
PLANNING & ZONING COMMISSION
September 21, 2009
Minutes

Members Present: Bruce Bixby
 Ovelia Campos
 Gary Glenn
 Tim McClarty
 Clint Rosenbaum
 David Todd

Members Absent: Fred Famble

Staff Present: Jon James, Director of Planning and Development Services
 Dan Santee, City Attorney
 Ed McRoy, Assistant Director of Planning and Development Services
 Ben Bryner, Planning Services Manager
 JoAnn Szech, Executive Secretary, Recording

Others Present: Dan Sefko, Dunkin, Sefko and Associates
 Barbara Pointer
 Desa Lee-Laird
 John Iman
 Dave Boyll
 Tim Ritter
 H.D. Burton
 Kenneth O'Shields
 Larry Robertson
 David Crymes, L.E.P.C. Representative

Item One: Call to Order

Mr. Tim McClarty called the meeting to order at 5:34 p.m. and declared a quorum present.

Item Two: Invocation

Mr. McClarty gave the Invocation.

Item Three: Land Development Code

a. Public hearing and possible vote to recommend approval or denial to the City Council on a proposal to adopt the Land Development Code.

Mr. McClarty commented that there are many citizens present at this meeting that are probably concerned about one issue and perhaps it would be wise to consider this issue first. Mr. McClarty asked Mr. James if he was familiar with the concern of these citizens and could the Commission begin at this point. Mr. James stated that he would provide the Commission with a brief introduction regarding the Land Development Code and then the public hearing could be opened to address this issue.

Mr. James stated that staff's intent is not to go through the entire Land Development Code but review with the Commission "outstanding questions." These "questions" address 19 issues staffs consider major issues that are still outstanding. Mr. James asked that the Commissioners advise staff of other issues they feel should be addressed and they will be added to this list. Most of the feedback from the Land Development Code Committee has been incorporated into the draft being presented at this meeting.

Mr. James stated that the schedule "goal" provided to staff by the Council is as follows:

⇒ The Planning and Zoning Commission will provide a recommendation to the City Council at today's meeting

Due to issues discussed at the September 8, 2009, meeting, this topic was not discussed and therefore it is anticipated that at least one more meeting will be required (if not more) to finalize this information. It is the Council's goal to review this information in October or November.

Mr. McClarty stated that he cross-referenced the 19 questions presented by City staff with information reviewed at the Committee. The 19 questions presented by staff are correct; however, there are other issues to be clarified.

Mr. McClarty stated that the list of questions received by the Commissioners include the following:

Staff's recommendation

Consultant's recommendation

Committee (LDC) recommendation

Mr. McClarty requested that an additional category be included: Planning and Zoning Commission's recommendation.

Mr. McClarty opened the public hearing.

Mr. John Iman stated that there are two issues to be addressed:

1. Daily rentals of guest houses in the City of Abilene
2. Ruling and clarification of a single-family residence

Mr. Iman stated that the issue of daily rentals has become a citywide issue. This practice of daily rental began in their neighborhood. Mr. Iman stated that the Director of Planning made the ruling about two years ago that the houses in questions were single-family dwellings.

Mr. Iman stated that there is no language in the new Land Development Code regarding these daily rental guest houses. Mr. Iman stated that he had asked the Planning Director for language that addresses this situation for the neighborhood's review and for inclusion in the Land Development Code. Mr. Iman stated that he and the neighborhood are asking the Commission to consider the inclusion of such language in the Land Development Code.

The following individuals from this neighborhood (Sayles, Highland, Amarillo) spoke regarding this issue and provided the following comments:

Ms. Desa Lee-Laird – Provided evidence of activities not relating to a single-family dwelling to the Planning Department and the Planning and Zoning Commission.

Ms. Jean Collier - Stated that no notification was received that such an enterprise would be located in the neighborhood. Ms. Collier stated that this is a business venture and nothing less.

Mr. Larry Robertson - The issue is whether or not these units are single-family residences. Mr. Robertson stated that all the neighborhood wants is a fair hearing – hear the concerns of the neighbors and come to a fair decision.

