

**MINUTES OF THE CITY OF PORT NECHES
ZONING BOARD OF ADJUSTMENT & APPEALS**

4:00 P.M.

February 22, 2016

MEETING

The special meeting was called to order at 4:00 p.m. by Chairman Vincent at Port Neches City Hall, 1005 Merriman Street, Port Neches, Texas with the following members in attendance:

Matt Vincent, Chairman
William "B.C." Clemmons, Vice-Chairman
Sam Loyacano
Lee West
Steve Visser
Gary Boudoin, Alternate (did not participate)
James Ware, Alternate (did not participate)

Also present:

Andre' Wimer, City Manager
Larry Reynolds, Assistant Public Works Director/ Building Official
Cari Reynolds, Public Works Secretary

Absent:

Donald Ware, Alternate

AGENDA ITEM 2 – APPROVAL OF MINUTES

Discuss and take action regarding the approval of the minutes from the special meeting held on January 28, 2016.

Board Member Visser made a motion to approve the minutes from the special meeting held on January 28, 2016, seconded by Vice Chairman Clemmons. **MOTION PASSED BY UNANIMOUS VOTE.**

AGENDA ITEM 3 – LEGAL SERVICES

The City Manager provided the Board with the Motion to Withdraw as Attorney of Record that was submitted to County Court at Law No. 1 by Jane Leger, Dugas Leger Law Firm, as well as the contract that was signed on behalf of the Zoning Board of Adjustments in December. Mrs. Leger no longer desires to provide legal counsel for the Zoning Board of Adjustment. The City Manager stated that based upon the filing of the Motion to Withdraw, the Board may wish to take action in the affirmative to terminate the Legal Services Agreement with the Dugas Leger Law Firm. If action is taken to terminate the agreement then the City can send notice to the Dugas Leger Law Firm that the agreement has been terminated.

Board Member Visser stated that if Mrs. Leger has requested to terminate the contract then the Board should release her from it.

Board Member Visser made a motion to approve terminating the Legal Services Agreement with the Dugas Leger Law Firm, seconded by Vice-Chairman Clemmons.
MOTION PASSED BY UNANIMOUS VOTE.

AGENDA ITEM 4 – LITIGATION

Chairman Vincent stated this agenda item is to discuss and take action regarding the approval of defining the position of and action to be taken by the Zoning Board of Adjustment relative to The Mayor and Members of the City Council of the City of Port Neches, Texas v. The Zoning Board of Adjustment of the City of Port Neches and its Members in their Representative Capacities.

The City Manager stated that in the absence of legal counsel the Board cannot go into executive session so all discussion must be in open session. In response to the action that was taken in agenda item #3, the Board could opt to consider new legal counsel or rely on the determination of the court based on the information that was submitted up to this point.

Board Member Visser stated that Mrs. Leger made it seem that there was an adversarial relationship between the Zoning Board of Adjustment and City Council because a writ or lawsuit was filed. He further stated it appears that by law the City Council had one option to appeal the decision of the Board and that was through the courts. Board Member Visser questioned whether there was an adversarial relationship or did Mrs. Leger make it appear more adversarial than it was.

Board Member Loyacano stated that when the City Council took legal action against the Zoning Board of Adjustment, the Board responded by hiring legal counsel. Discussions with legal counsel were in Executive Session, but they were based on Mr. Akhtar proving a hardship.

Board Member Loyacano also stated that in the past the Board would grant variances on a case by case basis. Some had hardships and some didn't; an example would be a person wanted a carport because every other house on the street had one. It wasn't necessarily a hardship, but the variance was granted. Residential hardships are different than commercial hardships.

Chairman Vincent stated he feels that the criteria to meet a hardship is much lower for residential than for a commercial property. He also agreed with Board Member Visser that the only course of action the City had was to challenge the variances.

Board Member Loyacano stated that if the Board would have approved the variances at the first regular meeting held on October 12, 2015, that would have been the end of it. There was no one on the Board nor in the room that was against the apartments.

Chairman Vincent stated there is no argument that apartments can be built on the property because it is zoned Residential – Multi Family (R-MF). The issue is the variances went against height and density requirements.

Board Member Loyacano stated that the reason the variances were tabled at that first meeting was because the Board requested more detailed information from the Fire Chief.

The City Manager stated the reason the request was on the agenda twice was because the information that was originally submitted was not consistent with the information that Mr. Akhtar brought in the day of the first meeting. Originally, the requested variances were for a lesser number of apartments and density. Mr. Akhtar brought in revised plans a couple of hours prior to the first meeting. Staff's response was the notices that were sent out and published were for the previous requests and not the revised plans that called for a greater density and more apartments. Staff needed to go through the posting process again because the revised plans were not consistent with the original requests.

The City Manager stated that as far as the information provided by Mr. Reynolds and the Fire Chief, Mr. Reynolds reviewed the plans for code requirements and if what is being requested can be constructed, while the Fire Chief looks at it from a fire protection stand point.

Board Member Visser asked if there was any personal liability against any of the Board Members. If the Board made a decision and it goes against legal precedence set by the courts, is there punitive measure taken or can it be reversed? Does the writ vacate the decision? If the members are not subject to penalty then there isn't a need for an attorney to represent the Board.

Chairman Vincent stated this is an appointed Board and if there is legal action taken against the Board then the City must defend the Board.

The City Manager stated that the action would not be on a personal basis, just the official capacity.

Chairman Vincent stated that included in the packet for the Board's review is a Third-Party Petition of Intervention that was submitted by Carl Parker on behalf of Jeff Akhtar.

Chairman Vincent also stated that the petition claims a financial hardship and the project may not profit him. This could affect his decision on building here or in a

different location. If he wants to build the apartments, he needs to strictly follow the City's codes.

Chairman Vincent asked Mr. Reynolds if Drainage District 7 had signed off on the plans and if there would be a retention pond.

Mr. Reynolds stated that he assumed that Drainage District 7 had approved the plans but as far as the retention pond, that would be addressed during plan review and the City had not received any plans.

There was discussion regarding a fifty foot (50') utility easement for a high line that connects to a sub-station on Herring Street.

Vice-Chairman Clemmons made a motion to allow the judge to make a determination based on the information submitted, seconded by Board Member West. **MOTION PASSED BY UNANIMOUS VOTE.**

AGENDA ITEM 5 – ADJOURN

There being no further business, Board Member Visser made a motion to adjourn, seconded by Vice-Chairman Clemmons. **MOTION PASSED BY UNANIMOUS VOTE.** The meeting was adjourned at 4:17 p.m.

Matt Vincent, Chairman

ATTEST:

Cari Reynolds, Public Works Secretary