



PLANNING COMMISSION

Department of Planning and Development Services P.O. Box 27210 Tucson, Arizona 85726-7210

Approved by Planning Commission
On March 3, 2010

Date of Meeting: February 3, 2010

The meeting of the City of Tucson Planning Commission was called to order by Rick Lavaty, Chair, on Wednesday, February 3, 2010, at 7:00 p.m., in the Mayor and Council Chambers, City Hall, 255 W. Alameda Street, Tucson, Arizona. Those present and absent were:

1. ROLL CALL

Present:

Rick Lavaty, Chair	Member at Large, Ward 1
Shannon McBride-Olson, Vice Chair	Member, Ward 2
Catherine Applegate Rex,	Member at Large, Ward 5
Brad Holland,	Member, Ward 6
Joseph Maher, Jr.	Member at Large, Ward 6
Mark Mayer	Member, Ward 5 (Arrived at 7:03 p.m.)
William Podolsky	Member at Large, Ward 4
Thomas Sayler-Brown	Member, Mayor's Office
Daniel J. Williams	Member, Ward 1
Craig Wissler	Member, Ward 3

Absent: None

Staff Members Present:

Ernie Duarte, Planning and Development Services, Director
Jim Mazzocco, Planning and Development Services, Planning Administrator
Tom McMahon, Principal Assistant City Attorney
Adam Smith, Planning and Development Services, Principal Planner
Jonathan Mabry, Community Services, Historic Preservation Principal Planner
Erin Morris, Planning and Development Services, Project Coordinator
Ceci Sotomayor, City Clerk's Office, Secretary

2. MINUTES FOR APPROVAL: JANUARY 6, 2010

Minutes from the January 6, 2010 meeting were not available.

3. PUBLIC HEARING – CHARTER SCHOOLS IN EXISTING RESIDENCES – LUC TEXT AMENDMENT

Adam Smith, Planning and Development Services Principal Planner made the staff presentation. He said the proposed amendment prohibited single family residence homes on less than one acre from being occupied as/or converted into a charter school.

Mr. Smith explained that on October 1, 2009, the Arizona Revised Statutes were revised to conditionally exempt charter schools from local zoning regulations, the same as schools located within public school districts. The Arizona Revised Statutes did permit local jurisdictions to restrict charter schools from operating in existing single family residences that were located on property less than an acre. Mr. Smith said the amendment exemplified the one exemption in the State code.

Mr. Smith also explained the amendment would go into the performance criteria for educational uses in the City of Tucson's *Land Use Code*. Applicants could request a modification from the criteria through the special exemption process which would require a public hearing, public notice to surrounding property owners, and determination by the Zoning Examiner.

Mr. Smith added that staff heard from three people in response ~~from~~ to the Notice of Public Hearing. One was in support of the amendment and two were in opposition. The letter of support stated that the proposed amendment would keep up the appearance and livability throughout the City. The two letters of opposition were both from Civano neighbors opposing the amendment, because it would affect the proximity and accessibility of a school to the students and the parents.

Mr. Smith explained that applicants could also propose a modification to the criteria that would lower the current requirement from five acres to one acre. He said Civano was a special exception because it was located within a Planned Area Development that did not require a minimum site area for schools.

Commissioner Mayer said he felt the Commissioners were thrown a curve and although there may be a variety of perspectives and opinions by the Commissioners, the issue of the special exception was recently presented with the agenda material. He added when Legislature adopts legislation that states a municipality prohibits something, it was the strongest form of relationship. To say that this was putting that into effect when a special exception process would allow for that use was not a prohibition. He said the term was about allowing something and not prohibiting it.

Mr. Smith said it was largely due to where that particular provision was located in the Code. Because it was located in the performance criteria with the other criteria pertaining to educational uses, the Code very clearly stated that a variance was not permitted and instead would go through the special exception process which was

something that currently existed in the Code. He said he mentioned the special exception process because he heard there were concerns that there would not be flexibility to the standard whatsoever and he wanted to highlight that point.

Commissioner Mayer said it was not surprising that Commissioners Rex and Maher had different views on that subject, but this could have been written to be a prohibition. He said it was not written the way the Commissioners were lead to believe. The language said “shall not be allowed,” but it conflicted with the language that said it would be allowed as a special exception. If it was going to be allowed, and that was what the majority of the Commissioners would recommend to Mayor and Council, that would be fine and maybe there would be a majority to recommend otherwise. But to call it a prohibition when it obviously was not a prohibition was a change in what was discussed for all the months this item was being considered.

Commissioner Rex advised that State law read that jurisdictions may adopt and did not say they had to adopt the prohibition. It also said it was up to the local jurisdiction as to how they wanted to formulate that adoption.

Commissioner Williams asked if this was not adopted, what would happen next. He asked Mr. Smith to explain that scenario.

Mr. Smith explained if not adopted, a charter school could potentially locate on any site of any size since they would now be exempt from any local regulations.

