

**ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF OLIVE BRANCH, MISSISSIPPI AMENDING THE ZONING ORDINANCE OF THE CITY OF OLIVE BRANCH TO REPEAL ARTICLE V, SECTION 18, AIRPORT HEIGHT USE REGULATION DISTRICT**

An Ordinance amending the Zoning Ordinance of the City of Olive Branch to repeal the Airport Height Use Regulation District.

**BE IT ORDAINED** by the Mayor and Board of Aldermen of the City of Olive Branch, Mississippi:

**WHEREAS**, the City of Olive Branch is empowered to adopt zoning ordinances, including airport zoning ordinances, pursuant to enabling legislation codified at Miss. Code Ann. Sections 17-1-1 et seq. and 61-7-1 et seq., and

**WHEREAS**, in 1983 the City of Olive Branch adopted a Zoning Ordinance which included as part of Article V, the Schedule of District Regulations, Section 18 labeled as the Airport Height Use Regulation District, or "AHR," and

**WHEREAS**, the AHR was intended to regulate the height of structures in the vicinity of the Olive Branch airport. However, the privately owned Olive Branch airport was located outside of the municipal limits in 1983, and

**WHEREAS**, after extensive review of the requirements of the enabling legislation, and after having been advised by the City Attorney, the Mayor and Board of Aldermen are of the opinion that the AHR was not adopted in compliance with the procedural requirements of Miss. Code Ann. Section 61-7-1 et seq., nor does it contain all of the prerequisite elements required by the enabling legislation. Further, the Mayor and Board are of the opinion that the Ordinance is vague and that it doesn't afford City staff or the general public with fair and adequate notice of what is allowed, and what is prohibited, in the vicinity of the Olive Branch airport. Additionally, the AHR District is not identified on the Official Zoning Map in the manner that other city zoning districts are identified, and

**WHEREAS**, the City Attorney has recommended that the AHR be repealed, and

**WHEREAS**, the Planning Commission, having been duly appointed as the Airport Zoning Commission, has recommended that the AHR be repealed following a public hearing

conducted on February 11, 2014. The relevant portions of the February 11, 2014 Planning Commission minutes are attached hereto and made a part hereof as Exhibit "A," and

**WHEREAS**, the Board of Aldermen conducted a public hearing on March 18, 2014, said hearing being advertised in the time and manner required by law, with the Mayor and 7 Aldermen being present, and

**WHEREAS**, having received the recommendation of the City Attorney and the Planning Commission, and having heard presentations by interested parties both for and against the repeal of the AHR, including representatives of the airport and representatives of adjoining industrially zoned property, and drawing on their own common knowledge and familiarity of the area surrounding the airport, the Mayor and Board make the following findings of fact:

- 1) Since 1983 the area surrounding the airport has changed dramatically, with increased residential, commercial, and industrial development, new public infrastructure, and increased population, including annexation into the City limits.
- 2) The changes to the area have created a public need for amendments to the Zoning Ordinance to eliminate the vague, unenforceable, and in some cases irrelevant sections related to the airport, and to consider future amendments that better reflect the area today.
- 3) The current AHR does not appear to comply with state law in terms of the manner in which it was adopted and in terms of its content.
- 4) The current AHR does not appear to have ever been included on a City Zoning Map.
- 5) The current AHR is unclear as to how it should be interpreted, applied, and enforced.
- 6) The AHR appears to be unconstitutionally vague. The section does not provide clear notice of what is allowed and what is prohibited. Reasonable citizens must guess as to its meaning and would differ as to its application.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Board of Aldermen of the City of Olive Branch, Mississippi as follows, to wit:

1. That the Zoning Ordinance of the City of Olive Branch be, and it is hereby amended, in order to repeal and delete Article V, Section 18, the Airport Height Use Regulation District, and the accompanying Figure 2 - Airport Zones, contained in Appendix A of the Zoning Ordinance.
2. That in all other respects the Zoning Ordinance of the City of Olive Branch shall remain unaffected and unchanged by the repeal of the AHR.