Mr. John Iman - Stated that single-family daily rental information has been obtained from other cities. Mr. Iman stated that perhaps a committee could be formed to review this information. Mr. Iman asked that this statement be a part of the record: “I am so sorry that someone asked him (Director of Planning) not to put this on your agenda tonight,”

Mr. McClarty closed the public hearing.

Mr. McClarty asked Mr. Dan Sefko how other communities deal with bed and breakfast enterprises.

Mr. Sefko stated that it is correct that many communities have addressed this issue. Daily rentals and short-term rentals are prevalent along the coast of Texas. Mr. Sefko stated that in his opinion this is a different type of land use that should be regulated and an item should be added into the Land Development Code. Mr. Sefko stated that language could be inserted into the Code (in the permitted use chart) that would allow for this provision – either conditional or by special permit. Mr. Sefko stated that he is aware of two methods to address this issue:

1. Zoning category for “Tourist Residential” (coastal cities have a district for this category)
2. Conditional use or specific use permits process

Mr. Bixby addressed the issues of:

Number of Unrelated Individuals residing at a single family residence
Grandfathering of current enterprises – will this be for a specific time period or ongoing

Mr. Sefko stated that regarding the “legal nonconforming use” issue the following could apply:

Is the use currently considered a legal use? If it is, then the legal nonconforming use status would apply.

If the use is not a legal function currently, then, the legal nonconforming use status would not apply.

Mr. McClarty stated that from today’s discussion, it is his interpretation that this is a business being operated in a single family neighborhood. Mr. McClarty stated that this (use of property) does not sound correct to him – a single-family neighborhood should be a single family neighborhood.

Mr. Sefko asked if it is correct that the Commission’s policy direction to him and to staff is to regulate these enterprises as bed and breakfasts – not the same, but similar, then they will prepare language to address this issue and present this at a future meeting. Mr. Sefko stated that the question is: Does the Commission believe this issue has the merit for the City to regulate these enterprises. Mr. Sefko stated that the rental “frequency” may be at issue.

Mr. Bixby asked the City’s Legal staff if this use is a legal, conforming use at the present time.

Mr. Santee stated that they are – Bed and Breakfast establishments are regulated by a Special Exception

approved by the Board of Adjustment. When the establishments being discussed today were first discovered and brought to the attention of the Planning Director, the Director reviewed the function and requirements of the Special Exception process. The Director's interpretation was that these enterprises did not fall into the definition of a "Bed and Breakfast."

Mr. James stated that the questions posed to him as the Planning Director with the authority to interpret the ordinance was "How does the current ordinance regulate these enterprises." Mr. James stated that given the wording of the current ordinance, the definition of a bed and breakfast is very specific (one of the item in this definition is that a breakfast is provided and these enterprises do not provide breakfast). Because it did not meet the definition of a bed and breakfast the question became, "Does it meet the definition of any other use or which was the closest use." Mr. James stated that other options and definitions were reviewed and his interpretation was that this is a single-family residence.

Mr. James stated that Planning staff has researched how other cities regulate this enterprise. Some cities treat these as single-family homes while others have a special classification for this enterprise. Mr. James stated that enforcement of this issue is problematic – being able to prove sufficiently to a court that the three unrelated individuals or some other element of the ordinance is being violated.

Ms. Campos stated that she is very concerned about opening up this category to allow these enterprises to appear in any and all neighborhoods throughout the City.

Mr. Bixby stated that he believes this neighborhood has a valid concern and this issue should be addressed.

Mr. Bixby asked Mr. Santee that if these are currently legal conforming uses presently and the Commission adopts an ordinance that changes that fact, would the current uses be allowed to continue.

Mr. Santee stated that typically the City has not amortized a use to remove that use (other than sexually oriented businesses); however, this is an option. If the business ceases to operate for a period of time, then the property owner must meet the regulations/processes in place.

Mr. Gary Glenn recommended that Mr. Sefko research this issue and bring back a recommendation to this Commission. This was the consensus of the Commissioners.

Mr. McClarty reopened the public hearing.

Ms. Collier stated that the "guest houses" in her neighborhood are more of a hotel/motel situation and not a bed and breakfast. These homes cannot be compared to those in Fredericksburg or along the Coast of Texas. Ms. Laird stated that the Highland Neighborhood is probably the oldest neighborhood in Abilene and a business operating in this neighborhood does not set well with her.

