

Planning and Zoning Commission
Minutes December 7, 2015

STATE OF TEXAS §

COUNTY OF TARRANT §

TOWN OF PANTEGO §

The Planning and Zoning Commission of the Town of Pantego, Texas, met in regular session at 7:00 p.m. in the Town Council Chambers, 1614 South Bowen Road, Pantego, Texas on the 7th day of December 2015 with the following members present:

Stephen Smith	Chairman
John Kushma	Vice Chairman
John Richards	
Clifton Cassell	
Jesse Howell	

Constituting a quorum. The following staff members were present:

Matthew Fielder	City Manager
Julie Arrington	City Secretary
Dennis Jobe	Community Development Director
Jessie Hanks	Planning & Zoning Secretary
Scott Williams	Public Works Director

Also in attendance:

Don Surratt	Council Member
Fred Adair	Council Member
Russell Brewster	Council Member

(The following items were considered in accordance with the official agenda posted on the 4th day of December 2015.)

REGULAR SESSION 7:00 P.M.

CALL TO ORDER AND GENERAL COMMENTS

Chairman Smith called the regular session to order at 7:02 p.m.

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Approval of Planning and Zoning November 2, 2015 Minutes.

Vice Chairman Kushma made a motion to approve the minutes with changes to reflect the interchanging of the ayes and nays for Zoning Case Z-215. Commissioner Howell seconded the motion.

The vote was as follows:

Ayes: Cassell, Kushma, Smith, Howell, and Richards.

Nays: None.

Abstentions: None.

Chairman Smith declared the motion passed unanimously.

NEW BUSINESS

2. Discuss and consider action on the appointment of Officers to the 2015-2016 P & Z Commission

Vice Chairman Kushma made a motion to nominate Chairman Smith to remain Chairman. Commissioner Richards seconded the motion.

The vote was as follows:

Ayes: Cassell, Kushma, Howell, and Richards.

Nays: None.

Abstentions: Smith.

Chairman Smith declared the motion passed unanimously.

Vice Chairman Kushma made a motion to nominate Commissioner Bergins to be Vice Chairman. Commissioner Howell seconded the motion.

The Vote was as follows:

Ayes: Cassell, Kushma, Smith, Howell, and Richards.

Nays: None.

Abstentions: None.

Chairman Smith declared the motion passed unanimously.

3. Public hearing, review and consider a recommendation for Zoning Case Z-216, a proposed Special Use Permit as requested by Sylvester T. Lafayette to establish a church and offices at 3216 W. Park Row Drive, Lot 1, Block 1, of Park Row West addition of the A.L.S. land survey, Pantego, Tarrant County, Texas. The property is generally located on the South side of West Park Row Drive between Nora Drive and Bowen Road.

Chairman Smith read the agenda item caption for the record and opened the public hearing at 7:07 p.m.

The following speakers were in support of the Zoning Case Z-216.

Brian Tally, 2117 Bay Cove Ct, Arlington, Texas 76013, stated that he is with Newport Investments, which owns the building. He asked the board if there were any questions they wanted answered. Chairman Smith asked him to give a brief description of what the church is and why he is supporting this motion. Mr. Tally explained that they purchased the building in the end of the first quarter and they have performed cosmetic only remodeling. The Church approached him in July and Newport was able to accommodate them and moved them into the building in the end of July. Newport purchased the building from a church who owned it before. It is his understanding that the church next door was given an SUP, or some form of variation. He was not under the impression that there was any reason why a church could not operate in a facility such as this. As far as the church itself, they might be able to do a better job at explaining who they are, what they are, as he is not a part of that church. They have been operating there and seem to be within their rights as far as he can tell. Mr. Tally confirmed the prior church owner was Trinity. Commissioner Richards stated that it wasn't a church, it was church property. They didn't hold services in this building. Mr. Tally said it was his understanding that they held services for children, and they used it for church like purposes but he wasn't there so he can't say one way or another. Chairman Smith asked if he bought the building after they had already left. Mr. Tally said that is correct. He was not an attendant of the church and he doesn't know much about the church. He just knows he purchased the building from them and to the best of his knowledge it was used for church purposes but as far as what they used it for and specifics, he doesn't know.

