

City of Hattiesburg, MS

*200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401*



Minutes Report

Monday, December 19, 2016

4:00 PM

Council Chambers

City Council

BE IT REMEMBERED that the Hattiesburg City Council held a public hearing at 4:00 p.m. Monday, December 19, 2016, in Council Chambers at City Hall for the appeal filed by Leonard Busby, III, Capturion Network, LLC, to appeal the Planning Commission's recommendation for the petition filed by Leonard Busby, III, Capturion Network, LLC, Applicant, on behalf of Mississippi Oil, LLC, Owner, to request a variance from Article 5, Section 95.10(3.1)(3) E which states spacing between Digital Billboards (Primary Structure) and Static Billboards are a minimum radius of 1,250 feet and instead allow a distance of one thousand, one hundred and fifty one (1,151) feet for a variance of ninety-nine (99) feet located on Hwy 98 AND to request a Use Permit Upon Review for a "Digital Billboard" as provided in Article 5, Section 95.10(3.1)(3) for a proposed Digital Billboard located on a certain property located at 4041 Old Hwy 11 (Latitude/Longitude: 31.314740, - 89.411141) (Parcel 055D-16-035.000, PPIN 18771, Ward 3); (Hattiesburg Planning Commission recommended to DENY on November 2, 2016).

Those present included Mayor Johnny L. DuPree and members of the City Council Kim Bradley, Ward 1; Deborah Delgado, Ward 2; Carter Carroll, Ward 3; Mary Dryden, Ward 4; and Henry Naylor, Ward 5. Others in attendance included Director of Administration/City Clerk, Kermas Eaton; Chief Financial Officer, Sharon Waits; City Engineer, Lamar Rutland; Assistant Fire Chief, Eddie Wilson; Police Chief, Anthony Parker; Assistant Police Chief, Frank Misenhelter; Director of Federal and State Programs, La'Keylah White; Director of Urban Development, Pattie Brantley; Planning Administrator, Ginger Maddox; Code Enforcement Manager, Mark Jordan; City Attorney, Annie Amos; Assistant to the Mayor, Valerie Arnold; Clerk of Council, Debbie Bernardo; Deputy Clerk of Council, Lisa Luu; media; and the public.

Council President Carroll called the meeting to order and explained the procedures.

1. **2016-118** Hold public hearing for appeal filed by Leonard Busby, III, Capturion Network, LLC, to appeal the Planning Commission's recommendation for the petition filed by Leonard Busby, III, Capturion Network, LLC, Applicant, on behalf of Mississippi Oil, LLC, Owner, to request a variance from Article 5, Section 95.10(3.1)(3) E which states spacing between Digital Billboards (Primary Structure) and Static Billboards are a minimum radius of 1,250 feet and instead allow a distance of one thousand, one hundred and fifty one (1,151) feet for a variance of ninety-nine (99) feet located on Hwy 98 AND to request a Use Permit Upon Review for a "Digital Billboard" as provided in Article 5, Section 95.10(3.1)(3) for a proposed Digital Billboard located on a certain property located at 4041 Old Hwy 11 (Latitude/Longitude: 31.314740, - 89.411141) (Parcel 055D-16-035.000, PPIN 18771, Ward 3); (Hattiesburg Planning Commission recommended to DENY on November 2, 2016).

1. November HPC Minutes
2. Appeal - 4041old Hwy 11 - 11-2-16 HPC
3. Applicant Sheets - Use Permit
4. Applicant Sheet - Variance
5. 4041 Hwy 11 - Distance Survey 9-4-16
6. 4041 Old Hwy 11 - Digital Billboard Proposal Timeline

Attorney Craig Orr of Burson, Entekin, Orr, Mitchell & Lacey, P.A. appeared before the Council and provided presentation with a recap of the previous Appeal Public Hearing and the Planning Commission meeting.

Attorney Orr explained that the variance request of 99 feet involves a very small distance; he stated that an attached survey shows the two signs serve two completely different roads and will not be read by the same traffic or overcrowd the roadway. He said that at the Planning Commission hearing, one of the Commission members said the Code is subject to strict interpretation for billboard companies and that there is no room for a variance; Mr. Orr stated that variances are a common request and that one of the bases for the appeal is the Council's approval of previous variance requests for the Brown Bottling Company and Thames signs. He also asked the Council review the minutes of the Planning Commission hearing and stated they do not contain any reference to his or his client's comments; rather, he said, they contained only Mr. Beasley's objection to the variance request.

Mr. Orr said that Mr. Busby filed his variance request based on a map, provided by the City, that showed of more than 1,300 feet; he indicated that Mr. Busby expected approval of the variance request. He said a new map that Mr. Busby had never seen was provided by the City on the day of the hearing, August 19, 2016, and that the new map provided a shorter distance that did not fall within the requirements. He said if Mr. Busby had known there was an issue with spacing of the signs, he could have space made adjustments. Mr. Orr said this is not an unusual request. He repeated his request that the Council review the Planning Commission minutes and asked that Council members find that the commission erred in denying the request and that they grant the variance.