Ms. Desa Lee-Laird stated that a continental breakfast is served at these establishments. Ms. Larid provided additional information to the Commission.

Mr. John Iman stated that the information provided by Ms. Laird is an appeal prepared in order to file suit against the Board of Adjustment regarding their decision to support the interpretation of a bed and breakfast establishment by City staff. Mr. Iman stated that a telephone conversation was held at five

minutes to five with the City Manager, Planning Director and the Mayor and an agreement was made two years ago that this issue (business enterprise in residential area) would be addressed, verbiage would be developed and this would be considered by the City no later than February of the next year. Mr. Iman stated that this is a citywide issue which needs to be addressed.

Mr. McClarty closed the public hearing.

Mr. McClarty reopened the public hearing.

Mr. Tim Ritter with Lamar Outdoor Advertising expressed a concern about signs posted on property for rezoning. Mr. Ritter stated that his concern is banning future billboards by changing the zoning and limiting the types of zoning thereby limiting new billboards.

Mr. McClarty closed the public hearing.

Mr. James stated that the issue of signs being posted on a property refers to the City posting signs on a parcel where rezoning has been requested. This issue has nothing to do with private signs – only signs placed on a property requesting rezoning. Mr. James stated that name changes have been requested for same zoning districts; e.g., Limited Commercial is proposed to be changed to Neighborhood Commercial, but the district regulations are very similar. The Sign Ordinance revision was not part of the consultant's charge because it is intended for staff to make these revisions and draft a new ordinance. Sign Ordinance revisions are currently scheduled for 2010.

Mr. McClarty reopened the public hearing.

Mr. Ritter asked if the proposed zone changes in the Land Development Code prohibit or restrict the use in these zones, i.e., if off-premise signs were prohibited in these zoning districts prior to revision of the Sign Ordinance, then changes could not be made once the Land Development Code had been adopted.

Mr. James stated that there will be not changes and there are not proposed changes in the Land Development Code that would change any of the restrictions for on-premise or off-premise signs. The Sign Ordinance will remain as it is currently except for the zoning category changes. As part of the adoption of the new ordinance an equivalency table will be included which provides the previous zoning category and the adopted zoning category (e.g. Shopping Center changes to General Retail zoning)?

Mr. McClarty closed the public hearing.

Mr. James provided information regarding the most pressing outstanding issues in the Land Development Code. Mr. McClarty recommended that the Commission discuss these issues individually to arrive at a consensus.

Mr. James began the review of the outstanding issues:

Chapter 1: Roles and Procedures

1. Which, if any, of the following changes recommended by the Review Committee should be made to the Development Review Committee (DRC), the staff committee that reviews plats and site plans?

(Chapter 1, Section 1.1.6)

In the new ordinance, the Development Review Committee will replace the current Site Plan Review Committee and the Plat Review Committee.

COMMISSION CONSENSUS: The Development Review Committee should remain as it is currently; however, the timeframe for reviewing plats should be moved back one week.

2. Should the applicant or staff be required to post a sign or signs on the property proposed for rezoning to provide additional notification to potentially interested neighbors or citizens that might not be within the 200' notification area?

COMMISSION CONSENSUS: The Planning and Zoning Commission agreed with the Staff, Consultant, and Review Committee that the current notifications are sufficient and rezoning notification signs on the property are not required

3. Is the list of those who can be held responsible for violations too broad?
(Section 1.2.6.7(c) – Page 1-33)

COMMISSION CONSENSUS: The Planning and Zoning Commission agreed with the Staff and the Consultant – No, all of these parties have some involvement in the development process and should be held accountable for compliance with the code as it relates to their role in the process.

4. Should the Planning and Zoning Commission have the authority to waive individual plat requirements as part of plat review and approval?
(Section 1.3.4 - Page 1-50)

Mr. James stated that the following procedures are currently in place that address certain plat requirements:

- Sidewalk Waiver
- Alternative Design Procedure
- Proportionality Appeal

Mr. Todd stated that it is his belief that there will be unique situations that arise that cannot be covered by one regulation or rule and it might be wise to allow an individual to come before a board or commission to state his case.

Mr. James stated that if it is the consensus of the Commission to allow waivers, should this be determined by this Commission or the City Council by a super majority vote.