Sylvester T. Lafayette, 5315 Faireast Ct, Arlington, Texas 76018, stated he is the Apostle of the Church and they lease the property. The Church went in knowing they were a church and it was commercial property because a church is commercial. He didn't see a reason why they couldn't be there. He stated he heard about a lot of complaints and he's trying to figure out what the complaints are about. The church doesn't make a lot of noise and stuff. There are churches all over Pantego.

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Like he said before, it's commercial property and they went in as a church because churches are commercial. He stated he is trying to find out what are the complaints and why the Town is saying they cannot be there. Chairman Smith explained the procedures of an open meeting and said he is sure Mr. Lafayette's question will be answered. Mr. Lafayette stated that he understands that but he would still like to know what the complaints are and if they are legitimate and legal. Chairman Smith asked Mr. Lafayette to describe his church, how many members he has, what his expectations are from the local community. Mr. Lafayette explained that they have about 75 members but not everyone comes at the same time. They have services on Sunday. They have Sunday school at 8:30 a.m. and regular morning service starts at 10 a.m. and out somewhere around 1 p.m. On Wednesday night, they have bible study that starts at 7 p.m. On Friday night, they have what they call Friday Night Lights. It's a worship service that starts at 7:30 p.m. There is prayer Monday through Friday from 6 a.m. to 7 a.m. in the morning. They came in and had an outreach day. They passed out 2,000 flyers to the apartment complex on the other side, in Arlington. He asked about the church across the street and was told that was Arlington. They were trying to reach people that need a church because there are a lot of people who don't go to church at all. That's what it's all about. Trying to reach lost souls.

Frank Hill, 1400 W Abram St, Arlington, Texas, stated he is a lawyer with Hill Gilstrap, P.C and he is representing the property owner. He said Mr. Tally asked him to say a few words to be certain everyone had a common understanding of what the legal considerations are. He stated he is sure the board is aware that the legal considerations are special where there is a proposed usage by a church. The strong 1st amendment rights that protect the church certainly pertains here. The Town's authority to prohibit the use by a church is severely circumscribe by the 1st amendment, that being limited to basically the safety and health of it's citizens. He has lived in Pantego, off and on, for a few years and certainly in Arlington for most of his adult life. He informed the board that he is very familiar with the area and, as everyone knows, that part of the town has historically housed churches in the past, certainly a major church maybe only a couple hundred yards away. Whether the prior church actually conducted primary church services at this location really isn't the test here. He added had this building not even been used or owned by a church in the past, it wouldn't be the test. The test simply, as he has researched the law again, was if there is some compelling evidence here that the church would endanger the citizen's health or safety and he couldn't imagine that to be the case. He stated that the elephant in the room is the fact that this congregation is primarily, if not exclusively, African American. As he understood it, the Commission has had the courage in the past to deal with minority church applications and the like and they should be very proud of that and he knows that they understand that any concern based on race should be totally prohibited. He doesn't really think that is the case here and he doesn't think that there are those inappropriate considerations. He stated it leaves us then with that simple test, can the City demonstrate that this church would be a danger to the health and safety of it's citizens? He would conjecture to say that it has been there for a little while, the Commission knows a little bit about it, and even if there are complaints about noise, that's not a condition to prohibit the use of a church. It may be sufficient for the Town to take some actions to eliminate the problems but it is not a basis to deny a church the utilization of the property. These are good, loyal American citizens. They come to the Commission very respectfully asking for the use of a church but they come to the Commission understanding that they are 99% protected by the 1st amendment, freedom of religion. He doesn't mean that in any threatening or condescending way but rather as a simple offer to be sure its kept on the table and foremost on everyone's mind because in this case it is the primary governing principal. Vice Chairman Kushma asked if he could please speak to this from the legal stand point of the zoning code for the Town of Pantego in the use of special use permit. Mr. Hill stated that special use permits can be required by a town, if that is essentially what Vice Chairman Kushma was asking. He had no reason tonight to challenge the articulation of the Town's requirements. Again, he didn't mean that in any condescending way at all but whatever the word or propriety of the facial reading of the Town's ordinance, it must give way to the Constitution's 1st amendment and the law is very, very clear about that. Vice Chairman Kushma asked if a more specific reference would be the Religious Restoration Act. Mr. Hill stated he didn't understand Mr. Kushma's question. Vice Chairman Kushma stated that Mr. Hill appealed to the Constitution and he is appealing to a law passed by Congress, the Religious Restoration Act, regarding the protection of religion. Mr. Hill said to the extent that any statue state or federal may exist it has to give way to the 1st amendment it dictates. There is just no doubt about that and the test that both the Texas Supreme Court and the United States Supreme Court have articulated in this situation in requiring the special use permit to the proposed use, or usage, by a church that the Town's authority is limited and only if it can prove