Passage of this Ordinance is now official and the same shall take effect on June 1, 2014.

**ADOPTED, ORDAINED AND APPROVED** this 18th day of March, 2014.

SCOTT B. PHILLIPS, MAYOR

**ATTEST:**

JUDY C. HERRINGTON, CITY CLERK

The foregoing Ordinance was read, discussed and voted upon in a public meeting, section by section, and as a whole, and whereas a motion was duly made by Alderman Dickerson, and seconded by Alderman Henderson, with the following results:

Alderman George Collins	<b>Aye</b>
Alderman Dale Dickerson	<b>Aye</b>
Alderwoman Pat Hamilton	<b>Aye</b>
Alderman Harold Henderson	<b>Aye</b>
Alderman Mark Aldridge	<b>Aye</b>
Alderman Gil Earhart	<b>Aye</b>
Alderman David Wallace	<b>Aye</b>

The foregoing Ordinance was passed, adopted and approved on the 18th day of March, 2014.

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**SCOTT B. PHILLIPS, MAYOR**

**ATTEST :**

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**JUDY C. HERRINGTON, CITY CLERK**

**Exhibit "A"**

**MINUTES  
REGULAR MEETING  
OLIVE BRANCH PLANNING COMMISSION  
FEBRUARY 11, 2014**

The Olive Branch Planning Commission meeting was held on Tuesday, February 11, 2014, in the Municipal Court Room located, at 6900 Highland Street, at 6:00 p.m.

**CALL TO ORDER**

The meeting was called to order by Chairman Lachaussee at 6:00 p.m. Phil Lachaussee, Terry Boyd, Anthony McLure, Steve Stratton, Chris Gillespie, John Curbo, and Jim Schumpert were present. B. J. Page, Director of Planning and Building, Laurette Thymes, Associate City Planner, Bennie Epps, Building Official, and Joyce Kerr, Planning Secretary, were present from the Planning and Building Department. City Attorney, Bryan Dye was also present.

**APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JANUARY 14, 2014**

There being no corrections or additions to the minutes of the regular meeting of January 14, 2014, Mr. McLure made a motion to approve the minutes as submitted. The motion was seconded by Mr. Boyd, which then carried unanimously.

**NEW BUSINESS**

Mr. Lachaussee stated the Planning Commission would hear item 2 first.

Mr. Schumpert recused himself to an area outside of the public hearing, due to a conflict of interest regarding items 1 and 2 on the agenda.

2. *Application to Amend Text of the Zoning Ordinance, pursuant to applicable law, including, but not limited to, Mississippi Code Annotated, Section 61-7-11, by the Planning Commission/Airport Zoning Commission of the City of Olive Branch, Mississippi, regarding an amendment to the City of Olive Branch, Mississippi, Zoning Ordinance, more specifically, repealing Section 18, the "AHR," Airport Height Use Regulation District, of Article V, the "Schedule of District Regulations."*

Mr. Lachaussee announced the item from the agenda and asked for the staff report. Mr. Page stated that as a result of recent development applications that have required reference to Section 18, the "Airport Height Use Regulation District" (AHR), the planning and engineering staff found that portion of the Zoning Ordinance to be vague and difficult to interpret and enforce effectively. Mr. Page stated to assist the City in evaluating this portion of the ordinance, the City retained an engineering consultant with airport experience. Mr. Page stated after considering the consultant's reports and conducting

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our own internal review, the planning staff was of the opinion that the existing airport regulations were in certain respects out of compliance with applicable state law, and

otherwise ineffective as a means of regulating the height of structures in the vicinity of the airport. Mr. Page stated as a result, staff was recommending to the Planning Commission and to the Board of Aldermen that the Zoning Ordinance be amended to repeal and delete Section 18. Mr. Page noted at a future date, a revised Section 18 which is clearly enforceable and in compliance with applicable state law may be submitted to the Commission for consideration. Mr. Page's staff report is incorporated herein as Exhibit "A."

