

March 8, 1995

Present at the start of the meeting: Sherman, Service, Pizzo, Kiesling, Hopkins, White. Arriving later: Swain, Cole, Bonnell.

MARCH 8, 1995
MEETING CONTINUES

It was moved, seconded and approved by a voice vote that the following appointments be made:

APPOINTMENTS TO
BOARDS &
CCMMISSIONS

Traffic Commission:
Reappoint: Doug Porter
Appoint: Christine Glaser
Buff Brown

Environmental Commission:
Reappoint: Jim Capshew
Appoint: Keith Argabright
Marc Lame

Martin Luther King Birthday Commission:
Appoint: Dorie Yorgen

Chapter 5 continued.

It was moved and seconded that Amendment #26 be considered: Hopkins explained that it was agreed in earlier discussions to create this position of Hearing Officer and this amendment provides for an appeal procedure to any decision by the Hearing Officer. Mueller said that it paralleled the state statute. Sherman read a statement saying he thought the Council was starting to tamper with fundamentals of the Zoning Ordinance, specifically the provision regarding the number of unrelated adults [in rental units] and policies involving the right to have separate apartments within houses, thus potentially changing the concept of single family residencies. There has been little discussion, he said, and little public input. These are in contradiction to important goals of the Master Plan and to sensible and important zoning principles. Sherman asked about the current timetable for appeals to Hearing Officer decisions and Mueller said that there was none now because there was no Hearing Officer, but that the 14 days specified by the proposal was what the statute specified. Sherman said then it was a reasonable time period.

It was determined that this motion was already passed on the first night of meeting, so the Council moved on to Amendment 10.

Hopkins wanted to respond to the comments of Sherman. He said that the concepts were all talked about at some length. Hopkins said that interpretations of the Comprehensive Plan may differ and he hoped they could agree.

Since Bonnell was not there, Kiesling asked for another Council member to introduce amendment 10. It was decided to wait until the Council member who had written the amendment arrived.

It was moved and seconded that Amendment #27 be considered: Hopkins forwarded this amendment to add a commitment "to protect environmental quality" to the section "Purpose of Site Plan Review" 20.05.08.01. Assistant Planning Director McClure said staff had no problem.

AMENDMENT # 27
PROTECT ENVIRON-
MENTAL QUALITY

Amendment #27 received a roll call vote of Ayes:6, Nays:0

It was moved and seconded that Amendment #19 be considered: Sherman said this amendment is to achieve the goal of having more site plan decisions made at the staff level rather than at Planning Commission level, and this strengthens the language of the review process.

AMENDMENT # 19
STAFF LEVEL
DECISION
AUTHORITY

Mueller said that he concurred with this amendment, but the words "important planning implications" were not specific enough. He explained about the provisions of a, b, and c, of the section regarding SF neighborhoods, commercial or industrial projects, and developments requiring new streets.

Service asked what was different about this provision from the current practice. Sherman said he envisioned this as a method to generate discussion of the concept of staff responsibility for site plan review.

Bill Finch, representing CFC, said more of the routine site plan decisions need to be at the staff level, and the proposed language indicates the intent.

Steve Smith said he shared some concerns, and said that wording like this could be substituted for the wording of Number 2.

Bill Sturbaum said that he understood the desire to speed the development process, but there were a number of amendments to the zoning ordinance which in no way relates to the Growth Policies Plan. He said the more the development process is speeded up, the more you eliminate public input. This will exclude the public.

Hopkins said he was also concerned about the phrase "important planning implications" and suggested changing the word important to unusual. He said that he liked the language in part two, because a big neighborhood complaint was a developer buying two lots and aggregating them, and building a duplex on them; he wanted that language kept.

Service said she did not approve of this, because it let the staff and developer agree to ignore the implications of a proposal which may have a significant impact on a core area, or affect the environment.

Kiesling said that this document needs to deal with future staffing and administrations with different objectives, and she favored caution.

Sherman said he liked Hopkins' word "unusual". He said to remember this is site plan approval and it is more a matter of meeting regulations rather than discretionary judgment.

Swain said this was a 20 year horizon with this document, and some of the amendments are too topical.

Pizzo said there is a conflict between speeding up the process and allowing proper citizen input, but he did not see the problem with this.