Commissioner Williams asked if the school owned or leased the property, would the statement still apply.

Mr. Smith said they were conditionally exempted. The way this was interpreted by the City was that charter schools had to own the property and had to be using it as a charter school. They could not own the property, lease it out to a different form of business and get that same exemption. It was also the same interpretation used in public schools.

Commissioner Williams asked, if this exemption did not pass, and there would not be any restrictions, could a charter school come in on any size lot with any amount of students and that would be perfectly fine.

Mr. Smith said that was correct.

Mr. Mayer said there was already a provision that said schools had to be on a minimum of five acres. He asked if that would be effective except that it would only apply as a minimum of one acre in that regard.

Mr. Smith said, because of the exemption that the State allowed for public schools and now for charter schools, the performance criteria currently in the code would only really apply to private schools.

Mr. Mayer said his point was that it did not apply to traditional public schools, and under the statute, it would not apply to charter schools unless they were minimum of one acre.

Mr. Smith agreed.

Mr. Mayer asked if it would not be operative in relationship to Commissioner Williams' question. If there were a minimum of five acres and State immunity applied to anything over one acre, the one-acre would then hold.

Mr. Smith agreed that would be true if adopted by Mayor and Council

Mr. Mayer said that he was saying this with the scenario of doing nothing.

Mr. Williams asked the City Attorney for a legal opinion.

Tom McMahon, Principal Assistant City Attorney, said he understood correctly what Commissioner Mayer was asking. If nothing were to happen, and the amendment would not be adopted, would the five-acre provision still stand. His answer was that it would not, and the new legislation would state that charter schools would only be subject to zoning regulations, the same as a public school was, and they would be exempt from such provision. That was the intent of initiating the exception allowed by the State Legislature, for the one-acre exception.

Commissioner Maher said she was curious how many residences were presently charter schools.

Mr. Smith said he did not know the answer to that question, but anecdotally the Civano neighborhood cited the Civano Community School as one charter school that was located in a residence until they could find a more permanent location.

Jim Mazzocco, Planning and Development Services Planning Administrator added that there would not be any examples of residences presently serving as charter schools because they would have come under the five-acre rule up to this point.

Commissioner Holland said there were discussions in Ward 6 in the last three years regarding a charter schools that ~~were~~ was starting out ~~who were~~ that was not able to come up with the three million dollars to buy the appropriate amount of land to build a charter school. They had discussions with the neighborhood and found they could buy three to four small homes situated throughout the neighborhood and start a fourth, fifth and sixth grade classes. Eventually they could expand to have green bridges built between the homes to create a charter school and metaphorically do the whole thing about how neighborhoods were connected. He said he was in support of the prohibition, but was hoping there would be an escape valve for supportive neighborhoods and creative schools to work something out within the neighborhoods.

Commissioner Mayer said he had another concern in that regard. The Legislation basically gave the State immunity to charter schools, even if they were operated by private corporations. The only exception to that was if a municipality wanted to prohibit the charter schools. The question would then come up, and if that was the only option given, what would happen if an argument was raised that the charter school was not prohibited, it was allowed by special exception, and they were being regulated under a special exception. Since the charter school was being regulated by a special exception and was not a prohibition, it would therefore fall under the State immunity. The only thing that could be done, would be to prohibit or not prohibit.

Mr. Mazzocco said he did not think it was an either /or in the phrase, you “may prohibit” them. One could go as far as prohibit them, but without this provision in the ordinance, they would be allowed. One could go a half step further and say they were prohibited without a special exception and that would still be in the ~~whole~~ realm of “may” in permissiveness. ~~to allow to trade a law on this~~. One could create a law as far as the extent of prohibiting them or a lesser version of that where one would allow them in certain circumstances.

Commissioner Mayer said maybe he could clarify his statement, particularly the comment made by Commissioner Rex. He reiterated his question.

Chair Rex asked if the City Attorney’s perspective was the same as Mr. Mazzocco regarding “may” meant that one could prohibit or that the language as it stood was appropriate and special exemptions were acceptable. She said in real life, a charter school that would want to go into a house on one acre, would not go through the rigamorable of a special exception. They would go some place else, so the final effect was prohibiting. The question would then be legally if the City was on the right track on the idea of how the term “may” was treated.

Mr. McMahon ~~Smith~~ said, he was confident that the amendment was well within the intent of the statute. However, in response to Mr. Mayer’s point, he said he could not speculate how a judge might possibly rule in the future. in the drafting, they were confident and consistent with the intent of the statute and that was what the concern was earlier. The intent of the statue was to absolutely exclude and allow the City to prohibit. He added the City was still well within the extent in the statute with what was being done. He asked whether there could be a decision such as Commissioner Mayer had described. He said after his long years in practice, he would just refuse to speculate. There could be any decision by a judge one way or another. He said he was confident in the drafting of the amendment that it was well within the intent of the statutes.

Chair Lavaty opened the public hearing. He said he did not have speaker cards and asked if there was anyone in the audience wishing to be heard. Hearing none, he asked for a motion to close the public hearing.