Mr. Lachaussee recognized Mr. Bryan Dye, City Attorney. Mr. Dye stated during 2012, the City of Olive Branch was called upon to review development applications associated with the Helen of Troy project, located at the northwest corner of the intersection of Polk Lane and Highway 302. Mr. Dye stated given the proximity of the proposed warehouse to the existing Olive Branch Airport, the developer submitted the necessary notice of construction to the FAA, and the City Engineer reviewed the Airport Height Use Regulation contained in the Zoning Ordinance. Mr. Dye stated Neel-Schaffer, an engineering firm retained by the privately owned Olive Branch Airport, offered its opinion that the proposed building would constitute a hazard to air navigation and violate the City's airport height ordinance. Mr. Dye stated Neel-Schaffer reached this conclusion in part due to its opinion that the approach surface slopes should be calculated based not on the existing runway, but on a proposed 1,000 foot extension to the runway. However, Mr. Dye stated that the FAA determined that the proposed Helen of Troy building did not constitute a hazard to air navigation, and the City Engineer reached the conclusion that the proposed building was not in violation of the City's AHR Ordinance.

Mr. Dye explained, in the Spring of 2013, McNeill CRE approached the City with a proposed development on industrially zoned property located west of the Helen of Troy site, and due south of the Olive Branch Airport. Mr. Dye stated the Olive Branch Airport again took the position that the proposed McNeill building would violate the City's Ordinance, based on applying the approach surface calculations to the proposed 1,000 foot extension. Mr. Dye stated McNeill CRE was represented by the Reaves Firm, which offered its opinion that the Ordinance should be enforced based on the existing runway, and that the proposed building would not encroach into any of the applicable approach surfaces. Mr. Dye stated that a complicating factor was that Section 18 of the City's Ordinance was unclear as to the point from which the approach surface calculations should be made. Mr. Dye stated further, the City's staff was of the opinion that the Ordinance was vague and that it didn't lend itself to efficient or clear interpretation and enforcement. Mr. Dye stated for instance, the Ordinance was accompanied by an exhibit that was illegible to the point of being useless. Mr. Dye noted the existence of questions as to the effectiveness, and validity, of Section 18 of the Ordinance prompted a need for research into its background. Mr. Dye stated that the City retained an engineering consultant with airport experience to assist in interpreting the AHR. Mr. Dye stated that following the consultant's review, and an independent legal analysis of the Ordinance, that questions remained as to the meaning, and proper application and enforcement, of Section 18.

Mr. Dye stated the AHR Ordinance was based on a model FAA Ordinance that was made available to local jurisdictions in the early 1980's. Mr. Dye stated the City of Olive Branch, along with other Desoto County jurisdictions, adopted updates to their overall

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zoning ordinances in 1982/1983. Mr. Dye stated the City of Olive Branch adopted its Zoning Ordinance, including Section 18, the Airport Height Use Regulation District, on

March 1, 1983, following a series of advertised public hearings. Mr. Dye stated to the staff's knowledge, the Ordinance was infrequently, if ever, utilized until the Helen of

Troy application in 2012. Mr. Dye stated that, in fact in 1983 the Olive Branch Airport was not located in the City limits. The Ordinance includes references to the Memphis International Airport as well. Mr. Dye stated there was no indication that the Board of Aldermen in 1983 made any attempt to tailor the Airport Height Regulation to the specific characteristics of the City or the Olive Branch Airport.

Mr. Dye stated staff had identified several deficiencies with the Ordinance. Mr. Dye explained these problems involved issues of a statutory, textual, and constitutional nature. Mr. Dye stated the problems may be summarized as follows:

Statutory issues:

