

Planning & Zoning Work Session Minutes

March 5, 2014

He also reminded the Commission that there are several things coming in the near future that other Commissions/Committees have been working on that will eventually be scheduled for a Planning & Zoning Commission meeting.

- ❖ The first item will most likely come from the Development Impact Fee Committee. It is time for the Capital Improvement Projects to be reviewed and the Development Impact Fee Committee is in charge of making recommendations on the CIP. The Commission will need to review their recommendation to insure that the projects are in alignment with the Comprehensive Plan.
 - ❖ The second item is being worked on by the Historic Preservation Commission. Currently there are several historic areas throughout town but only one has a historic district overlay. The Historic Preservation Commission has developed a five year plan that outlines these areas and the plan for developing design guidelines for the districts. The first district on their list would involve the City Park as well as some of the surrounding buildings in that area. As they move forward through the process there will be public hearings that come through the Planning & Zoning Commission for adding the overlay district as well as codifying the design guidelines.
 - ❖ The third item is House Bill 480 coming through the State Legislature that will impact us and require amendments to our code. It roughly states that cities should not have building aesthetic requirements. The City received a draft of the proposed amendment and responded with comments to the AIC. There are a few places in our code that are aesthetic in nature that would likely have to be changed if the bill is approved. For example in the Canyon Rim Overlay and the Neighborhood Commercial Overlay have some aesthetic requirements. Commercial developments that are very close to homes or close to the Canyon Rim have some requirements to reduce impact to the neighbors. For example pitched roofs, maximum sizes of building, required staggering of building walls, which therefore may need to be amended, our response to this change was that the City is opposed. This passed the house by a vote of 50-17 and the senators that are involved in this committee are in support of the bill. If it does the code will have to be amended rather quickly.
- Commissioner Grey asked if it was specific to the pitched roof, fishes because it seems that our requirements are appropriate.
 - Community Development Director Humble explained it is not our code that is causing concern, and he would agree that requirements in our code are appropriate. The concern is with cities that have Design Review Committees that have arbitrary standards.
 - City Attorney Wonderlich stated he spoke with former Twin Falls Mayor Lance Clow about this bill and it is like everyone that has come to the legislature has brought forward bad examples and the one that is driving this change is a Boise parking garage that outraged

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everyone, so the legislature is proposing a fix without taking into account the consequences to places like Twin Falls. Every year there are amendments to the Urban Renewal law because someone has done something somewhere that upset someone enough to go to the legislature, and so the change gets made to fix it for everyone. This is another one of those bills where the legislature doesn't want the same incident to happen again in other places so they are going to make a law to fix things.

- Commissioner Woods agreed that it does impact us as a City. For example when your coming in to Twin on from the north you can't see the Best Buy and Sportmans Warehouse because of design guidelines, but you can see Home Depot. He would hate to see a bunch of sore thumbs all along the Canyon Rim because of this change.
- Commissioner Frank stated that if you look at the names attached to this amendment you will see that their names are attached to other similar type bills and it seems this is the year that they are going to win.
- Community Development Director Humble stated as clarification that there are still some exceptions to this amendment such as signage, lighting, landscaping and screening. Staff will keep the Commission informed of the status of this Bill.

2. Identify upcoming P&Z agenda items.

- Commissioner Frank asked if staff could review the property located at 284 Washington Street North. The ownership of the property is still in limbo but it is beginning to warm up and the landscaping is still an issue.
- Zoning & Development Manager Carraway stated the property is still on hold and staff is watching the property. If there are any changes staff will follow-up.
- Commissioner Frank asked if the next agenda is big.
- Zoning & Development Manager Carraway stated the next agenda has two Special Use Permit items for land uses. One is in an industrial park area and the other is the downtown area.
- Commissioner Frank asked about applicants for the vacant Commission positions.
- Zoning & Development Manager Carraway stated there are two applicants on that would fit each position but she would encourage the Commission to get the word out.
- Community Development Director Humble stated we didn't have any applicants when the posting for the positions originally closed. This second posting ends this Friday. It is always nice to have several to interview so if someone is interested all they have to do is call or send an email.

3. General Commission training

- Zoning & Development Manager Carraway reviewed with the Commission the difference between serving alcohol for onsite in conjunction with restaurant versus operating as a bar. At the last Planning & Zoning Commission there was an approval for a Special Use Permit to serving alcohol for consumption onsite making the alcohol an accessory to the restaurant; and there was a question about the reason or that specification. There is

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quite a different impact to a neighborhood when a bar is in operation serving alcohol and when a restaurant is operating and serving alcohol. The complaints that come in regarding alcohol are not associated with restaurants they are associated with the operation of a bar. Several years ago because of these complaints started adding the suggestion that the Special Use Permit be issued in conjunction with a restaurant. This condition is allowed with the approval of a Special Use Permit. As a reminder a Special Use Permit that addresses land uses that are not outright permitted but can be with special conditions if approved. City Code states that Commission can place conditions of approval on a Special Use Permit to help minimize impacts to the surrounding area.

