

URBAN COUNTY COUNCIL
PLANNING COMMITTEE SUMMARY

SEPTEMBER 23, 2008

CM Gorton chaired the meeting, calling it to order at 11:00 am. All committee members were present as well as CM Myers. CM Henson arrived at 1:30 pm.

1. Development Plan Adherence

Kevin Wente, Dept. of Public Works, gave some background information on the packet.

CM Myers asked if there is a way to get to a point that developers have to do certain things they said they would do or can not change certain things once approved without coming back to Council or the Planning Commission for approval. Also, CM Myers asked who holds them accountable.

Chris King, Division of Planning, stated the questions span over many different types of plans and processes. He described the different plans and processes. Mr. King stated developers file a final development plan.

CM Blue asked about developers not following through with what they are supposed to do.

Mr. King stated the first level of enforcement if the private developer does not do what they are suppose to do then it a question of how do we catch them, how do we learn about it and then what steps happen after that. He stated in the case that CM Blues talked about the neighborhood was the best field staff. He stated in Planning they do not have field staff, no inspection and no citation authority. Mr. King stated Division of Engineering and the Division of Building Inspection has some.

CM Myers asked if they can look at a development plan and then hold the developer to that plan.

Dewey Crowe, Building Inspection, stated they may have a preliminary development plan as part of the zone change but not the final development plan. He stated they are not involved in that completely; however, they are at Planning Commission meetings when those issues come through and have input into the development plan process and the zone change request at that point. Mr. Crowe explained the process once the final development plan is completed.

CM Myers asked if they need to look at the preliminary development plan since it can change drastically or should they not look at it all.

Mr. King stated that question has both practical and legal connotations when broken down. He stated years ago, the yard stick was when looking at a zone change look at the worse thing that could happen with that change and see if you could live with that. He stated it is much more common for a neighborhood and developer to negotiate with each other to see if they can find something they are happy with. He stated as a practical matter it somewhat hard for council to ignore the development plan. Mr. King stated once a developer/land owner has the rights to zone then they have rights that come along with that and this is where the legal question comes in.

CM Myers asked if they could put the agreements between neighborhoods and developers into zone restrictions.

Mr. King stated if the restriction in play is very important to the parties and is one that is allowable under conditional zoning restrictions then try to do it through conditional zoning. He stated Council can put that conditional zoning restriction in place and put any change under the purview of the Planning Commission. He stated certain things could be left under the purview of Council.

CM Stinnett asked how do we ensure more protection for citizens.

Mr. King stated legally they could amend the ordinance to not permit any amendments to development plans.

CM Stinnett stated they do not want to say that but are there more check points that could be put in place to protect the neighbors. He asked are the neighborhoods notified when there is a change in the development plan.

Mr. King stated sometimes it depends. He stated there is no requirement for notice of amendment to plan.

CM Stinnett stated someone needs to be notified of the changes.

Mr. King stated notifying people will increase cost of application, increase process time and slow things down.

CM Stinnett stated the cost would not be increasing if they did not change their plan.

Mr. King stated a lot of times the changes occur during the preliminary plan and the final development plan.

CM Gorton passed the chair to CM Blues.

CM Gorton asked what would be the venue of routine discussions held among staff as to flow of process.

Mr. King stated with zone change requests all staff is invited on a monthly basis. He explained the process.

CM Gorton asked who from LFUCG is involved with the technical committee.

Mr. King stated Engineering, Parks, Sanitation, Urban Forester, and Fire.

CM Gorton asked what is the point of the technical committee.

Mr. King stated their charge is to review and have input to issues they have identified with the design.

CM Gorton asked how does the water quality and EPA issue figure into the review of the process.

Mr. King stated Sanitary Sewer and Environmental Quality is involved in the review.

CM Gorton asked how a request can come through the process when the surrounding area has current existing stormwater/sanitary sewer problems.

Mr. King stated the laws say what the standards are that must be met.

