

On March 7, 1995, Kiesling called the continuation of the March 6, 1995 meeting to order.

MARCH 7, 1995
MEETING CONTINUES

Chapter 4. Mueller said this chapter identifies the other planning documents referred to by the Zoning Ordinance, such as the Comprehensive Plan. Of interest are some of the references in the Plan, especially those calling for a yearly review. It is thought that that is unrealistic, and is changed to once every four years. He said subarea plans are similar to neighborhood plans which have been done before, and are identified in the comprehensive plan as neighborhood enhancement areas. These are felt to warrant subarea plans. The intent is to continue the program of subarea planning as soon as the Zoning Ordinance procedure is over. The thoroughfare plan is also referenced, and has a bearing on several sections of the Zoning Ordinance, such as street setbacks.

CHAPTER 4

Kiesling asked about subarea plans being incorporated in the comprehensive plan and if the Zoning Ordinance would be changed to accommodate subarea plan provisions. Mueller replied that they would.

Chapter 5. Mueller said this chapter spells out the standards and procedures for the various actions called for under the Zoning Ordinance, such as public hearing procedures. Much of it is specified by state statute. He pointed out the conditional uses provisions, and noted that they included provisions formerly called Special Exceptions. Some, but not all, conditional uses have specific criteria as well as the general criteria. New definitions were bed and breakfasts, drive-through. He also pointed out the Historic Adaptive Reuse provision and commercial uses in industrial zones. He also identified a section of "worst-case" industrial uses which are conditional uses, so that some control can be given. Other additions to the conditional use section were outdoor storage, shared and off-site parking. The parking provision was to enhance development flexibility. Mueller also explained the new business park zone which allows light manufacturing if it is compatible with the business park environment. He noted the downtown development opportunity overlay and the off-premise sign provision, but said full discussion would come later in the ordinance.

CHAPTER 5

He noted that variances are changed to reflect state statute, which allows Plan Commission review of use variance requests before decision by the Board of Zoning Appeals. He explained the difference in use variances and standards variances, and said that use variances could be serious issues, changing the use of the land in major ways. The Plan Commission review would lend their expertise in major land use questions to the BZA decision.

The site plan review section has been beefed up and replaces the old Title 21, which was a maze of site plan requirements. This consolidates site plan provisions, with the process being the same as now. There are some changes as to what is reviewed by staff and what is reviewed by the Plan Commission.

The Planned Unit Development section has some significant changes, mainly to give flexibility to mixed uses. This is a rezone on which the Council will have the final decision. Mueller feels that the new process is more straightforward, and allows more negotiation. He said that one area of PUD which would generate discussion was the RE 2.5 district, which covered "sensitive areas" such as lakes watersheds. This limits where PUDs can be considered, and restricts them from these areas. This was a compromise generated from the committee formed after the Gentry Estates rezone was not approved. There are three areas outlined in the RE 2.5 area which may be upzoned through the PUD process which have been identified by the criteria set forth by the committee. The criteria are contiguity, direct access to an adequate thoroughfare, and development

capability according to the subdivision chapter and potential for sewer service.

Mueller mentioned Home Occupations, saying they were much the same. "Administrative Interpretation" has been expanded, because much still would require interpretation, and this gives the staff guidance and specificity.

Bonnell asked about the site plan review process being forwarded to the Plan Commission: under what circumstances would it be sent to Plan Commission? Mueller explained that current code required much the same thing, and read the provisions that required the staff to forward the project to the Plan Commission for their review. He explained some of the other site plan review provisions and their rationale at some length.

Bonnell asked about the fact that every application needs site plan approval. Mueller said that there is a simpler process for single family residences. Bonnell asked about the process for approval for other projects: would it be much more lengthy? Mueller agreed that language was needed to except certain activities from this review process. The staff will work on language to that effect.

It was moved and seconded that Amendment #6 be considered: Bonnell said that this amendment follows the customs of the planning staff and states that maps required for some applications "would be provided free of charge by the Planning Department in the form of a GIS map or its equivalent". This merely makes a current practice clear. Kiesling asked about the fiscal impact of this and if the GIS maps were up to date. Mueller said he had some suggestions as to wording and placement in the ordinance. Sherman questioned the placement of the amendment. Discussion followed about the proper place for this.