Bonnell asked staff about PUD hearings; what hearings do those plans get? Mueller reviewed the PUD hearing process. This proposal does not affect the PUD process at all. Bonnell asked if this would only affect areas of more than one lot; Mueller said this had to be something other than a SF house. Bonnell asked about other

circumstances which would apply. Bernans pointed out that problems may occur in areas where one zone abuts another.

Cole said that it is important that neighbors have an opportunity to comment on proposals.

Amendment #19 received a roll call vote of Ayes:4, Nays:5 (Service, Swain Kiesling, Cole, Hopkins). The amendment failed.

It was moved and seconded that Amendment # 28 be considered: Bonnell explained that this amendment removes the necessity of the Plan Commission and BZA to both hear petitions for use variances. He said this was not intended to shortcut the rezoning process. Mueller said usually use variances are regarded as poor practice in the planning profession around the country. State law mandated that BZA hear petitions for use variances. The problem is there is no real limit on what can be allowed as a use variance, and BZA members, who did not participate in the Master Plan process, can allow virtually any use as a variance if they feel the criteria has been met. There is no other instance in city government where three people could have such a profound effect on land use. He gave some examples of previous use variances given by the BZA which went against neighborhood plans.

AMENDMENT # 28
(TABLED)

Mueller went on to list items they may or may not feel comfortable with for Plan Commission review as use variances: a SF home in any zone; maybe duplexes; non-residential uses in residential zones. He said they averaged 1-1.5 use variances per month, and most were small. He said if they excluded SF and duplex requests from Plan Commission review, a commercial use in a non-residential zone, and any non-residential use in a non-residential zone, under some acreage threshold.

Kiesling asked Service about the discussion at Plan Commission level. Service said it wasn't given much discussion. She said she wasn't sure about the impact of this and thought it should be tabled.

Sherman said there was discussion at the Plan Commission level, but there were quite a few use variances he was not comfortable with having only one review. Some can be changes of zoning plans which were done at the Plan Commission and Council level. There are also some use variances of an insignificant nature, and he would support having a list of exceptions to Plan Commission review. To that effect, he proposed tabling this amendment so staff could make that list.

Tim Sutherlin encouraged the Council to table this, and asked about the BZA's authority. Mueller said they are the final decision-maker on these issues and they could grant a variance on any provision of the zoning ordinance. He asked if the Council could reverse the BZA's decision; Mueller said no.

Jim Bohrer was in favor of the amendment and commented on the BZA's ability to judge these cases.

Norm Deckard was in favor of the amendment.

Tim Mayer said he was a former BZA member, and his concern was that the BZA was a very limited forum and

significant issues were given only five minutes for debate.

Steve Smith asked about the membership of the BZA, and pointed out that two of them were Plan Commission members.

Bill Sturbaum, who also had served on the BZA, said he was not given significant guidance to make decisions. He said some use variances went counter to the Growth Policies Plan.

Susan Fernandes said that use variances may not be used now, but could be a significant loophole. When word gets out they are available, they could come in greater number. By nature, the BZA does not deal with the amount of planning law and implications that the Plan Commission does. Also if a property owner does not like a BZA decision, it can only be challenged in court with some expense.

Chris Sturbaum said he challenged the underlying assumption to the right to a quick variance process; he said we should take use variances seriously.

Bill Finch said this added a layer of hearings not required by state law and thinks there is a legal problem with this.

Kiesling said she would like to stop discussion here if the proposal was to be tabled. Service said she remembered that there was a lot of discussion at the Plan Commission, and the problem was that people did not understand the differences between types of variances; some use variances could have as much impact as a rezone. Some deserve a lot of public discussion.

Bonnell made a motion to table this amendment and read the criteria for obtaining a rezone, and said it was not as easy to get a use variance. He then read the criteria for a use variance. The motion was seconded to table.

The motion to table Amendment #18 received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Amendment #10 be considered: AMENDMENT # 10

Bonnell said this amendment requiring a written copy of a BZA decision be available within five working days was very similar to another amendment adopted earlier. He agreed with the changes made on the earlier amendment and would incorporate them in this one. WRITTEN BZA DECISION

Amendment #10 received a roll call vote of Ayes:9, Nays:0. Discussion followed about whether the five days were working days or five consecutive days.