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that the use by the church is a danger to the health and safety of its citizens can it be denied. In general, municipal zoning ordinances don't even facially apply. Commissioner Richards asked if Mr. Hill is saying the church can build wherever they want to regardless of what our (the Town's) laws are. Mr. Hill responded with no, what the law says is that a town can attempt to use a special use permit as a limitation, even on a church, but to use it successfully it is the Town's burden to prove that this church in that location would present a danger to the health or safety of its citizens. If that's not proven, you cannot limit and it's unconstitutional. It's not a matter of State or Federal statute. He sensed that maybe those aren't things the Board wants to hear.

Karen Calvin, 2125 Park Springs Circle, Arlington, Texas 76013, stated that she is for the church. She said she is new to the Town of Pantego. She used to work in Arlington, right down the street, and she just opened up a business and she decided on the location because she worked at the Arlington Ogle School up the street. She worked there for 6 years and has always enjoyed the area and Pantego is right in the same area. So when she had to decide to open a business and she saw the sign at the shop, she talked to Brian. Mr. Tally told her that a church was coming and because of the church she thought it was a good decision to open up a business right here in the Town, in spite of the negative. Everyone told her a lot of negative things. "Oh don't move to Pantego." She stated she thinks each person has to make a decision for themselves where they are going to start their business and where they feel it's going to grow and where it's going to flourish. She doesn't have that problem. Now if there was a problem in the past, she hoped there wouldn't be a problem going forward. He stated the church, since they have been there, has been nothing but a blessing. They have so much love and they bring people into the community. They stop into her salon. She said she is just saying she has never noticed anybody or a lot of noise or anything like that. They are just a bunch of loving people.

The following speakers were against the Zoning Case Z-216.

Benjamin Rhodes, 2726 Whispering Trail Circle, Pantego, Texas 76013, stated he wished to say he takes exception to the legal scholar who called us bigots. He is not a bigot. He has a lot of black friends and he doesn't consider himself a racist at all. He stated he does have concerns though about traffic patterns, security in his neighborhood, and taxes. If a church takes over a property, they're tax exempt and the City is going to have to make up the taxes somewhere and he guessed he was somewhere. He said the main problem he has is with the off hour type thing, late in the evenings or anything like that. If indeed what the Apostle said was going to be their timetable, then he doesn't have too much of a problem with that. But he does have some problems with security and stuff. The legal scholar said we have to prove some sort of damage. He stated Jason is not here tonight but he believes Jason had to get somebody off his fence a time or two. If that person fell off the fence and died, Jason would be liable, whether or not he invited the guy to climb the fence or not. So there are just some things. He doesn't live right up next to the church so he doesn't know all the things that have gone on in the last 3 or 4 months that they have been operating as a church there. The fact of the matter is they're coming before the committee asking for a special use permit to put a church in an area that isn't zoned for a church and the area abutting that area is not zoned for a church. Churches are allowed in Pantego and even in residential areas just not an R-1. He said that is his stance.