AMENDMENT #6
FREE GIS MAPS

Kiesling asked Mueller about the provision of GIS, and Mueller said that GIS maps now are made available at cost, and that cost would likely go up. He didn't want to imply that the cost would always remain the same. Discussion followed about the fees for this service, and it was determined that Planning charges the same for the maps as Utilities does. Mueller's wording of, "A GIS map showing the required information, to the extent available, shall be provided by the Planning Department to applicants without additional charge over the application fee" was accepted by Bonnell and also the suggested change in placement.

White said that this was an appropriate amendment and a good way to kick off the development process. Kiesling said that she agreed with this, but that there would be a fiscal impact to this.

Amendment #6 received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Amendment #7 be considered: Bonnell said this referred to availability of the Planning Department staff report on applications and required it be available to the review body, applicant and public no later than the end of the last working day prior to the first scheduled meeting. Bonnell explained his rationale for proposing this, saying sometimes the staff recommendation was not available to the public until the date of the meeting.

AMENDMENT #7
PLAN DEPT. REPORTS

Mueller said that the first scheduled hearing may not be where the staff recommendation is made and said that it should be a requirement before the hearing which is the final hearing on the application. He explained that sometimes the negotiation process went on down to the wire.

Swain said that he thought this may be micro-management and this may create an artificial deadline which may hamper negotiations. Kiesling said did he want this

to mean staff report or recommendation? Mueller said this was a big difference and if he wanted recommendation, then that should be the word. Bonnell suggested two changes: That "final" be inserted instead of "first" hearing, and the words "and recommendation" be added at the end after "staff report".

Jeff Brantley, Positive Progress, spoke in favor.

Amendment #6 received a roll call vote of Ayes:8, Nays:1 (Swain).

It was moved and seconded that Amendment #8 be considered: Bonnell said this adds to the notice requirements of 20.05.02.01 with the purpose of bringing the noticing requirements into the electronic age, i.e. cable tv, internet, etc.

AMENDMENT #8
ELECTRONIC NOTICE

Kiesling asked Mueller and Clerk Williams to comment on this as the are both affected by the proposal. Mueller said this was probably a good idea but that state statute specifies that notice requirements be part of the Plan Commission and BZA rule making authority and that would be the proper place for that. City Attorney Bernens agreed that it was probably the job of the Plan Commission and BZA to set these rules. Clerk Williams said this was a good idea and noted that this would be easier to implement in the new city building. She also said that a bill was in the Legislature about the availability of information. Kiesling said that there was need for a procedure for this to make sure it is coordinated.

Swain said that he thought it a good idea but needed more thought. Discussion followed about the need for making this amendment at this particular time.

Sherman said he favored doing it now. Bonnell said that it wasn't mandated that the Planning staff put it on BCAT, etc., but that they make it available for that.

Amendment #8 received a roll call vote of Ayes:8, Nay:1 (Swain).

It was moved and seconded that Amendment #9 be considered: Bonnell said this requires the Planning Staff make available the decision of the decision-making body within five working days. However, Bonnell said he objected to the disclaimer on the end saying this may be in the form of an audio tape. He wanted a written copy of the decision within five days. He said most Plan Commission decisions follow staff recommendations and it should be a simple matter to add a certification on top of the staff report for most cases. Bonnell accepted a friendly amendment changing the term to "a written copy of the decision" and deleting "in the form of an audio tape".

AMENDMENT #9
DEADLINE FOR PLANNING
DECISIONS

Assistant Planning Director Toni McClure said she thought that they had described the decision in 20.05.02.02f, and recommended if this was adopted to add "as described in 20.05.02.02f" after "copy of the written decision." Bonnell said he had no problem with that.

Bill Sturbaum commented about the danger of using a summary as a report. He cited an instance of the agreements made in a meeting not getting into the summary report.

Bonnell clarified the amended amendment by reading: "A written copy of the decision, as described in 20.05.02.02f, of the decision-making body or officer shall be available in the Plan Department within five working days of the decision."