- Miss. Code Ann. Section 61-7-7: “every political subdivision having an airport hazard within its territorial limits may adopt, administer, and enforce .... Airport zoning regulations for such airport hazard area.” As of the time Section 18 was adopted, the Olive Branch Airport was outside of the territorial limits of the City of Olive Branch.
- Miss. Code Ann. Section 61-7-13: “Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision .... Shall appoint a commission, to be known as the airport zoning commission....” There is no indication in the City’s minutes that the Board appointed a standing committee, or the existing Planning Commission, as the “airport zoning commission.” [The Board of Aldermen on February 4, 2014, appointed the City Planning Commission as the Airport Zoning Commission as allowed by the above referenced section of the Mississippi Code.]
- Miss. Code Ann. Section 61-7-15: While the City did conduct a series of public hearings regarding the adoption of the overall Zoning Ordinance in 1983, the main focus of the hearings dealt with protests over the zoning designation assigned to various tracts located in the City. There is no indication in the City’s minutes that the Board or the Planning Commission considered the “character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the airport property to be zoned is put and adaptable” as required by the Code section referenced above. The statute states that the Board “shall consider” these factors. Mississippi law is clear that cities speak through their minutes, and that valid Board action is that which is based on substantial evidence as set forth in the minutes.
- Miss. Code Ann. Sections 61-7-17; 61-7-21; 61-7-23: State law requires a Board of Adjustment and a variance procedure specifically applicable to the airport hazard issues. While the City does have a Board of Adjustment, the City’s airport zoning regulations do not provide for an airport-specific adjustment board or a variance procedure as required by state law.

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Text issues:

- The introductory paragraph of the Ordinance makes a vague reference to the airport hazard zone being an overlay as shown on the zone District Map. The City’s Official Zoning Map makes no reference to an airport zone overlay.
- The various entities and individuals that have articulated a position that the Ordinance should be enforced based on the proposed 1,000 foot

runway extension base this opinion on a sentence in the definitions section of the AHR. The definition of the term “Precision Instrument Runway” contains the following sentence: “It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout or any other planning document.” It is my opinion that this lone sentence is insufficient to support an interpretation of the Ordinance based on a proposed yet indefinite/speculative runway extension plan that was first developed 14-19 years after adoption of the Ordinance.

- The Ordinance contains an exceptions section (section (c)(6)) that doesn't appear to grant any exception at all.
- The Ordinance is accompanied by an illegible exhibit that offers no assistance in regard to interpretation and enforcement of the Ordinance.

#### Constitutional issues:

The situation before the Commission is unique, and somewhat awkward, since it involves City staff arguing against the validity of an existing City Ordinance. It is important to note that Section 18 appears to have been adopted with little, if any, consideration given to actual aviation issues, and that the City lacked any documented occasion to have made substantive reference to the regulations between the 1983 adoption and the 2012 Helen of Troy development. The Helen of Troy project, and the subsequent McNeill CRE application, have prompted an intense and thorough review of Section 18, and staff feels obligated to make candid recommendations to the Commission and to the Board.

Municipal Ordinances carry a presumption of validity. In most instances, all that must be shown is that the Ordinance is designed to address a legitimate governmental purpose. In our current situation, clearly the regulation of airport hazards is a legitimate government purpose that both state and federal law delegate to local zoning authorities. However, despite a presumption of validity, local regulations must pass constitutional muster on several grounds, including but not limited to the concept of vagueness.

The Mississippi Supreme Court addressed the concept of vagueness in the case of City of Clinton v. Welch. 888 So.2d 416 (Miss. 2004). In Welch, the Supreme Court prohibited the City of Clinton from enforcing a portion of its zoning ordinance under circumstances where the court held that the ordinance was impermissibly vague. The Court cited numerous state and federal cases on the issue of vagueness, and quoted one case which held that an impermissibly vague ordinance would violate “the first essential of due process of law.” The cited case went on to state that “the law, of course, should give fair notice of offending conduct or else the law is void for vagueness.”

Excerpts from Welch, on the topic of vagueness, include the following:

- A “restriction must be reasonably clear, enabling a citizen to understand what is allowed, and what is not.” Welch, at 420.
- “... a vague, ambiguous ordinance places an unfair burden upon the judge or city official required to interpret the terms of the ordinance. Conversely, a clear, unambiguous ordinance eliminates the danger of conflicting standards.” Welch, at 421.
- An “ordinance cannot be enforced unless it provides clear notice and sufficiently definite warning of that which is prohibited, and that which is allowed.” Welch, at 421.
- “A governmental enactment is impermissibly vague where it fails to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” Welch, at 421.
- “... A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.” Welch, at 422.
- “...vague laws may trap the innocent by not providing fair warning,” and that “if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” Welch, at 422.
- “When an ordinance falls into the ‘vague’ category, citizens are left to the mercy, discretion and caprice, of a government official as to the use of their property.” Welch, at 423.