- Community Development Director Humble stated that when reviewing requests, the Commission has to look at what could be a negative impact to the neighbors. If the condition says the consumption of alcohol onsite is in conjunction with a restaurant it ensures that that is what is requested and that is what is being approved. If that condition is not added and the restaurant goes away the Special Use Permit would still allow for consumption of alcohol onsite because it is attached to the property not the business. The next property owner could move in and operate a bar, which could have additional restrictions and would have different impacts to the surrounding area. If there are things that come up where discussion needs to occur about adding or removing a condition in a meeting ask so that discussion can happen.
- Commissioner Grey stated if the restaurant doesn't do well and they want to change it to a bar that serves alcohol that would be a change in the plan for the business and it would need to come back through the process for that land use change.
- Community Development Director Humble stated exactly it might be that the property doesn't change hands but the business plans change for the operation and that change would have a different impact on the neighbors. Without the condition that basically says you can have onsite alcohol sales with the restaurant, someone can change it to a bar and we can't do anything about it because the Special Use Permit approved consumption of alcohol onsite.
- Commission Woods asked if the business is purchased and the new owner wants to be more of a bar rather than a restaurant and are serving chicken wings with beer.
- City Attorney Wonderlich stated that in the real world the City might not even be aware that the business has changed and calls would come in from people telling us there is something new going on that is causing problems. In the scenario described the food would be secondary to the alcohol and if they are not willing to comply the conditions on the Special Use Permit that the alcohol be secondary to the restaurant then the City would probably have to take the business to court.
- Zoning & Development Manager Carraway explained that changes happen without our knowledge but if this restaurant Special Use Permit is approved with the alcohol as an accessory the Special Use Permit can be reviewed for revocation.
- Community Development Director Humble stated that if this was a change that they wanted to make they could also make a request for different Special Use Permit. Staff

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tries to educate and help people resolve their issues revocation or court would be a last step.

- Zoning & Development Manager Carraway reviewed what a Variance is and the criteria necessary to allow a Variance. She stated generally not many requests come through for Variances however she has recently had several questions about Variances. Communities have different ways of looking at Variances but the City Code is very specific as to the requirements associated with approval of a Variance. Typically the question of a Variance comes up for vacant property and the person wants to do something that is not provided for in the code. If the property is developed and the person wants to do something that is not provided for in the code it would not be a variance, sometimes things have change that the City would recognize as making the property non-conforming which provides for a different type of process. All of the stipulations for approval of a variance are provided in the application process and each item has to be addressed.
- Community Development Director Humble explained that land use is not something you can get a variance for, a variance deals with development standards. If there is something uncommon about a lot that would make it difficult to develop there may be a variance request.
- Commissioner Grey asked if a property owner wants to expand their home into a setback would that be allowed through a variance.
- Zoning & Development Manager Carraway explained that if there is a property that is non-conforming and they want to expand it would not be a variance it would be expansion of a non-conforming building. If it were for a residential expansion of a non-conforming building would go through City Council without a public hearing.
- Community Development Director Humble stated if there is not an existing violation to the setback and the building currently conforms to the code and the expansion would encroach into the setback then a Variance would have to be approved. The Variance conditions would have to be met to be able to move forward with the expansion.
- Planner I Spendlove explained one of the things that the applicant has to prove is that literal interpretation of the Title would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of the Title. Their property would have to have something different imposed on it which typically doesn't happen; most properties in the same area have the same setback and have the same rules to follow.
- Commissioner Grey asked if there are already non-conforming properties along the street and this person were to apply for the expansion then could that be used as an example of why the Variance should be approved.
- Zoning & Development Manager Carraway stated that it could be used however all of the other criteria have to be met in order for the Variance to be approved. A Variance is very difficult to achieve with all of the criteria that needs to be met, if there were a need for multiple variances that would be an indicator that possibly the Code needs to be amended.

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III. UPCOMING PUBLIC MEETINGS (held at the City Council Chambers unless otherwise posted):

1. Public Hearing – Tuesday, **March 11, 2014**

- Commissioner Frank asked if staff knew which avenues were being used to advertise the vacancies on the Commission. He is aware that sometimes interest is an issue for other Commissions as well.
- Community Development Director Humble stated that he is not aware of all the different ways the openings get advertised. He put together a notice for four different boards that totaled approximately nine different positions and currently there are 5 or 6 total responses. He stated he had three interested in the Commission however one did not meet the requirements. This Commission has special bylaws seven have to live in the City Limits, two have to live in the Area of Impact and have to have lived in that location for two years, and those requirements can't be waived by the City Council. Keep in mind this information if you're out promoting the positions and please get the word out. He stated he has sent the information to the Chamber of Commerce, the Builders Association and the Association of Realtors but has not received many applications.

IV. ADJOURN MEETING:

Chairman Frank adjourned the meeting at 1:00 p.m.

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