It was moved by Commissioner Rex, duly seconded, and carried by a voice vote of 10 to 0 to close the public hearing.

Commissioner Mayer said regarding the charter school size, who would really go through a special exception process. However, the issue could potentially be raised that there was not authority to regulate through a special exception process and again, who would litigate that issue over that small ~~of a~~ property. He said they would probably end up where this was represented to be but he still believed there were the kind of problems he previously raised.

Commissioner Holland stated he would like the record to reflect that a determined charter school in a supportive neighborhood could go through the process to make it happen if it was in the best interest of everyone involved.

Motion was made by Commissioner Williams, duly seconded, and passed by a voice vote of 10 to 0 to forward the Charter Schools in Existing Residences – *Land Use Code* Text Amendment to Mayor and Council with approval and include language from the staff report that said the amendment was made in ~~the~~ order to group all similar site related provisions together in one subsection.

4. PUBLIC HEARING – ARCHITECTURAL DOCUMENTATION – LUC TEXT AMENDMENT

Jonathan Mabry, Community Services Department, Historic ~~Principal Planner~~ Preservation Officer, said he would be making the presentation on the Architectural documentation of historic buildings prior to demolition.

Mr. Mabry said the purpose of this *Land Use Code* amendment was to provide a permanent record of the building length of historical significance before it was lost. On January 13, 2009, the Mayor and Council directed staff to prepare this *Land Use Code* Amendment and the first draft was presented to the Planning Commission on November 4, 2009. On December 2, 2009, after input from the Planning Commission, the second draft was presented and the third draft followed with a few minor revisions. The draft was approved and scheduled for this public hearing.

Mr. Mabry said the amendment described the applicability, the type of review required, and the application. The review process described the submittal requirements for Minor Documentation, the submittal requirements for Full Documentation, and the documentation retention. He asked if the Commissioners had any questions.

Chair Lavaty asked if there were any questions from the Commissioners. Hearing none, he opened the public hearing.

- Damien Klinco spoke in support for the amendment.
(Note: speaker was inaudible.)
- Dirk Arnold spoke in support for the amendment.
(Note: speaker was inaudible.)

With no additional speakers, it was moved by Commissioner Mayer, duly seconded, and carried by a voice vote of 10 to 0 to close the public hearing.

Commissioner Rex asked in regard to the Special Development applications for demolition, would this apply if the City or some other governmental agency was demolishing buildings, or would this only apply to private entities.

Mr. Mabry said the City already had an Administrative Directive to document historic buildings that were impacted by City capital improvement projects or public works projects. The City already did this type of documentation. ~~and was~~ this is additional documentation ~~than what was~~ required in the amendment.

Chair Lavaty asked if there was further discussion. Hearing none, he asked for a motion.

It was moved by Commissioner Rex, duly seconded, and carried by a voice vote of 10 to 0 to forward the Architectural Documentation – LUC Text Amendment to Mayor and Council with approval from the Planning Commission

5. OTHER BUSINESS

a. Mayor and Council Update

Ernie Duarte, Planning and Development Services Department (PDSD) Director, announced the following:

- Regarding the Mayor and Council update, staff was directed on January 26, 2010, to review several Land use Code and policy items summarized in a memo in the Commission’s packet. ~~The extent of the Mayor and Council update was contained in item “B” of the discussion of the *Land Use Code* and policy changes in the Planning Commission packet as summarizing direction received from the Mayor and Council from their meeting to be held February 23, 2010.~~

Mr. Duarte explained the five items that the Mayor and Council directed staff to revisit were contained within the *Land Use Code* and specific to infill. He said he wanted to give Commissioners an early look at the items that staff would be working on between now and March 9, 2010.

- Revisit the Parking Reduction Ordinances.
- Revisit the Infill Incentive District to see what issues were within those items that were preventing customers from being able to readily use those provisions contained in the Code that would promote infill.
- Performing an analysis of some of the University’s area plans and what might be done to promote some infill development in those areas.
- Revisit the issue of Certificate of Occupancy and Land Use Code implications on Certificate of Occupancy on existing buildings.

- Revisit the timeframes on various applications contained in the Land Use Code and reformat for consistency and greater ease of use for the customers.
 - The Water / Wastewater report was presented to the governing bodies of the Mayor and Council and the Board of Supervisors a few weeks ago. As a result, Pima County adopted a resolution endorsing the work of the Committee. Mayor and Council did not approve the report and asked for a thirty-day period to study the report and it would return to the Mayor and Council for their consideration at a later date.
- b. **Discussion on Land Use Code and policy changes**
No discussion was held
- c. **Other Planning Commission Items
(Future Agenda Items for Discussion/Assignments)**
 - Grant/Alvernon Area Plan and to provide the conceptual land use map as part of the Commissioners materials.

6. CALL TO THE AUDIENCE

There were no speakers.

7. ADJOURNMENT – 7:30 p.m.