Mr. Dye stated it was his position that the Airport Height Use Regulation District (Section 18) of the 1983 Zoning Ordinance was impermissibly vague based on the ruling in Welch, and that enforcement of this section could in certain circumstances violate constitutional requirements of due process. Mr. Dye stated not only individuals of common and ordinary intelligence, but also specialists trained in the interpretation of municipal ordinances, differ as to the appropriate application of Section 18. Mr. Dye stated it was his opinion that the City of Olive Branch can, and perhaps should, adopt a better airport height regulation.

Mr. Dye stated if the Planning Commission and the Board of Aldermen accept staff’s recommendation and vote to repeal Section 18, the question then becomes “what impact will their action have as to the development application of McNeill CRE for the property south of the airport?” Mr. Dye stated the McNeill forty-two acres was zoned industrial, and the submitted plat appeared to conform to the requirements of the City’s subdivision Ordinance. Mr. Dye stated additionally, subdivision of property is not directly related to the “use” of property, accordingly, there is little justification for denying the application for plat approval.

Mr. Dye stated to be clear, in this instance, plat approval was a prerequisite step to the issuance of a building permit. Mr. Dye stated whether a building permit would be issued requires a discussion of the relationship between local approval and FAA review. Contrary to the position taken on the Helen of Troy project, the FAA has issued notices finding the proposed McNeill building to constitute a hazard to air navigation. Mr. Dye stated it appeared that the FAA reached this conclusion by calculating the approach slopes based on the proposed 1,000 foot runway extension shown on the 2002 Airport Layout Plan. Mr. Dye stated to a certain extent, construction of the proposed McNeill building would arguably prohibit the expansion of the runway for various reasons related to the approach slopes and another protected zone known as the Runway Protection Zone (RPZ).

Mr. Dye stated it is important to note, however, that an FAA hazard determination "has no enforceable legal effect." To the contrary, the FAA encourages voluntary compliance with its determinations, although the findings of the FAA may have a practical impact, such as making it more difficult to obtain financing or insurance. Mr. Dye stated however, the FAA lacks authority to prohibit a construction project it believes to be hazardous to air navigation. Mr. Dye stated due to the limited reach of the FAA, the agency encourages airport owners to protect navigable airspace by acquiring ownership or easement interests in property surrounding airports. Mr. Dye stated in fact, the 2002 Airport Layout Plan for the Olive Branch Airport identifies the McNeill property with the label, "Property to be acquired."

Mr. Dye stated regardless of the FAA determination, in the absence of an enforceable and applicable local height regulation, there would be no legal means of prohibiting otherwise permissible development of the McNeill site. Mr. Dye stated however, it is Mayor Phillips' position that it is in the general public's long-term best interest that the McNeill site remain vacant, and that the most immediately effective means of it remaining vacant is for the owner of the Olive Branch Airport to purchase the site. Mr. Dye stated, the Mayor and Board, through counsel, have communicated this position to representatives of Metro, the owner of the Airport, and have discussed offering City financial assistance toward a local match in the event federal grant funds are available for site acquisition. Mr. Dye stated it was his understanding that Metro was in the process of having the McNeill site appraised, and that Metro had initiated preliminary discussions with the FAA regarding the availability of grant funds and the procedures applicable to the acquisition of approach zone property.

Mr. Dye stated in conclusion, based on the foregoing, it was his recommendation that Section 18 of the Zoning Ordinance (AHR) be deleted/repealed, and that the McNeill plat application be approved. Mr. Dye's written memo to the Commission is incorporated herein as Exhibit "B."