Ovetta Hitchcock, 2733 Whispering Trail Circle, Pantego, Texas 76013, thanked the Board for sending a letter inviting her to come tonight. Her home is backed up to all of these properties which are not zoned for a church. As she understands it, they are zoned for a business. A church is tax exempt. If Pantego decided that taxes are going to be higher, the senior citizens are going to have to pick up the tab for these other properties who are none taxable and that is not fair to them in their senior years of life. Her husband and her choose that property when they came to Pantego. She came from Lubbock, Texas, a great place she would like to go back to, but she is unable to because her husband passed away. Since her husband has passed away, she had to become the priest of her home. She had to stand and she had to be strong and she had to speak for herself. She stated she finds it very difficult when she, as a senior citizen and a widow, has to stand and protect the taxability and the devaluation of her home. She stated it is not easy, it is not easy at all but she has to do what she has to do. Since those buildings are not zoned for a church, she just thinks it's not feasible for a church to be put there. She states from the street where The Prayer Room is and her fence there's like 20 feet. That's like a street. That's not suppose to be a street but the traffic there is just unreal and that should not be happening. If it's not zoned for that, she should not, as a senior

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citizen who lives in that area, have to come to the City of Pantego and have to fight their way through for the devaluation of their property and it's just not right. She said there is a right and a wrong to everything and she stands for right. She doesn't care who it's for or what it's for, but if it's not right then it's not right. She added she just thinks that all of us should take a second to look at this. She stated that when there is dissension between a church, which is a large group of people, against the senior citizens in this area. When a large group of people can swelch a small group of people, that church cannot be blessed because when there is dissension you cannot be blessed. She is not against churches. She is not against prayer. But she is against the location in which this place is going in because the traffic in the thoroughfare, between that building and her fence, is like 20 feet. You don't have much variation there. She said since The Prayer Room has gone in, there is so much traffic that goes in between their buildings and her fence. It is not safe. As people come in off of Nora St, in that thoroughfare, there is a big hill of cement, she doesn't know what it's for but teenagers use it as a race track. By the time she calls in on them, they are gone. There is no way to report that and that is a hazard. Safety is not an object in this. That is one of her greatest objections because between her fence and that building is 20 feet. With the traffic going through there, it's just not safe and she just doesn't think that as a senior citizen she should have to be picking up the tab for not taxable entities that are going in there. That is the way she feels and that's what she has to say.

Barbara Nunn, 2704 Whispering Trail Circle, Pantego, Texas 76013, has been a resident for 37 years. She stated she was here when they started to build those buildings and she tried to fight it then but the Town assured her that those were commercial buildings that were going to bring in a tax base for the City. She said last month it was the Muslims, and this month it's the blacks. She doesn't care what they are. She is not a racist that this gentlemen (Mr. Hill) so kindly indicated that she was. She just wants something safe. The Methodist, when they used those buildings, had a policemen there every Sunday so they could get in and out of their houses on that street. There is no policemen there anymore. The church is just going to cause a bigger traffic jam. She stated it is not going to be safe for anyone. Those buildings need to find occupants that will bring the Town in a tax base. That is what the buildings were put there for.

Lannie Forbes, 2724 Whispering Trail Circle, Pantego, Texas 76013, wasn't going to speak at all. She stated she came to, basically, just hear what everyone had to say but when Mr. Hill talked about the elephant in the room, she felt like she had to stand up because she resents anyone thinking that she is against an African American church or person or whatever. She's a Christian woman and it kind of moved her when the Reverend said that they were there to help lost souls. She knows there is a growing black community in Pantego and his church probably should be in Pantego but just not behind the homes that are on Whispering Trail Circle. She said it is disturbing to her and the properties do devalue her property and she thinks they should be in Pantego but maybe just not there on Park Row.

Chairman Smith adjourned the Public Hearing at 7:35 p.m.

Chairman Smith explained that the Commission is an advisory board and doesn't make the final decision. He continued by explaining how the open discussion part of the meeting works.