Amendment #9 received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Amendment # 21 be considered: Service said this was being added to the section on additional criteria for certain categories of Conditional Use, Industrial Uses with Potential Adverse Effects were "manufacture and processing of drugs and pharmaceutical" and "metal fabrication". This section is industrial activities which are conditional uses because of their potential for causing problems, particularly off-site problems. This would provide more scrutiny into some of their processes, such as dealing with waste, but not prohibit them. Mueller said that they sympathized with the amendment but took issue with the language. Making it a conditional use limited the predictability that was needed in economic development efforts. He said that they tried to refine the list of manufacturing activities so every new industry would not have to go before the BZA.

AMENDMENT #21
CONDITIONAL USE

Discussion followed about the definition and impacts of various industrial uses. Mueller pointed out that most industries had both good and bad effects; Hopkins said that this made it the perfect argument for conditional approval. That way the effects, both good and bad, could be looked at and the decision made on that basis. Mueller pointed out that conditional uses were also reviewed by the Plan Commission which would subject the petition to a longer review. Pizzo asked if they were not on the conditional use list, then would they be reviewed in another process? Mueller said no, not if they were a permitted use, then they would need a permit, but that would not be a discretionary review. They would be permitted by-right, and not be reviewed as to being a good neighbor or not. They would have to meet objective industrial performance standards, but there would be no ability to control effects not listed in those standards.

Sherman said this is what happened with the asphalt plant; it was a permitted use and the Council did not have the authority to make any decisions. This was the reason for adding some industries as conditional uses. The question was how broad these categories should be.

Bonnell said he wasn't comfortable with adding metal fabrication to the Conditional Use category.

George Heise from the Environmental Commission spoke in favor of the amendment. He worked for a pharmaceutical company and said that although it was a very reputable company, the stream it discharged into ran in different colors almost daily. It was not a particularly "clean" industry, and it made a variety of products, not just a few.

Peter Wright asked if the point of this was to ask manufacturers if they were a potential danger to the community. He suggested that that question be added to the end of this list and then if they were a danger, they could be excluded.

Gene Fritz asked if the items were not listed here would they be assumed to be not permitted.

City Attorney Bernens said that they would then probably fall under the definition of light or heavy industry.

Bill Finch, representing Cook Group, asked that drugs and pharmaceutical, not be included on this list. He said they are strictly regulated now by the state and the federal government.

Norm Deckard said that metal fabrication was used somehow in almost every plant and the process varied widely in its impacts.

Hopkins referred to the definition of Light Manufacturing and proposed a friendly amendment to add to "other than Light Manufacturing" after the words "metal fabrication" in the conditional uses list. This would cover any adverse effects of objectionable heavy metal fabrication. Mueller said this was an improvement in the definition, and suggested saying "light manufacturing as defined herein". Service accepted both suggestions to amend the amendment. Bonnell asked if Service had in mind the kind of processes to which Finch referred. Service said that she didn't think "drugs and pharmaceutical" covered medical devices.

Discussion followed about the production of pharmaceutical. Sherman asked what the problem was with drug manufacturing -- was it toxicity?

Pizzo replied that most drugs are not toxic but production processes may have toxic impacts, such as the extraction process.

Bonnell said there was already a definition of toxic substances which should protect the public safety. Service said she agreed with the changes to the definition of metal fabrication but did not want to change the drugs and pharmaceutical definition. She agreed to split the amendment to take each subject separately.

Kiesling said they would vote on the metal fabrication issue first. Service read the amended definition to be added to the list of conditional uses, "metal fabrication, other than light manufacturing as defined herein." Swain asked for an overview of the IG areas on the zoning map. Mueller pointed out those areas on the map. Swain asked for a description of the light industrial and general industrial zones. Mueller gave a brief description. Swain asked what the economic development community thought of this. Mueller said they didn't want any conditional uses, but were told that this was only to screen the most problematic industries.

Amendment #21 (a) received a roll call vote of Ayes;9, Nays:0.

Service then proposed the second part of her amendment, adding "the manufacturing of drugs and pharmaceutical" to the list of conditional uses.

Sherman asked what size had to do with it. Bonnell moved to change the wording to "the manufacturing and processing of drugs and pharmaceutical, other than light manufacturing as defined herein". It was seconded. Mueller said this improved the situation.

Gene Fritz asked about odors, saying living next to a pharmaceutical manufacturer could be odorous. He was told it was listed. Service read the definition of light manufacturing.