Mr. Lachaussee asked if the Planning Commission members had any questions for Mr. Dye. There were none. Mr. Lachaussee asked if there was someone present to represent the application. Mr. Barry Ward, 200 Jefferson, Suite 1250, Memphis, TN 38103, stated he was representing McNeill, and he was in favor of the recommendation. Mr. Ward stated, rather than waste the valuable time of the Commission, he asked the indulgence of the Chairman to allow those in opposition to speak first, then Mr. Ward would like to come back to the podium.

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Mr. Lachaussee asked if there was anyone present in opposition to the recommendation. Mr. Bill Bradley, 6000 Poplar, Suite 400, Memphis, TN, stated he was representing the operator of the Olive Branch Airport, Metro Aviation Services. Mr. Bradley stated he had gathered signed petitions by pilots and prominent business people, who strongly opposed the repeal of Section 18 of the Zoning Ordinance. (Mr. Page distributed the letters of petition to the Commission members, and the same are incorporated herein as Exhibit "C".) Mr. Bradley stated the Olive Branch Airport was like no other airport in Mississippi with 70,000 take off and landing operations in 2013, with Jackson, MS only having 54,000. Mr. Bradley stated there were 130 based aircraft at the Olive Branch Airport and some aircraft in the 30 million dollar range. Mr. Bradley stated the Olive Branch Airport was the part of the FAA Reliever System, meaning it was important to the national airport transportation system. Mr. Bradley stated the FAA invested 6 million dollars in the Olive Branch Airport, and the City of Olive Branch had invested \$800,000 toward the control tower. Mr. Bradley stated what was being asked would erode the standing of the airport. Mr. Bradley stated the airport had no permitted use in the Ordinance that allowed it to operate and to make certain the airport would continue to exist as is, and expand to meet needs. Mr. Bradley stated historically the runway had been extended four times, and he anticipated the aircraft operation would continue to grow, and then more space would be needed. Mr. Bradley stated the proposal from McNeill would put a building at the end of the runway. Mr. Bradley stated we had made a 180° turn since December, with the Planning Commission. Mr. Bradley stated he understood the reason for tabling item 1, was because we hadn't heard from FAA. Mr. Bradley stated now there are building plans to be submitted and that is an item of concern, and was confusing. Mr. Bradley referenced adoption of an ordinance by the county in 1983, identical to the one passed by the City, and the reason for Section 18, of the Zoning Ordinance, which is to have aircraft fly in and out safely, and for the safety of those on the ground, and that taking away the Ordinance would be detrimental to public safety. Mr. Bradley stated the airport had the benefit of restricting what takes place on McNeill's property and that McNeill had purchased the property in contention with the full knowledge of the restrictions the ordinance imposed on this property. Mr. Bradley stated this Ordinance was used nationwide and that it is a model FAA Ordinance, not just for the City of Olive Branch, but a national model Ordinance. Mr. Bradley stated his client was strongly opposed to the deletion of the article, and thought it would be detrimental to the airport, putting the legal status in limbo. Mr. Bradley suggested if any tweaks were to be made, they should be made carefully and

deliberately, rather than just throwing the whole Ordinance out, but thoughtful amendments.

Mr. Lachaussee asked if there was anyone else present in opposition to the application that would like to speak. There were none.

Mr. Lachaussee recognized Mr. Barry Ward. Mr. Ward stated the runway is at 6,000 feet and to expand it to 7,000 feet, there would have to be carriers come to Olive Branch Airport. Mr. Ward stated Memphis Airport had excess capabilities and carriers would not come to Olive Branch Airport. Mr. Ward stated his client sold the land to the Helen of Troy people, and with that created a tax base and jobs for the City of Olive Branch. Mr. Ward stated their application before the Commission tonight would continue with those benefits. Mr. Ward stated the airport was a private entity and when his client purchased the property in 2005, there was an avigation easement in place, which his client had steadfastly upheld. Compliance with the avigation easement, however, is

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different from being subjected to an unrecorded document that the runway would be extended and that the airport would acquire his client's property, which Metro hadn't done yet. Mr. Ward stated the value of his client's property was not a small amount of money, but \$4.5 to \$5 million. Mr. Ward stated the airport was trying to manipulate the City to keep Section 18 of the Zoning Ordinance for the benefit of a privately owned entity, while it's Airport Layout Plan was not of record, and it was not appropriate to limit his client's land use rights in this manner. Mr. Ward stated the City Attorney had made a judicious recommendation and his client asked the Commission member's to stand behind it.