Council President Carroll called on Ms. Maddox. She provided an overview of Mr. Busby's applications for a use permit for a digital billboard and for a variance of 99 feet, and a recap of the decisions that were made during the Planning Commission hearing. She stated that Mr. Busby provided a survey to the Planning Department on September 4, 2016 that listed the distance from the static billboard as 1,151.02 feet. She also displayed and discussed a timeline of events related to Mr. Busby's requests. Ms. Maddox concluded her presentation with the statement that the Planning Commission denied the variance November 2, 2016, by a vote of 6-1 and denied the use permit the same day by a vote of 7-0; she said the appeal was received November 8, 2016.

Council Member Bradley stated that Attorney Orr made a valid point about the billboard not serving the same people. Ms. Maddox stated that the ordinance calls for radial measurement, not linear, and does not specify the number of roads.

Council Vice President Dryden commented that Highway 11 seems to be more of a feeder road and Highway 98 is a highway. She said she does not know the rationale for the rule, but that 99 feet seems to be a very significant difference a large variance. She asked Ms. Maddox why there is a discrepancy between the distances.

Ms. Maddox responded that the first measurement that GIS provided was based on an incorrect projection a stretching of a map from a globe onto a flat surface]. She said the map was corrected as soon as GIS realized the error, and that the preferred and most accurate measurements are those by licensed surveyors or engineers.

Council Vice President Dryden asked if the Brown Bottling sign was approved before the new sign ordinance was passed; Ms. Maddox responded that she was not familiar with the circumstances of that sign approval.

Council Member Bradley recalled the sign being approved; he said it often is used as an argument and said it should be excluded as an argument. He said that Brown Bottling sign was approved while the sign ordinance was being discussed, and that later a sign at a Sonic was found to be in conflict with the ordinance but was allowed to stay because it pre-existed the ordinance.

Council President Carroll said that it was noted at the time that the sign was an exception and was not to be used as a normal variance request; also, he said he believes the foundation was in place for the Thames sign, so it was grandfathered in. He also said that the Council during that time wanted strict regulations on the signs and did not want Hattiesburg to be a billboard city. He said that unfortunately, much of the City's growth has been due to annexation, and that billboards.

Council President Carroll called on Attorney Orr for rebuttal.

Attorney Orr repeated Council President Carroll's statement that the City does not want to be a billboard city. He said Highway 11 and Highway 98 are completely different, and that this variance is different than the norm; he said it is situational that it is less than 1,250 feet between these two signs. He said he does not believe that this requirement of the Code was enacted for this type of situation. He said he raised the Brown Bottling and Thames variances as examples of variance requests the Council has granted in the past, but is not trying to say the situations are identical; he reiterated that this is not a significant request and represents about one-third of the Brown Bottling request.

Mr. Orr said Mr. Busby's applications were approved initially by the Planning Commission; he said were never notified that a concerned citizen had called the city and lodged a concern about the application and were never given an opportunity to address the concern. He said had they known, they could have adjusted. He asked the Council to consider the request and consider the equity and overrule the Commission.

Council Vice President Dryden asked if the location of the sign placement could be adjusted now.

Attorney Orr responded that Mr. Busby would have to go through the whole process again and that his competitor, Lamar Signs, now has a permit across the street; he said if Mr. Busby repeats the process, Mr. Beasley will just file another complaint. Mr. Orr said that he and Mr. Busby are in a Catch 22 situation.

Council Vice President Dryden stated that it appears the location needs to be moved.

Council member Bradley stated that he is in favor of approving Mr. Busby's request. He said that if Mr. Busby has to re-start the process, he will lose; he said that Mr. Beasley is the person who filed the complaint, and who is holding a permit across the street.

Mayor DuPree stated that cannot simply move , but would have to start over.

Ms. Brantley stated that Mr. Beasley does not have a permit across from Mr. Busby; she said it is another billboard company has that permit.

Attorney Orr said he based his statement on a comment from Mr. Beasley at the Planning Commission hearing, and that he had filed a public information request for a copy of any other permit applications, but that the request was denied.

Subsequent discussion related to the granting of a permit for a static billboard to another applicant while Mr. Busby's application was pending, and to the possibility of moving either that applicant's sign or Mr. Busby's sign.

Ms. Brantley explained that digital billboards are measured radially and static billboards are measured linearly. She stated that Mr. Busby could have moved his sign 99 feet at the beginning; Mr. Orr said that was not a fair statement, as distance was not an issue until August, when a new map was brought in.

Council President Carroll asked if the static billboard can be adjusted and moved 99 feet; Mr. Orr said he would have to ask Mr. Busby. Council member Bradley questioned whether Mr. Busby has 99 feet in which to move his sign.

Ms. Maddox responded that it is the burden of the applicant to prove the distance requirement in the application, and it is the applicant's responsibility to prove the distance between the proposed billboard and other billboards. She said even though there were staff errors made and incorrect measurements, the billboard is 99 feet more than the required distance. She said that with regard to moving the billboard, the applicant would be in the setback area, meaning a variance for setbacks would be needed.