Mr. Santee asked Mr. Sefko about notification to surrounding property owners for these waivers. There are Subdivision Regulations in place and if the Commission is given the power to waive the requirements of the Subdivision Regulations this could become problematic. Also, if this Commission is the final decision makers and they are given the authority to grant variances to the Subdivision Regulations, the Commission will also be accepting liability and therefore the Commission may be sued due to a decision.

Mr. Todd recommended that waiver requests be handled like zone changes – a recommendation from this Commission is made to the City Council. The Council makes the final decision.

COMMISSION CONSENSUS: The Planning and Zoning Commission has the authority to recommend to the City Council to waive individual plat requirements.

5. When the P&Z Commission denies a case, should a Council vote to over-ride the denial require a super majority?
(Page 1-56)

Mr. James stated that approval of a recommendation for denial by the Planning and Zoning Commission by a super majority of the City Council is not a requirement at the present time. This action is authorized by State law.

COMMISSION CONSENSUS: When the Planning and Zoning Commission denies a case, a Council vote to override the denial requires a **simple majority**.

Chapter 2: Zoning

6. Should accessory dwellings (e.g., garage apartments, etc.) be permitted in single-family zoning districts?
(Page 2-112)

COMMISSION CONSENSUS: Yes, within limits and conditions (as proposed by Staff, Consultant, and Committee).

7. Should the City enforce platted building setbacks that are different from current ordinance requirements at the time of development?
(Page 2-128)

Mr. James stated that the questions before this Commission is should the requirements of the Zoning Ordinance be enforced or alternatively enforce the more restrictive setbacks (i.e., enforcing the least restrictive setback).

COMMISSION CONSENSUS: Yes, if platted building setbacks are less, but not if platted setbacks are greater. (This is the recommendation of the Committee – Staff and the Consultant did not provide recommendation but are in agreement.)

8. Should we include a provision that allows a new building in a mostly developed area to meet the average setback of surrounding buildings, in lieu of the otherwise required setback?

COMMISSION CONSENSUS: The Planning and Zoning Commission agrees with the recommendation of the Staff (this item was not discussed by the Committee).

Chapter 3: Subdivision

9. Should the City allow property to be platted for development where the only water supply available is through a water delivery service (i.e. there is neither the potential for a well on site and no existing water service in the area)?
(Page 3.38)

Mr. James stated that under the current and proposed ordinances, adequate water facilities can be met by a well or a public water system. The Committee recommendation was that a water delivery service be allowed to be considered an acceptable water supply system. Mr. James stated that staff and the consultant are comfortable with not allowing this as an option (this only applies to property within the City limits and in the ETJ).

Mr. James stated that this requirement only applies if property is being subdivided that is less than 10 acres. Otherwise, the property meets and “exemption” and these standards do not have to be met. A waiver from this requirement could be requested.

COMMISSION CONSENSUS: No, an adequate water supply consistent with current standards should be required (as proposed by Staff and the Consultant). This would apply to property within the City limits and the ETJ and a waiver could be requested

10. What should be the required minimum lot size for lots where an on-site septic system will be the method of wastewater treatment?
(Section 3.2.5.2 – Page 3-41 and Section 3.2.5.5)

Mr. Todd recommended following State standards, ½ acre, because there are other alternatives to on-site waste disposal other than just the absorption field.

COMMISSION CONSENSUS: Follow absolute minimum state standards: ½ acre for a lot with public water system and 1 acre for lot not on a public water system.

Mr. McClarty asked about the size of the wastewater treatment line: Sewer mains larger than 10 inches – the Committee members were in agreement that 8 inch mains would suffice. {Paragraph B.3.2.5.1.(b)}

Mr. McClarty stated that there was a great deal of discussion in the Committee regarding associated facilities. Mr. McClarty stated that his recollection is that water treatment plants were not associated facilities but was unsure how this issue was resolved.

Mr. Sefko stated that he recalled that associated facilities were ones required by the Subdivision Regulations.

11. Who should be responsible for managing the construction of an arterial that bisects a development?
(Section 3.2.7.2.(b)(1)a. – Page 3-48)

Mr. Todd stated that his concern is that if there is a contract with the City for administration and design of an arterial and off-shoot streets designed by the developer/engineer. Mr. Todd stated that this could cause some coordination issues.