Bill Finch said Bonnell's amendment may cover the situation.

Marc Cornett asked them to remember that there are people involved in each manufacturing decision. Service asked the representative of the Environmental Commission for his reaction; he said it seemed reasonable.

Amendment #21 (b) received a roll call vote of Ayes:9, Nays:0

Amendment #21 as a whole received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Amendment #23 be considered: Hopkins said in this accessory apartment definition he was looking for a solution to the affordable housing problem. This will have a minimal affect on neighborhoods,

AMENDMENT #23
ACCESSORY APT.

as the occupancy is limited to the underlying zone. Mueller said that this evolved from discussions at the Plan Commission level about family apartment accommodations. He explained the current code provision for family occupancy and said that in our student-driven market it was a concern that accessory apartments would become student rentals. He said that the term "owner-occupied home" raised legal questions in his mind, and he wondered if there was a legal basis for setting up this distinction. This also may have the effect of setting up duplexes in single family neighborhoods.

Service said that this proposal got around some of the problems brought up in the Plan Commission discussions. One question is if the owner sells the house, will the next owner be able to rent the accessory unit? She said that the proposal has enormous potential for affordable housing, as well as helping families care for elderly relatives. She said she thought it was a good proposal, although it has potential for abuse.

Sherman asked about the current code -- if he was allowed to have a student live in rooms in his house in trade for cooking and landscaping. Mueller said that although it was no longer a family, it meets the maximum limit of three adults. Sherman asked if he could rent those rooms. Mueller said yes. Sherman asked what the difference was in this proposal. Mueller said that this proposal creates a separate full apartment, not just rooms. Mueller asked about the normal occupancy provision: does that mean per unit or for the whole house.

Hopkins said it was for the whole house. Kiesling asked what the difference was between someone having a hot plate, refrigerator, etc. in their room and this proposal. Mueller said it was the difference between having a single housekeeping unit with shared areas, and having two separate living units. The presence of a second kitchen is one criteria of a separate unit, Mueller replied.

Sherman clarified that this proposal makes an apartment within a house. What happens when the house is sold? Is it two units where you can have three unrelated adults in each, or is it just one unit?

Hopkins said it is only one unit total. Sherman asked about selling it. Mueller said that conditional use approval is given to the owner, not the structure. The apartment can be disassembled or someone with a family member needing the apartment could buy it and live there. If an investor bought it for a rental, it would have to be reconverted back to one living unit. There could also be a recordable commitment attached to the deed.

Swain asked Hopkins about the tax question he mentioned in his introduction; Hopkins said he speculated that there would be a higher tax assessment. Mueller asked why they did not specify this to be for family members only. Hopkins said that some people want people living with them who may not be family.

Bill Sturbaum spoke against the amendment, saying it would have a bad effect on core neighborhoods and is against the "conserve community character" principle of the Plan. Putting in an apartment makes the house a duplex and when sold, makes it an investment possibility and prices it out of the family market. He said there were many houses in his neighborhood that were already over occupied and nothing could be done about it now.

Marc Cornett said this would contribute to the Plan's compact urban form principle.

Kiesling asked if this proposal applied in core neighborhoods; Mueller replied that

they can limit it to certain zones, but as now it applies everywhere. One thing they could do would be to limit it to certain zones or prohibit it in core neighborhoods.

Bonnell said he supported it and doesn't think it would increase density and besides, it requires the owner to live there.

Cole said she would vote against it because it would raise the price of housing because of having another apartment. Also, most older homes have an integrity of design and chopping them up in the interior will hurt that.

Swain agreed with Cole and Sturbaum and said if it passed, he would like to see specific zones and also the recordable commitment included.

Sherman asked if he owned a house alone, could he do two of these apartments? He said he could not support this amendment.

Kiesling said she had a problem with nonspecific zones and it needs a provision for when the home is sold. Discussion followed about possible changes to this amendment. Kiesling suggested that it be turned back to staff to work out the details better.

Amendment #23 received a roll call vote of Ayes:5, Nays: (Sherman, Swain, Cole, Kiesling).

The meeting was then continued until March 8, 1995. (Recessed @ 10:45 pm)