CM Gorton stated she finds it very frustrating to be brought a zone change when there are multiple existing problems in the surrounding neighborhoods.

Mr. King stated we can not make the developer fix the cities problem but we can not let them make it worse.

Marwan Rayan, Engineering, stated the rule is that conditions can not be made worse. Mr. Rayan explained the process. He stated he has someone from the New Development section that sits in on the technical meetings.

CM Gorton asked when in the development does Engineering get the developer's engineer report on stormwater run off and sanitary sewer impact.

Mr. Rayan stated they are involved in implementation phase of the development. He stated they have inspectors go out during the building.

CM Gorton asked over the last 5 years in this process what percentage of development plans have been rejected at the technical committee level.

Mr. King stated the technical committee does not have the authority to stop the process. He stated they make recommendations. He stated it happens in every case.

CM Gorton asked if there are minutes of the technical committee.

Mr. King stated no. He stated it is an open meeting and anyone can attend.

CM Gorton asked about the block of time from the technical committee to the subdivision committee review looking at the flowchart.

Mr. King stated the flowchart is a good chart but it is not in its proper context.

CM Gorton asked what they base their certification of the plan on.

Mr. Rayan stated they certify the plat.

CM Gorton asked about the fees in excess of \$20K that have been collected since Spring of 2005 and what they represent.

Mr. Rayan stated it represents the aggregate of all the violations.

CM Gorton asked for a copy of the report with a list of the violations. She asked who obtains all local, state, and federal permits.

Mr. Rayan stated Engineering.

CM Gorton asked how do we ensure they are all obtained.

Mr. Rayan stated before the developer is allowed to begin construction of infrastructure they must submit the permits if required. He stated the developer's engineer has to determine if they are required and if they are not required they have to submit a waiver.

CM Gorton asked about the review process in Engineering.

Mr. Rayan stated the developments are assigned to an individual in the new development section. He stated they have to have them from the beginning.

CM Gorton asked about the Georgetown ordinance that has to do with violations and how they deal with entities that are delinquent in violations and what happens to the property.

Barry Brock, Engineering, gave an overview of the Georgetown ordinance.

CM Blues returned the chair to CM Gorton.

CM James stated she recommends a complete flowchart. She asked is it possible that plans can change from when Planning Commission sees them to when the Council sees them.

Mr. King stated no. He stated if the Planning Commission approves the plan it is signed and certified before it comes to Council. He stated after Council acts then they can come back with final development plans or plan amendments.

CM James asked if that is binding.

Mr. King stated the Planning Commission will give consideration to Council wishes but they are not bound.

CM James asked if the technical committee and subdivision committee are the same divisions of government.

Mr. King stated at the subdivision committee a lot of them do come.

CM James asked if Waste Management and Urban Forestry are part of the technical committee.

Mr. King stated yes.

CM James asked if trees are considered infrastructure when looking at a development plan.

Mr. King stated probably not. He stated they are viewed as site amenities. He stated if they reach a certain level they can be designated as environmentally sensitive area. Mr. King stated there is a whole tree ordinance that governs how trees are handled.

CM James asked about a tree canopy.

Mr. King stated he does not know but the plan will show requirements that will meet the dictates of the ordinance and the Urban Forester will sign off that it has been reviewed and says yes this combination and protection of existing trees will achieve standards in the ordinance.

CM James asked if that is on the development plan or the construction plan.

Mr. King stated it would be on the development plan.

CM James asked what if the tree line ends up where the utilities need to go then what happens.

Mr. King stated those things are addressed at the technical committee where everyone is there. He stated they work to resolve potential conflicts.

CM James asked if he feels there needs to be changes made.

Mr. King stated he always believes any process can be approved.

CM James encouraged Mr. King to utilize the Planning Committee.

CM Beard asked how Engineering standards are developed.

Mr. Rayan stated the manuals have set the minimal standard. He stated those standards were developed on national standards.

