

State of Texas
County of Denton
City of Lake Dallas

The Planning and Zoning Commission of the City of Lake Dallas met on October 16, 2014 at 7:00 p.m. in the Lake Dallas City Hall located at 212 Main Street, Lake Dallas, Texas with notice of the meeting posted as required by Title 5, Chapter 551.041 of the Texas Government Code.

A. **Call to Order**

B. **Roll Call**

Present: Chairperson Ben Gilbert, Commissioners Peggy Shelton, Clyde Fisher and Jenny Warmbrodt

C. **Pledge of Allegiance**

Chairperson Gilbert led the Pledge of Allegiance.

D. **Citizen's Agenda**

No one came forward and Chairperson Gilbert closed the citizen's agenda.

E. **Business:**

1. **Consideration and Action on approval of Minutes for August 21, 2014 meeting.**

Motion to approve the minutes for August 21, 2014 was made by Clyde Fisher; second by Jenny Warmbrodt.

Ayes: Fisher, Shelton, Gilbert, Warmbrodt

Noes: None

2. **Public Hearings to hear comments on the proposed rezoning of the property A1163a J.W. Simmons, Tract 5, located at 400 N. Stemmons, from M-1 Light Industrial to C-1 Retail District.**

City Manager, Nick Ristagno, spoke first giving a summary of the reasons why the City is requesting the zoning change. The issue is the Andrews Distributing property which is currently zoned M-1. This is the only property fronting the freeway that is zoned M-1 and even though Andrews has been a good neighbor the City is concerned a "dirty" business could be opened at this location. The City would prefer a commercial business like retail or restaurant open as opposed to an industrial type of business. Andrews does oppose the action. There has not been any business at the location for 15 months.

Joe Jernigan from 2730 Irving Blvd, Dallas, TX 75207 came up next. He has been with Andrews Distributing since 1994 when the present owner bought out his partner. They have had several acquisitions and one of them is this property up for rezoning. They purchased the property in 2006 and have spent several hundred thousands of dollars to bring the property up to their standards. As the business continued to grow, the need to occupy that property went away. They have had 75 people look at purchasing the property and have discussed offers with 26 people but were never able to come to a close. They currently have two businesses interested in purchasing and occupying the property. Mr. Jernigan stated he can't get anyone to actually define what a "clean" or "dirty" business is. They take a lot of pride in their business and they aren't going to let someone into the property that wouldn't be considered a good business. One of the prospective buyers is a cell phone re-conditioning company and the other business is an RV repair company. Both the businesses are aware of the zoning change and don't feel that they would qualify to be there if the zoning were to change to C-1.

The business is listed at 2.5 million dollars and the appraisal district has it listed at 2 million. They were collectively astonished this was brought up to change the zoning and no one contacted them. It was only after one of the employees saw the zoning change sign placed on the property that they knew of the request. They have been in the City for eight years and have paid over \$400,000 in taxes to the City. They have never been late in tax payments. Andrews has invested a lot of money into the business and supported the community. If the business changes to C-1 it will cost them a lot of money. They offered to sell the land to the City either through an installment sale or the CDC. Andrews Distributing takes pride in doing business the right way no matter the cost. He respectfully requests that the Commission deny the request tonight.

Commissioner Clyde Fisher asked Mr. Jernigan if the two prospective buyers were serious buyers and confirmed they were currently not under contract. Mr. Jernigan said they would not feel right to put any of them under contract with the zoning change still uncertain. As far as he knew these two prospective buyers would be using the current building. He would be agreeable to sit down and discuss the situation with the Commission, City Manager, or City Council. He does not feel there is a good reason to change the current zoning of the property.

The City Manager spoke again to state there was an error on the part of the City in notifying them about the zoning change, but the City stopped that action right away. The concern for the City is what could possibly go into that property that is allowed in M-1 which includes heavy truck sale, manufacturing, processing, or fabrication which is what the City does not want at their front door. He then went over what is allowed in the C-1 zoning district. Also, Andrews does not currently have a contract with either of the prospective buyers. Mr. Jernigan interjected that they couldn't in good conscience accept an offer with the current zoning change uncertain. Clyde Fisher mentioned that they could have put a contingency on the contract. The City Manager stated that it could be rezoned again if they bring in a business that the City does agree with and it fits into the M-1 zoning. Mr. Jernigan mentioned again that the City could purchase the property and what they are proposing does not make good business or community sense.

Mike Massey, 3104 St. Germaine, McKinney, TX was next to speak on Andrew's behalf. . He has been a real estate appraiser for 44 years, specializing in litigation support, 100% commercial. He represents Andrews Distributing and it is his opinion the property is worth 2.5 million dollars. Denton CAD has the land at \$2 a square foot and the improvements at \$1,389,724 for roughly a 2 million dollar value. His concerns are with the Swisher Rd District and the businesses that are listed that are prohibited which leads to the issue of inverse condemnation. If the property is changed to C-1 then the existing improvements are non-conforming. He has done at least 20 parcels off of I-35 and the issue that comes up when you have an inverse situation is one cannot get financing due to the zoning. There is difficulty in someone buying it as an investment and trying to lease it out when they don't know if they can be guaranteed the issuance of a Certificate of Occupancy by the City. He did a calculation and he feels Andrews Distributing would lose around a million dollars. This building is so specialized and has enough power in it to run the city. To retrofit the building for another type of business would not be feasible and it would have to be bulldozed and start all over again.