Mr. James stated that this could be reworded to allow for the developer to construct the arterial if this is the correct course of action but at the City's discretion.

COMMISSION CONSENSUS: The Commission agreed with the Staff/Consultant recommendation with the inclusion of the wording above (regarding the City discretion).

12. Should a subdivision be required to have two points of vehicular access?
(Page 3-51)

Mr. James stated that this item refers to the number of access points for a specific number of lots (emergency vehicle access, traffic congestion issues, etc.).

Mr. Todd stated that as long as there is an avenue to grant a waiver from this condition, he is OK with this.

COMMISSION CONSENSUS: Yes, for a subdivision with more than 100 lots **with a waiver**.

13. Who should be responsible for the cost of installing streetlights and street signs in a new development?
(Page 3-55)

Mr. McClarty and Mr. Todd agreed that taxes generated by a new development will pay for street signs and adding an additional cost will discourage development in Abilene.

COMMISSION CONSENSUS: The City/taxpayers (current practices and Committee recommendations). The Commission recommended removing Sections (k) and (i) from this part of the Land Development Code.

14. What should the maximum street block length be?
(Page 3-56)

Mr. James stated that a review of peer cities revealed that one-half of the cities have a maximum block length of 1200 feet and three (3) cities were set at 600 or 660 feet.

COMMISSION CONSENSUS: The Planning Commission recommended a block length of 1200 feet for **residential areas**.

15. Should we revisit changes to cul-de-sac standards?

This issue was addressed in 2007 and the Planning and Zoning Commission and the City Council recommended no changes. Staff's recommendation to the Land Development Code Review Committee was to reduce the length of cul-de-sacs to 600 feet (which is consistent with 7 of 10 peer cities).

Mr. Bixby stated that his recommendation is that this issue not be revised at this time since a great deal of time was spent discussing this issue recently. Also, the size of the bulb of a cul-de-sac will remain as currently required.

COMMISSION CONSENSUS: The Planning and Zoning Commission's recommendation was that this issue was recently reviewed (in 2007) and should remain as written currently.

16. Should the City require new subdivisions to dedicate parkland or fees-in-lieu of parkland to ensure adequate parkland for the future?
(Page 3-109)

Mr. James stated this item was placed in the Land Development Code draft at the request of the City Council. The Council did not make a recommendation that this issue be included in the adopted code, but wanted it included in the Code draft for consideration by the Planning and Zoning Commission.

COMMISSION CONSENSUS: The Planning and Zoning Commission recommended eliminating this issue in the Land Development Code.

Chapter 4: Site Development

17. What should trigger the requirement for a site plan (which also triggers a site to come into compliance with most development standards)?
(Section 4.1.1.2(b) – Page 4-2)

Mr. James stated that the five items listed are in the current ordinance. City staff and the Consultant have recommended inclusion of all five items in the Land Development Code. The Land Development Review Committee recommended eliminating Items three and four. Of the two items recommended for elimination by the Committee, staff is most concerned about item three (expansion of structure of more than 5,000 square feet). Mr. James stated that if the trigger for a site plan is only 30%, then, a very large facility could expand without the requirement of a site plan. In some cases this could be tens of thousands or hundreds of thousands of square feet of new building not triggering the site plan requirement. Mr. James stated that staff feels a straight square footage trigger that would also apply, regardless of the percentage.

Mr. James stated that a similar situation arose when the issue of landscaping was discussed. At the time the Planning and Zoning Commission and City Council felt that the 5,000 square footage requirement was too low and what was recommended that this requirement not be triggered until 20,000 square feet.

Mr. Bixby asked how the size of the building would be determined for shopping centers where firewalls are in place creating separate buildings.

Mr. James stated that for that purpose, if attached, it would be considered one building for these purposes.

Mr. Bixby asked that a notation be made regarding this issue.

COMMISSION CONSENSUS: The Planning and Zoning Commission came to the consensus that 20,000 square feet (expansion of a structure) would trigger the site plan requirement. Also, the Commission agreed to eliminate the 50% of the current value of the structure for expansion or renovation of a structure.