Mr. Lachaussee asked if the Planning Commission members had any questions for the applicant. Mr. Stratton asked if Mr. Ward or his client had been approached, since the City offered to cooperate with the Olive Branch Airport, if the airport applied for corporate or federal funding for funds, or have indications the airport is proceeding in that direction, as the Airport Layout Plan had a notation the airport was to purchase your client's land. Mr. Ward made reference to the correspondence between the City, Metro, and McNeill regarding the proposed sale and City cooperation, but that there was no confirmation of an Airport grant application.

Mr. Stratton asked about the notation, "property to be acquired." Mr. Dye confirmed that this notation was on the Airport Layout Plan. Mr. Dye further stated that he discussed with Mr. Bradley, by phone and with Mayor Phillips, that the airport is technically considered a legal non-conforming use since airports aren't listed as permitted uses in any City zoning district. Mr. Dye stated that a potential solution would be an amendment to the "M-1," District zoning text to include an airport, existing or future, as a permitted use. This would carry over to the "M-2," District. Mr. Dye stated if Metro was successful in acquiring the tract of land, there were some solutions for the Olive Branch Airport in regard to zoning amendments to alleviate any concern as to their alleged vulnerable situation.

Mr. Lachaussee recognized Mr. Bradley. Mr. Lachaussee asked Mr. Bradley if the Olive Branch Airport had done anything toward trying to purchase the subject property in item 1. Mr. Bradley stated yes, that Metro had ordered an appraisal of the property, and that they may apply for an FAA grant.

Mr. Lachaussee closed the public hearing and opened the discussion to members of the Planning Commission. Mr. Lachaussee asked if there were any questions or need for discussion among the Commission. There was none. Mr. Lachaussee made a motion to amend the Zoning Ordinance to repeal and delete Section 18, the Airport Height Use Regulation District, of Article V, for the following reasons:

- 1) Since 1983 the area surrounding the airport has changed dramatically, with increased residential, commercial, and industrial development, new public infrastructure, and increased population, including annexation into the City limits.
- 2) The changes to the area have created a public need for amendments to the Zoning Ordinance to eliminate the vague, confusing, and in some cases irrelevant sections related to the airport, and to consider future amendments that better reflect the area today.
- 3) The current AHR does not appear to comply with state law in terms of the manner in which it was adopted and in terms of its content.
- 4) The current AHR does not appear to have ever been included on a City Zoning Map.
- 5) The current AHR is unclear as to how it should be interpreted, applied, and enforced.
- 6) The AHR appears to be unconstitutionally vague. The section does not provide clear notice of what is allowed and what is prohibited. Reasonable citizens must guess as to its meaning and would differ as to its application.

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Mr. Lachaussee continued his motion as follows: "Based on the evidence before the Commission, including submissions and presentations by City staff, representatives of the airport, and owners of industrial property near the airport, and taking into consideration the Commissions' common knowledge and familiarity with the airport and the surrounding area, I move to amend the Zoning Ordinance to repeal and delete Section 18, Article V, the Airport Height Use Regulation District."

Mr. Lachaussee asked for a second. Mr. McLure made a second to the motion. Mr. Lachaussee stated he would poll the Commission for a vote by individual name. Mr. Lachaussee explained a “yes” vote is a vote to recommend repeal of the AHR and a “no” vote is a vote against making that recommendation to the Board of Aldermen. The vote was as follows:

Mr. Boyd – yes  
Mr. Curbo – yes  
Mr. Gillespie – yes  
Mr. Lachaussee – yes  
Mr. McLure – yes  
Mr. Stratton – yes  
Mr. Schumpert – recused

The motion was approved. Mr. Dye stated this item would progress to the Board of Aldermen on Tuesday, March 18, 2014.