CM Beard asked how do they catch developers who cut corners on sidewalks.

Mr. Rayan stated they have a year to go back to the developer to have them replace it.

A motion by CM Blues to ask internal auditors to expedite Engineering audit, seconded by Dr. Stevens, passed without dissent.

A motion by CM Blues to request Law Dept to draft ordinance similar to the Georgetown ordinance and address loopholes in that ordinance (page 26 in packet) for discussion purposes, seconded by CM Beard, passed without dissent.

CM Myers asked the Division of Planning to bring back recommendations for tightening up the process.

2. Mobile Home Park Quality of Life

CM James gave an overview of this issue.

Cheryl Talbert, Dept of Social Services, gave the history of Mobile Home Park Quality of Life issue.

CM James stated they approve of the draft ordinance.

Dr. Stevens asked if this applies to tenants of any structure.

Keith Horn, Dept of Law, stated that is correct.

Dr. Stevens asked what is the appropriation in this years' budget.

Mr. Horn stated none for this program.

Dr. Stevens stated they currently have relocation funds.

Ms. Talbert stated they do have relocation funds but those are for specifically related to condemnation.

Dr. Stevens asked why the other ordinance could not be changed for relocation funds to be more inclusive.

Ms. Talbert stated those funds are very limited and all those funds are utilized.

Dr. Stevens asked if this would apply to mobile homes.

Mr. Horn stated it was specifically written for mobile homes.

Dr. Stevens asked if there were any currently pending.

Mr. Horn stated he did not think so.

Dr. Stevens stated if there are none pending then why is it needed.

Ms. Talbert stated they are trying to be proactive.

CM Blues asked about Section 5-107 and how is the availability of funds determined.

Mr. Horn stated the Council decides if the funds are available for the program.

CM Blues stated they can not pass an ordinance that states "Council will allocate X amount".

Mr. Horn stated they could and it could be amended at any time.

CM Crosbie asked if besides the Economic Contingency fund if there is any other ordinance that requires them to put a specific amount of money into a fund.

Mr. Horn stated nothing comes to his mind.

CM Crosbie asked where will the funds come from if it is passed before the next fiscal year.

CM James stated there is a proposal coming forward to use \$50K UDAG funds.

Mr. Horn stated it has its own release valve built into it if it reaches \$200K.

CM Gorton passed the chair to CM Blues.

CM Gorton asked what was the discussion around mandating \$50K. She expressed concerns with the first sentence of Section 5-107 "Subject to the availability of funds, the LFUCG shall appropriate at least \$50,000 annually to the Relocation Assistance Program for Tenants".

Mr. Horn stated they tried to qualify it.

CM Gorton asked how is this different from other social service agency funds.

Mr. Horn stated it is not different in a legal aspect. He stated they want to make sure it will be around for a long time to help those who need it. He stated it can be handled like any other social service program.

CM Gorton stated the only part she has a problem with is "shall appropriate".

Mr. Horn stated they can make that change.

CM Blues returned the chair to CM Gorton.

CM James explained why she supports it in its current language. She stated it is important to clarify and not get this mixed in with the other social service programs. CM James stated it needs to be a separate line item in the budget. She stated it needs to clear that this is for relocation due to redevelopment or rezoning.

CM Crosbie asked if during the budget process did social services' consider asking for this to be in the budget.

Ms. Talbert stated they did not ask for it during the budget process.

CM Crosbie asked if she can administer it without the ordinance.

Ms. Talbert stated no.

A motion by Dr. Stevens to approve the ordinance with Section 5-107 changed to say "subject to the availability of funds, the LFUCG may appropriate...", seconded by CM McChord.

A motion by Dr. Stevens to table discussion until Law Dept. meets with Budgeting and comes back with reworking, seconded by CM Ellinger, passed without dissent.

CM Beard asked if it could be re appropriated.

Mr. Horn stated if it is not a dedicated fund then it would have to be re appropriated. He stated he can work with the beginning of the paragraph and change it to what they are wanting.