Vice Chairman Kushma asked about the parking spaces. Mr. Jobe stated there are approximately 56 spaces and they have access to parking in the surrounding buildings. Mr. Fielder added that if they park in the surrounding buildings they must have agreements with the property owners, which doesn't currently exist.

Chairman Smith asked if someone could explain why they are meeting about this if the church has already been operating as a church without an SUP. Mr. Fielder stated that the church moved into the building and the Town was not aware of it. The Town became aware when he started getting inquires from the residents on Whispering Trail Circle. He simply didn't know they were there. The church wasn't aware they needed to come to the Town for a permit. Once the Town found out, he made them aware of that.

Chairman Smith asked if there had been issues involving the police? Mr. Fielder stated he wasn't aware of any police records but he has received several complaints from residents.

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Commissioner Cassell asked if someone from the church could speak on whether they were aware of the complaints. Mr. Lafayette stated that he heard about the complaints when the City Manger came down to talk to them but he hadn't heard anything from the residents. He addressed a prior comment about the cars entering from the back and said they enter and exit on Park Row, not through the back. He discussed the fence incident, and his outreach day. They have taken into consideration every complaint that has been made and have worked to fix the issues.

Mr. Tally addressed the tax complaints. He stated that because the church is leasing the property he still has to pay property taxes on the building. He went on to discuss the SUP issue and why they were unaware the church needed an SUP. He doesn't believe the building or the church have devalued any properties because they have improved the property and actually utilized the space.

Commissioner Cassell asked Mr. Lafayette what his expectations are for the growth of the church. Mr. Lafayette said that the church has grown already and wants to continue to grow.

Chairman Smith verified the times of operation again.

Vice Chairman Kushma made a motion to recommend approval for a 2 year period or change of ownership. Commissioner Howell seconded the motion.

The vote was as follows:

Ayes: Cassell, Kushma, Smith, and Howell.

Nayes: Richards.

Abstentions: None.

Chairman Smith declared that motion passed 4-1.

- 4. Public hearing, review, and consider a recommendation for Zoning Case Z-217, a proposed Special Use Permit as requested by DS Restaurant Ventures, LLC for the permission to sell alcohol (mixed beverage) for on-premise consumption at a restaurant located at 2233 West Park Row Drive, Lot 1, Block 10 of the G. W. Parks Subdivision, Pantego, Tarrant County, Texas. The property is generally located on the northeast corner of West Park Row Drive and Milby Road.**

Chairman Smith read the agenda item caption for the record and opened the public hearing at 7:54 p.m.

The following speakers were in support of the Zoning Case Z-217.

Steven Woods, 6301 Halifax Rd, Fort Worth, Texas 76116, stated DS Restaurant Ventures, LLC had recently acquired the restaurant Pantego Bay. He explained that with the new ownership they had to get a new SUP and liquor license. He informed the board that everything was going to stay the same, (name, menu, hours, etc.)

Barbara Brown, 2227A W Park Row Dr., Pantego, Texas 76013, stated she has known DS Restaurants for a while. They have been overseeing the restaurant and with her office being right behind there, she has overseen what is going on and nothing has changed, everything is the same. As the landlord, she is all for them getting this SUP and alcohol permit.

No one spoke against the Zoning Case Z-217.

Chairman Smith adjourned the Public Hearing at 7:57 p.m.

Commissioner Richards made a motion to approve the special use permit for Zoning Case Z-217 as requested. Commissioner Cassell seconded the motion.

The vote was as follows:

Ayes: Cassell, Kushma, Smith, Howell, and Richards.

Nayes: None.

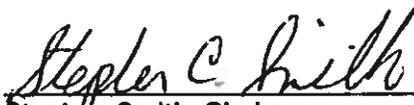
Abstentions: None.

Chairman Smith declared the motion passed unanimously.

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ADJOURNMENT

Chairman Smith declared the meeting adjourned at 7:58 p.m.


Stephen Smith, Chairman

ATTEST:


Jessie Hanks, Planning & Zoning Secretary