It was moved and seconded that Amendment # 30 be considered: AMENDMEN # 30

Cole said that this was to increase the minimum size of a Planned Unit Development from one acre to three acres. Mueller said the intent of the PUD process was to allow maximum flexibility in development and this one acre minimum was part of that thinking. He said that the approval of a PUD was entirely discretionary and he did not want to limit that capability. A PUD usually was used to gain public amenities such as landscaping, compatibility etc. He said many small sites would be good PUD candidates INCREASE PUD

and gave the example of Hillside and Woodlawn. A quarter block of one acre could qualify for PUD under the proposed zoning ordinance. He said this amendment would curtail their ability to use the PUD flexibility.

Kiesling asked if this applied downtown and was told that the downtown opportunity area was excepted from this three acre minimum.

Hopkins pointed out that a PUD was also a means for giving the developer more concessions than would normally be available. There needs to be a balance between the public interest and development. Bonnell said he had an amendment following allowing as a PUD two adjacent lots or one acre anywhere. He asked how many hearings were possible with a PUD; Mueller said four or possibly five. Discussion followed on the discretionary approval process.

Cole pointed out that the present ordinance requires five acres for a PUD and the proposed ordinance cuts that down to one acre.

Sherman asked how the past PUDs smaller than five acres were granted; Mueller said the Plan Commission has power to grant variances to PUD requirements, but that power is not in the new ordinance.

Service said that the argument that this is mainly a method to gain public amenities may be wrong: the give and take may not be of equal value, in that what is gained for the public may not outweigh the harm caused by the giving certain concessions to the developer.

Bill Sturbaum cited the "conserve community character" of the Growth Policies Plan saying to maintain the residential character of older neighborhoods and discourage the conversion of single family households. The PUD provisions were completely rewritten from one draft to the next and were very liberalized with little opportunity for Plan Commission scrutiny. He was concerned with protection of the core neighborhoods and he argued that the present five acre minimum causes no hardship. He illustrated what could be developed on a typical parcel, i.e. covering 65% of the lot and building 40 feet high and asked how that contributed to conserving community character in the core neighborhoods. He also pointed out that existing buildings could be razed to create an aggregation of lots, especially if owners let buildings deteriorate.

Jeff Brantley spoke in favor, saying that this would encourage quality development and Council would still have control. The Plan Commission voted this amendment down.

Tim Mayer said there was a problem with enforcing the developer's commitments, such as landscaping and cited an example when he was on the Plan Commission.

Mike Probst did not favor the amendment and gave an example of a PUD project which worked on a little more than one acre.

Gene Fritz supported the amendment saying as a former president of a zoning board, he felt that one acre lots defeated a purpose of a PUD to have more green space.

Susan Fernandes pointed out that the proposed PUD chapter explicitly gave variances to every provision of the zoning ordinance. She said the only standards for PUDs in this section were the minimum lot size, which was too small, and the lot coverage percentage; there are no other standards. This lack of standards made a wide open situation.

Chris Sturbaum saw high density development coming to core neighborhoods and didn't favor it.

Marie Webster spoke in favor of the amendment.

Marc Cornett said the PUD review section said it should reflect the Comprehensive Plan in the neighborhood and be compatible with surroundings. He said there was no way to judge these two factors at this time. Developers want both predictability and flexibility and criteria are needed to make decisions.

Tim Sutherlin said that issues of compatibility and enforcement were ignored in the past in PUDs. He pointed out that the Cook Tower PUD had one hearing for both outline plan and development plan, so the number of hearings possible could vary widely. He said this amendment is arbitrary and does not provide the protection needed and more restrictions are needed.

Jim Bohrer said to remember PUDs were rezones and were entirely discretionary. It is a good tool to use and they shouldn't be afraid of it.

Sherman said he could not support this without a variance process. He thought that the PUD is a good tool with three acres.

Service said that Brantley's argument that this would allow quality infill in the core areas, and asked how one could evaluate quality without a compatibility review process. Most of the infill in core areas has been anything but quality.

Bonnell said he was against this amendment and he has confidence in future bodies making the right choice.

Hopkins said that he agreed that a PUD was an "open variance" which is rarely overturned and one acre is too small.

White said a PUD gives the maximum flexibility to decision-making bodies and they do not need to be approved.

Amendment # 30 received a roll call vote of Ayes:5, Nays: 4(White, Bonnell, Sherman, and Pizzo).

Kiesling asked for Amendment 13 to be introduced; Bonnell, the sponsor, said he wanted to withdraw that amendment. It was withdrawn.

AMENDMENT #13
WITHDRAWN

It was moved and seconded that Amendment #33 be considered: Mueller introduced the PUD Opportunity Overlay in the Watershed area and explained why it deviated from the Growth Policies Plan. Mueller spoke at length regarding the amendment and the policy as outlined in the Growth Policy Plan.