Council Vice President Dryden stated that she is not supportive of billboards, but said this has created an unfair situation for the applicant.

Council President Carroll called for comments from citizens on this matter.

There were no citizens present who wished to address the Council on this matter.

Council President Carroll closed the public hearing at 4:42 p.m., this the 19th day of December, A.D., 2016.

2017-135 Appeal Public Hearing for Leonard Busby, Capturion Network, LLC, Sign-In Sheet, 12-19-16.

1. Appeal Public Hearing Sign-In Sheet, 12-19-16

Council President Carroll proceeded with the Agenda Review.

Council member Bradley asked if Policy Agenda Item VI.2 must be approved if Item VI.1 is approved; Ms. Maddox responded in the affirmative.

Regarding Routine Agenda Item VI.5, Council Vice President Dryden asked the reason this section was chosen. Mr. Rutland responded that the Downtown Association determined the sections and that different venues were looked at; he said there is a strict timeline.

Andrea Saffle, Director of the Downtown Association, responded that because there is a timeline for the money being reimbursed to the City, they looked for a section that was easier to complete and would not involve a great deal of permitting.

Council Vice President Dryden asked Ms. Saffle for feedback on the downtown parking; Ms. Saffle responded that the feedback has been positive to date.

Council Member Naylor left the room at 5:05 p.m.

Regarding the claims docket, Council member Bradley questioned \$33,000 in medical expenses for two prisoners. He also questioned use of the General Fund to pay [\$18,406] for computer drops to Gilliland Electronics and [\$6,200] in payments to marketing consultants for sewer and wastewater treatment.

Council President Carroll said that the Council will need to meet with John Milner for an executive session.

Council President Carroll asked Mr. Eaton to have the payment of \$3,500 to Ronald Mathis removed from the Claims Docket. Mr. Eaton said he will have it removed. Council President Carroll stated that this payment must go through court and that this matter have been decided months ago; Mr. Eaton said he does not recall that decision being made.

Following discussion of the agenda items, Council President Carroll closed the Agenda Review.

Council Vice President Dryden proceeded with the Citizens' Forum. She stated the procedures and invited members of the public to speak.

Staci Cox, 2013 Mamie Street, appeared before the Council on behalf of the Parkhaven Neighborhood to address the discolored water issue. Ms. Cox thanked the Mayor for responding the neighborhood's letter, but said they have not yet received a schedule of which she said residents would like because the water is more discolored when the hydrants are flushed. She also discussed a neighbor's experience when a local restaurant had to provide customers with bottled water due to the discoloration of the water. Mayor DuPree responded that he will have someone from the Water, Sewer and Fire Departments speak with Ms. Cox; Council Vice President Dryden said she has some thoughts and will speak with her also.

Council Member Naylor returned at 5:07 p.m.

Joseph Rawson, 701 Dearborne Road, appeared before the Council to read aloud a written statement regarding the Council's neglect of duty. Mr. Rawson exceeded his time and was escorted from the podium by a police officer.

Joshua Tillman, 403 South 22nd Avenue, appeared before the Council regarding discolored water issues at his property. Mr. Tillman presented a sample of the water from his faucet and asked why is he received a \$313 water bill when he cannot use or drink his water. He asked for a reduction in his water bill; Mayor DuPree said that the State of Mississippi does not allow cities to adjust water bills. The Mayor and Council Vice President Dryden said that they will take Mr. Tillman's request under advisement.

There were no other citizens present who wished to address the Council.

Council Vice President Dryden closed the Citizens' Forum.

2017-136 Citizens' Forum Sign-In Sheet, 12-19-16.

1. Citizens' Forum Sign-In Sheet, 12-19-16

A MOTION was made by Council member Delgado and seconded by Council member Naylor to consider the need to go into Executive Session to discuss pending litigation and Council personnel, in accordance with Mississippi Code Sections 25-41-7 (a) and (b).

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Dryden and Naylor

Nays: 0

A MOTION was made by Council member Delgado and seconded by Council member Naylor to go into Executive Session to discuss pending litigation and Council personnel, in accordance with Mississippi Code Sections 25-41-7 (a) and (b).

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Dryden and Naylor

Nays: 0

Those present for the Executive Session were Mayor DuPree; Council members Bradley, Delgado, Carroll, Dryden and Naylor; Mr. Eaton; Attorney Amos; Mr. Rutland; and Ms. Bernardo.

Mayor DuPree; Mr. Eaton; Mr. Rutland; and Ms. Bernardo left the room at 5:19 p.m.

No action was taken during Executive Session.

A MOTION was made by Council member Delgado and seconded by Council member Bradley to come out of Executive Session and re-open the meeting to the public at 5:36 p.m.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Dryden and Naylor

Nays: 0

By unanimous consent, Council President Carroll closed the meeting at 5:36 p.m., this the 19th day of December, A.D., 2016.