

Planning and Zoning Commission Work Session Minutes
August 10, 2017
Conference Room 1-B - 1st Floor City Hall

ATTENDANCE:

Commission Members Present: Burns, Harder, Loe, MacMann, Rushing, Russell, Stanton, Strodman, Toohey
Commission Members Absent: None
Staff: Palmer, Smith, Teddy, Zenner
Guest: Farnen

ADJUSTMENTS TO AGENDA: None

TOPICS DISCUSSED – Old Business:

- **Ex-parte Communication and Conflict of Interest (follow-up discussion)**

Mr. Zenner introduced the topic indicating that this evening's meeting was to provide additional follow-up discussion for the prior meeting. He noted that Commissioners should have received correspondence from Commissioner Rushing regarding the topic and her thoughts on the issues discussed during the last work session. There was general Commission discussion the views expressed by Commissioner Rushing. Several Commissioners felt that communications with citizens was not appropriate and affected the objectivity of the Commission. Commissioners agreed that disclosure of such contacts really depended on their potential impact to a particular action before the Commission. Several examples were given to illustrate the point that was trying to be made.

Mr. Zenner noted that the Commission's ability to consult with citizens on non-pending PZC matters as a means of providing insight or guidance to the planning process was more than appropriate. The issue at hand however really was intended to focus more on the potential for ex-parte communication to influencing the type of public engagement brought before the Commission on cases it was reviewing.

Several Commissioners voiced frustration that continued ex-parte communication was undermining the Commission and if not addressed may result in a request for the resignation of Commissioners participating in such activities. It was discussed that there were no rules in place for being able to seek the resignation of a Commissioner for continued "inappropriate" behavior. Mr. Zenner noted that it was correct there were no rules within the enabling legislation establishing the Commission or within the Commission's own By-Laws pertaining to this topic. Principally the only rules pertaining to conflict of interest deal with monetary matters which rarely applied to Commission activities.

There was discussion of the ability to establish Commission rules for the conduct for its members. Mr. Zenner noted that to do so would require the amendment of the Commission's By-Laws which would ultimately need to be approved by the City Council. Commissioner MacMann noted that he had consulted privately with outside unnamed legal counsel that had advised him the creation of standards to control ex-parte communication was potentially not legally sustainable if challenged and if adopted may have to be applied not only to the Commission, but to other boards and commissions as well as City Council. There was discussion regarding these comments.

Mr. Zenner noted that he sensed several Commissioners felt it necessary to develop criteria that would establish boundaries on what constituted acceptable and non-acceptable forms of communication. If so, he stated, that these provisions should really be included in the Commission's By-Laws to ensure that the concerns regarding this matter can be effectively addressed should the boundaries be crossed. He noted, that the final acceptance of these rules would be at Council's discretion. If the changes were not to be made within the Commission's By-Laws, Mr. Zenner indicated the Commissioners could self-police each other regarding the matter. In either instance, Mr. Zenner indicated that it would be most appropriate to address this issue quickly to bring it to closure and allow the Commission to move on to other topics.

Chairman Strodman suggested that the Commissioners comment individually on what their preference was in addressing this issue – amended By-Laws or self-policing? The majority of the Commission desired to proceed forward with amended By-Laws. Commissioner Toohey recommended that it may be best to schedule a special work session to ensure that all Commissioners were present. Mr. Zenner indicated that he could clear a future work session agenda for discussion or potentially schedule it following one of the Commission’s regular meetings which had limited items on it.

Commissioners agreed that it would be best to ensure all Commissioners were in attendance at the work session in which there would be discussion of this matter. They requested that staff proceed to schedule the topic at the next at work session where all Commissioners would be present. Mr. Zenner indicated that would likely be the September 7 meeting.

New Business:

- PD District Discussion (public comment follow-up)

Mr. Zenner opened the topic by providing a general overview of what was anticipated to be accomplished through the discussion. He noted that staff wanted to provide an overview of what the former process was and how it permitted a “two” step process for planned districts and why the current standards were developed. Mr. Zenner explained that the former process did not provide enough certainty to when development would occur and it was very staff intensive to track projects. The new provisions had been designed to address these issues.

Mr. Zenner continued to explain the general staff philosophy regarding the use of the PD district and indicated that unless staff saw such requests meeting the intent of the new district that there would likely be greater instances of staff recommending denial. He further stated that to continue to utilize the PD process when there was really no apparent need for such zoning undermines the integrity of the other UDC provisions. Zoning of land, he stated, was really about evaluating the compatibility of proposed uses against the surrounding developed environment. The use of the PD district has been abused to address non-land use related issues – principally the desire of having a plan that depicts anticipated development and using that plan as a mechanism to either seek enhanced development rights or waiver of certain standards.

Mr. Zenner noted most PD requests don’t involve land use challenges that necessitate relief, but rather involve managing conflicts between adjoining properties. Managing the conflicts, Mr. Zenner stated, was what the basic zoning regulations were intended to do. If the base zoning regulations are insufficient they should be amended to make them more so. PD zoning over time is cumbersome. Whereas use the base zoning, allows development sites adjust to market conditions more easily.

There was general Commission discussion. Some Commissions felt that it was not appropriate to be telling someone to not submit a PD application. Mr. Zenner responded staff would advise applicants of their options and if support was likely or not. Ultimately, submission of a PD was not left to staff - it was the applicant’s choice. He advised that the Commission should not make an applicant submit a PD if they chose not to at the beginning of a land use change. Mr. Zenner stated this went to his point that the land use change should be determined on the compatibility of the use without added conditions. There was additional discussion relating to Mr. Zenner’s comments.

Given that the work session time was running short, Chairman Strodman indicated that discussion would need to be suspended. Mr. Zenner stated staff would like to discuss strategies to improve the PD process at the next meeting to make the process more user-friendly.

ACTION(S) TAKEN: July 20, 2017, minutes were approval. No other votes or motions were made.

Meeting adjourned approximately 6:55 p.m.