AMENDMENT # 33
PUD OVERLAY
WATERSHED

Pizzo said there were already provisions to make exceptions and asked why there needed to be an exception in the ordinance.

Sherman said the Council wanted to have conditions set for watershed development, and the committee spent hours developing a comprehensive plan for the whole area.

Pizzo asked why pick out these four areas. Service said this was not supported by the Environmental Commission members or herself and this is not only for the Gentry proposal but three other parcels as well. She said she favored sticking with the watershed line as a very defensible unarbitrary boundary. The master plan had sound principles and they should stick with them.

Hopkins said he thought it was a policy question and wondered why maps were included. Mueller said the reason for the maps was to exclude all other areas from the ability to do PUDs in the watershed.

Pizzo asked what would happen if someone found a parcel which met all the criteria of these four parcels and asked to be able to do a PUD? Mueller said it would be against the code and the code would need to be amended.

Hopkins said this gives clear notice that the other portion of the watershed is off limits for dense development. Hopkins asked about variances; Mueller said that variances from any part of the code could be given, but the staff would not support them in the watershed.

Ben Beard said the main Council objection to his previous Gentry proposal was that it was ad hoc zoning and that a public process was needed. He said the issue has been discussed at great length and he pointed out the amount of time the committee spent on this. He was surprised with this amendment. He pointed out that the greatest negative impact to the lake was from raw sewage, and presented an overlay showing the overall impact of their development on the whole watershed. He noted the number of acres in the entire watershed, in Monroe County, and in the City's jurisdiction. The two parcels under consideration in the Monroe watershed are about 140 acres. He said that the impact of this property is minimal. He talked about the master plan and the fact that the implementation measures are called suggestions. He also discussed the per acre density implications in the watershed policy, saying the biggest threat to the water supply is raw sewage, and septic systems will be prone to that. He said the cost of sewer was the same regardless of housing density and splitting the cost among more units made housing more affordable. That is true of other issues such as drainage. There are other safeguards besides sewers provided by the overlay such as road access, flat topography, etc. He presented studies and documents from engineering firms, Health Department statements and others about septics vs sewers and said he was trying to develop his property in a responsible manner. He presented reports from WW Engineering, the company who issued a report saying that development will not hurt the lake. The usage they are proposing is a better use than the current use of septics, etc running down to the lake. He referred to numerous reports supporting his position and wondered what more he could do to be a responsible developer and not harm the lake.

Tom Micuda, representing the Environmental Commission, said that the committee goals were to see the watershed divide for Monroe and Griffy in half acre lot boundaries. It was hard to decide if the committee would hold their position or if they wanted to be involved in creating the

policy here before the council, this evening. The later was decided. Soil criteria will be discussed via another amendment, as well as the mapping process to support those concerns.

Slope criteria (18%) for the entire watershed is also an upcoming amendment. So from the commissions point of view, they too are waiting to see just how this all develops. Micuda continued by saying that the creation of these 4 PUD areas and the higher density for certain areas of the watershed and then the watershed overlay policy would be addressed in Chapter 7.

Rick Zabriskie said this is not a one developer issue, the Plan Commission and council has had extensive hearings on this proposal. The Environmental Commission drew up another list of considerations and a work shop followed; this has gone on through slope presentation, amendments to be considered and on and on for in depth discussion. He urged the council to leave the ordinance in place with strong, good, well thought out policies.

Steve Smith urged the council to open this up for continued discussion before it is going to be changed by the amendment process. This is an environmentally sensitive community. This is a big area, 5 or 6 sq miles and we can't just say no to development, we have to look at it seriously. State Road 446 is a good road and there isn't a better place to put development. He noted that the city is spending millions of dollars on water and sewer and this is a way to leverage existing infrastructure in terms of utilities and in roads.

Pam Lohman spoke in favor of the amendment because of concern about the watershed line and the water supply. The line should be clear and well defined where the RE 2.5 and the watershed overlay lines apply. There should not be any exceptions built into the ordinance. She read excerpts from the Growth Policy Plan supporting environmentally sensitive areas remaining undeveloped. If exceptions are made, it should be on a case by case basis taking into consideration, the soil, slope and proximity to the watershed boundaries.