3. Electrical Inspector's Fee Schedule

CM McChord gave a brief introduction to this issue.

Steven Vicroy, Murphy & Vicroy, PLLC, gave background information on the Electrical Inspector's Fee Schedule.

CM Gorton asked about the prices.

Marshall Jones, Commonwealth Inspections, explained the prices.

CM Gorton asked who came up with the proposed fees.

Mr. Jones stated he came up with them.

CM James asked if had received any responses in writing or verbally to his letters he sent to LFUCG.

Mr. Jones stated he got a verbal response from Don Kelly.

CM Blues asked if within government there is an entity that would have the expertise to say if the proposed list is a fair increase.

Dewey Crowe, Building Inspection, stated Purchasing may be able to say if this pricing is fair.

A motion by CM McChord for the administration to meet with Mr. Vicroy and Mr. Marshall and come back to the committee at the next meeting with their recommendations, seconded by CM Beard, passed without dissent.

4. Penalties/Fines for Zoning Ordinance Violations

CM Henson gave background information on this issue.

Chris King, Division of Planning, provided information on the penalties/fines. He stated the penalties have not been changed in over 20 years so they are not a deterrent to someone violating the ordinance.

Dewey Crowe, Building Inspections, stated the levels of the fines are way too low and need to be increased. He stated the fines are set by state statute.

CM Beard asked if there are any other tools to use.

Mr. Crowe stated they are using civil penalty provisions for zoning ordinance violations. He stated it works similar to Code Enforcement's program. He stated there are still some violations on which they have to use the criminal complaint process.

CM Beard asked if LFUCG can pull their license.

Mr. Crowe stated he does not think there is any way that can be done.

Rochelle Boland, Dept of Law, stated there is nothing in place. She stated they can look into it.

CM Blues asked if the penalties are at the same level as the state.

Mr. King stated yes.

CM Henson asked if the civil penalty process goes quicker.

Mr. Crowe stated yes.

CM James asked if they can go for an increase at the state level.

Mr. King stated he put this issue on the table with Ned Sheehy.

A motion by CM Blues to request state legislative delegation to work with Louisville and other communities to seek increases in the fine at the state level, seconded by CM James, passed without dissent.

5. Restrictions Building Permits when Applicant Has Violated Zoning Ordinance

CM Henson gave background information on this issue.

Dewey Crowe, Building Inspection, stated currently there is nothing in the building code that lets you tie a violation to the issuance of a building permit. He stated everything stands on its own.

CM Gorton asked if there is anything in the ordinances that they can do to tighten it up.

Rochelle Boland, Dept. of Law, stated these issues may come up as they are researching the Georgetown ordinance.

CM James stated the word permit can be misleading.

Ms. Boland stated they are required to issue building permits by state code. She stated how they add to that on a local level may be something to look at.

A motion by CM James for the Dept of Law to look at zoning violations of record and whether restrictions on future applications for any other government permits or license can be enforced, seconded by CM Blues, passed without dissent.

6. Time Limits on Building Permits

CM Henson gave background information of this issue.

Dewey Crowe, Building Inspections, gave an overview of building permits. He stated you can not change the Ky Building Code at the local level.

CM Gorton passed the chair to CM Blues.

CM Gorton asked what verification we ask of a person doing construction that they have worked on a building.

Mr. Crowe stated there is no established standard as to what constitutes progress. He stated the inspector keeps a running record as to what he has looked at and if they have added to it.

CM Gorton asked if there have been revisions to Section 105.5 of the Kentucky Building Code.

Mr. Crowe stated to the best of his knowledge the 180 days has been there for quite a while. He stated the state housing committee approves the building code.

CM Blues returned the chair to CM Gorton.

CM Gorton asked Mr. Schoninger to do some research and leave it in committee.

7. Referred to Committee

No motions from this item.

Meeting adjourned at 2:56 p.m.