not binding on Conco that this agricultural....

Aldermen Richard Simpson: True. But this is what this PDD is going on Comprehensive Plan and our Land Regs. We passed this on our Comprehensive Plan all I want to do is put it in the regs. the same thing. Just put it in ordinance. They can argue.....

City Attorney Ken Reynolds: territory....Bill Caplingers comment about you know what's the appropriate place and I'm just telling you what I know and I'm not a planner. We can get Ralph Ronstead here who does this. My understanding is that you deal with those issues in the PDD. That's the purpose of the PDD. I'm not a planner guys.....

Aldermen Richard Simpson: We're not talking about putting in a PDD we're talking about.....

City Attorney Ken Reynolds: I know but if you're wanting to put it outside the PDD paragraph A to that particular....yeah I understand that perfectly. But that onto itself is restricting it. All I'm trying to say is you might want to get some more information about this before you make.....

Aldermen Richard Simpson: But Ken in that PDD it says that this PDD supersedes any ordinances. So how is that restrictive?

City Administrator Fred Gress: The process makes it restrictive.

Aldermen Bill Caplinger: It gives us the ability to...this is going to sound bad, to pick and chose.

Mayor Thomas J. Keltner: To look at each case individually.

City Attorney Ken Reynolds: Wouldn't you all like to have more information on this? I mean wouldn't you.....

Aldermen Richard Simpson: On the PDD we would.

City Attorney Ken Reynolds: On all of that I mean I'm not.....

Aldermen Richard Simpson: Well it's pretty cut and dry on the M-2 on two (2) sides. I mean gee your either for it or not.

Mayor Thomas J. Keltner: I call the meeting to order, enough. Fred do you need a recommendation from the board on this?

City Administrator Fred Gress: Again I can carry this recommendation and we have scheduled a Public Hearing for the next Planning and Zoning Commission meeting and we will simply re-present both sides of the issue fairly and everyone is encouraged to be there to submit their own interpretation and give it to the Planning and Zoning Commission to consider.

Mayor Thomas J. Keltner: Oh boy.

City Administrator Fred Gress: I don't....Ken you're the legal beagle here. I don't think you need a, particularly need a motion to put this down as a recommendation to the.....

Mayor Thomas J. Keltner: Can we ask for a show of hands on which way the board feels this to go? Would this help?

City Attorney Ken Reynolds: I prefer you do it by way of a motion.

Motion made by Richard Simpson with second by Charles Whitehead to recommend to Planning and Zoning that we amend our zoning to not allow M-2 on two (2) sides of R-1 property anywhere in the city. Charles Whitehead-yes. Bill Caplinger-yes. Gordon O'Quinn-no. Richard Simpson-yes. Motion carried.

Wellhead Protection Application

City Administrator Fred Gress stated the wellhead protection committee has met once. The city has areas in town where septic tanks were not closed properly and private water wells that have never been closed properly. The state has \$200,000 they are offering for grants. Fred requested approval to apply for a grant in the amount of \$14,500 which the city would then match in two (2) ways. Field work and records work to find the location of the septic tanks and wells that have not been closed properly. Applying for \$5000 to do well closers, \$3000 to do septic tank closers, and \$5000 to establish a rebate program to assist private owners with doing both or one of the entities. The city has earmarked \$2500 to participate in the rebate program.

Motion made by Bill Caplinger with second by Gordon O'Quinn to approve Fred to submit the grant application. All votes yes. Motion carried.

Old Business

City Administrator Fred Gress reminded the board of the meeting with the school on November 14th, at 7:00 p.m. Also on November 16th, Public Hearing, Special Board of Aldermen meeting for PDD.

Mayor Thomas J. Keltner stated that the board would be going into closed session for legal and personnel issues.

Motion made by Richard Simpson with second by Bill Caplinger to close the open session. All votes yes. Motion carried.

Meeting adjourned.

Kathy Snyder, City Clerk

DRAFT