Eugene Fritz was in favor of the one unit per 2.5 acres because we are blessed with a very adequate water supply at present. As the community grows, it behooves us to protect our watershed as strong as possible. To allow development, sewers are not necessarily the answer. People must learn to protect this resource.

Russ Skiba said that Mueller says that this deviation from the growth policy plan represented by the watershed opportunity overlay if left in place will not be the only deviation and he may be right. He said he would like to see fewer deviations from the current plan. Over 80% of the general population supported the protection of the watershed as well as 55% of the homebuilders surveyed. There is a pretty big difference in one unit/2.5 ac and 2.5 units/acre. He also stressed a firm dividing line between areas. But he suggested that maybe we have the process backwards, maybe we should talk about the area as an amendment and bring it back in for a future full debate.

Tom Baker supported the amendment and was concerned about the current state of Lake Griffy and hoped that we don't allow Lake Monroe to reach that point.

Marie Webster was also concerned about Lake Griffy and since we use over 1 million gallons of water everyday, we need to be even more concerned about future availability.

Patty Werner said the original strong support of the Growth Policy Plan by the Environmental Commission was the strong consideration given to watershed areas. The Task Force was instrumental in developing criteria that would be acceptable and some of those have been eliminated in this overlay and now the Commission is negotiating and compromising again. It is difficult to accept a compromise and then find it is not supported.

Susan Fernandes said the county Task Force developed some of the tightest septic regulations in the state for watersheds. Specifically Lake Monroe is our only resource to accommodate our future. Farmers, foresters as well as developers are thinking watershed as well and no one is looking at just developers to allay their impact. Other are doing so as well. It isn't just raw sewage that people are concerned about. Roadways carry heavy metals to the water supply and other impervious surfaces speed up the erosion. If we don't have water, we don't have a future.

Jin Boher did not think major changes in the zoning ordinance should be made this late in the process without all parties having the opportunity for input. Hours and hours have been spent crafting this document. Not every principle of the master plan can always be implemented and a balancing process must take place. He spoke at length about various developments, the current master plan document and how to make it less environmentally threatening, to be able to leverage public capital, utilize compact urban form and use the overlays effectively. He urged the council to vote this amendment down.

Pizzo said this issue is too important to resolve this evening and should be discussed by the entire community and there are other amendments that have to do with this same issue.

It was moved and seconded that Amendment #33 be tabled. The motion to table received a roll call vote of Ayes:3 (Pizzo, Kiesling, Cole), Nays:6. The motion was defeated.

Sherman said that some people who have talked tonight think we should consider this overlay issue on a case by case basis and the very project that came before us was sent back because we said we should not be doing it on a case by case basis. We can't have it both ways. And as far as more discussion, there have been hours of meetings and the public was invited to participate and more discussion is not going to change the fact that this is a hard decision. The planning process is complex and many of the requirements are statutory in nature and people who complain about the number of meetings must understand this. He thought a lot of people felt "jerked around", Ben Beard, the Environmental Commission, as well as councilmembers who have heard different things at every step of the way.

Service also said that this issue of the watershed has been discussed for years and new information is coming forward all the time and people do have the right to

bring issues back for discussion. She asked about Compact Urban Form and wondered why this seems to have become the primary principle. It is important, but it isn't the only goal. She was concerned about the premise that tearing up ground, putting down impervious surfaces and chemicals on the ground will have less effect on the environment than leaving a few cow droppings.

Mueller highlighted the overlay districts, the boundary lines and guidance for PUD development shown in green on the map. A small area off Dunn Street, a triangle near University School, a small area near Knightridge Apartments and the Gentry Estates petition. As currently written (without this amendment), the balance of the watershed is not eligible for PUD, it remains RE2.5. Only the green areas can be considered for a PUD project. The questions remains, are we going to consider PUD in any of the RE2.5 zone? or is the whole area opened up for case by case consideration. This really isn't addressed in this amendment.

Hopkins thought this has gone on long enough and said he would vote against the amendment.

White agreed with Hopkins and every side has been heard. Compromises have been reached and the issue thoroughly discussed.

Bonnell and Tom Micuda talked about soil types, environmental enforcement and 18% slope construction concerns that will all be discussed with the appropriate amendment.

Amendment #33 received a roll call vote of Ayes:4 (Pizzo, Kiesling, Service, Cole), Nays:5. The motion failed.

The meeting was recessed until March 20, 1995 at 7:00 P.M.

(Recessed @ 11:40 pm)