Mr. Rosenbaum questioned the 5,000 square feet in issue bullet 5 of Question 17 because if a building is increased in size by 20,000 square feet and the parking must be increased because the building has extended into the parking lot, a site plan will be triggered.

Mr. James stated that the way the fifth bullet is currently drafted if the parking lot surface area is increased either by more than 30% or 5,000 square feet, a site plan would be triggered.

Mr. McClarty stated that this could be addressed in bullet one: if a 20,000 square foot addition deletes parking, then a site plan is triggered. (If development extends into the parking lot and parking spaces are deleted, a site plan is required.)

Mr. James stated that this issue addresses an increase in parking; therefore, if the structure extends into the parking lot and eliminates 50 spaces, but 50 spaces are added in another area this would result in a net zero increase in parking area. Mr. James stated that if additional impervious surface is added, drainage issues must be addressed.

18. Should a Traffic Impact Analysis (TIA) be required for new developments that result in substantial traffic impacts on City streets? (Note: the TIA would identify proportionate traffic system improvements that the developer would be responsible for including as part of the development).
(Page 4-8)

Mr. James asked the Commissioners if they wanted this information included in the Land Development Code.

COMMISSION CONSENSUS: The consensus of the Planning and Zoning Commissioners was that Traffic Impact Analysis (TIA) **not be included** in the Land Development Code.

19. Should reuse of an existing building in the downtown trigger the need to provide on-site parking per ordinance parking standards?

Mr. James stated that there was no consensus among the Committee members and staff is comfortable with the current ordinance: reuse of an existing building in the downtown area requires no additional parking than that currently in place.

Mr. McClarty stated that he is in agreement with the current ordinance, Staff, Consultant and some Committee members as follows: “No, downtown is unique and existing buildings that don’t meet current standards for parking should not be required to add parking upon reuse.” However, Mr. McClarty recommended that this be tweaked, as follows: if a developer is willing to renovate a historic structure – even though it is not in the area considered as “downtown” - for reuse and on-street parking is available, they should be able to upgrade the facility for reuse.

Mr. James stated that a South Downtown Study is currently in progress and perhaps objectives for the downtown are could be developed through this group.

Mr. James stated that a new parking alternative has been included to provide an opportunity for an individual to appeal the parking standards (if for some reason the parking standards could not be met). The alternative would be approved by staff.

Mr. James stated that one of the issues mentioned in the parking alternative is that the presence of on street parking is one example where this could be potentially counted toward the parking requirement.

Mr. McClarty stated that a mechanism need to be in place whereby a committee or group of individuals can make a decision when the code and parking requirements are so specific that they discourage development.

The authority for the Alternative Parking Plan is given to the Director of Traffic and Transportation. The current draft does not provide an appeal. An alternative to this could be an appeal to the Board of Adjustment (Special Exception) or an appeal to the Planning and Zoning Commission or the City Council.

COMMISSION CONSENSUS: No, downtown is unique and existing buildings that don't meet current standards for parking should not be required to add parking upon reuse **with the addition of an appeal process to the Planning and Zoning Commission.**

Mr. James asked the Commission if they are prepared to forward the Land Development Code to the City Council; place and agenda item for the Land Development Code on the Commission's next regularly scheduled meeting, or would the Commission prefer to discuss this Land Development Code at a special meeting. Mr. James stated that if the Commissioners feel there are questions that have not yet been addressed, Commissioners were asked to provide this information to staff prior to the next meeting.

Mr. McClarty stated that he has questions regarding the Land Development Code. Mr. James stated that he could meet with Mr. McClarty prior to the Commission's next meeting to discussion these issues. Any changes or revisions will be presented to the full Commission for action.

Mr. James stated if this item is tabled today specifically to the next Planning and Zoning Commission meeting date (October 5, 2009), this would avoid the necessity of an additional newspaper notification,

Mr. McClarty moved to table discussion of the Land Development Code to the October 5th Planning and Zoning Commission meeting at 1:30 p.m. Mr. Bixby seconded the motion and the motion carried by a vote of six (6) in favor (Bixby, Campos, Glenn, McClarty, Rosenbaum and Todd) to none (0) opposed.

Item Four: Adjourn

There being no further business, the Planning and Zoning Commission meeting was adjourned at 9:35 p.m.

Approved: _____, Chairman