Andrew's attorney, Jonathan Vinson of Jackson Walker, L.L.P. at 901 Main St Ste 6000, Dallas, TX came up next. He first wanted to address the problem with the lack of proper notice of the initial meeting and the assumption that this could have gone forth without them knowing. The fact that the property owner and those around it are opposed to the rezoning and the City is still pushing for the change is odd. Also, to propose this without sitting down and discussing it with the property owner is very negative and sends a bad message to the public. He then brought up the issue of having a buyer under contract. He also feels it would not be fair to put a property under contract while this rezoning is still going on. It is unfortunate that they are in this situation since everyone appears to consider Andrews a good corporate citizen. They will lose money since

whoever buys it would not be willing to pay as much for the property if they have to demolish the building. He also does not feel it would be suitable as a commercial retail location and this process is actually hindering redevelopment. His final point is Andrews has been an excellent corporate citizen and to have their zoning taken from them seems to be an attempt to take away their rights as property owners.

The City Attorney, David Berman, then asked Mr. Vinson if their client received notice of this meeting at least 11 days or more ago and he answered he believed they did. The City Attorney said that is all the law requires. Mr. Vinson stated the problem was they didn't get notice the first time and the City Attorney then stated that hearing was canceled. The main concern at this time for the City Attorney is that Mr. Vinson cannot state the notice for this meeting was defective which would render the rezoning recommendation by the Commission or Council invalid. There was an issue with the first notice but with the City Attorney's thorough review the notice was corrected and therefore not illegally defected.

Joe Jernigan said that if one of the employees had not driven by the property and noticed the potential rezoning the City might have gone through the rezoning without their knowledge. The fact that they were not notified in any way in the beginning is not right. The City Attorney said he does not disagree with them but his only concern at this time as the City's legal counsel is that written notice of tonight's public hearing was sent to them at least 11 days ago so for legal purposes they could move forward with the zoning recommendation. Mr. Jernigan advised they did receive the notice.

3. Consideration and Action to recommend approval of an ordinance rezoning of the property A1163a J.W. Simmons, Tract 5, located at 400 N. Stemmons, from M-1 Light Industrial to C-1 Retail District.

Jenny Warmbrodt asked if the City had received any notice of opposition to the zoning change from any of the surrounding properties. The City Manager said he had not received any phone calls or anything in writing. Andrews then presented a copy of a letter written by Comco (the property next to Andrews off of Overly Drive) to the Commission.

Mr. Vinson said he also spoke with the Manager of Lake Haven mobile home park.

Chairperson Gilbert made sure the City did not receive anything in writing and asked how many notices were sent out. Planning and Zoning Secretary Khara Sherrill stated they sent out a total of seven letters.

Jenny Warmbrodt reviewed the M-1 district and asked the City Manager if the noise of a possible business moving in there was the City's concern. The City Manager replied that the concern expressed to him is that it is the only business off of I-35 zoned Light Industrial and the zoning allowance of storage yards, manufacturing, processing, fabrication or assembling is a concern. She also asked if Andrews would have to pay for the rezoning; and the City Manager said there is no fee associated to the zoning change. Andrew's attorney, Mr. Vinson, stated their concern is not so much the processing expense of the rezoning but the fact that they will lose a million dollars with the property changing to C-1.

Clyde Fisher mentioned the option of tabling the decision. The city attorney said if they are inclined to table it, it does hamstring the City and City Council. If they vote yes or no, either way the City Council will seriously take their recommendation. If the Commission tables it, he urged them to reschedule the consideration and action to a specific date. Clyde Fisher feels that they didn't have enough time to make an informed decision. The Public Hearing has been formerly

closed so they don't have to go through the notice process again. The City Attorney said the Chairperson can let anyone speak if he wants even if they don't have a Public Hearing on the agenda. Mr. Vinson said he would like for them to open the Public Hearing so there would be re-notice.

Jenny Warmbrodt said she has some concerns about the decision and doesn't feel comfortable making a decision now. The Commission also said they would like to tour the facilities but they would have to go in no more than pairs since if they have three people it would constitute a quorum. They would reconvene regarding this issue at the next meeting on November 20, 2014. It was determined, by the City Attorney's recommendation, not to re-open the Public Hearing.

Motion to table the recommendation for the approval of an ordinance rezoning of the property A1163a J.W. Simmons, Tract 5, located at 400 N. Stemmons, from M-1 Light Industrial to C-1 Retail District and continue the Consideration and Action to the next meeting on November 20, 2014 was made by Jenny Warmbrodt; second by Clyde Fisher.

Ayes: Fisher, Warmbrodt, Gilbert, Shelton

Noes: None

F. Future Agenda Items

No new agenda items at this time.

G. Adjournment

Motion to adjourn was made by Jenny Warmbrodt; second by Ben Gilbert.

The meeting adjourned at 8:00 PM.

Ben Gilbert, Chair

Khara Sherrill, Planning and Zoning Secretary