

**MINUTES
CITY OF ST. CHARLES**

**JOINT MEETING OF
THE PLANNING & DEVELOPMENT COMMITTEE &
ST. CHARLES PLAN COMMISSION
MONDAY SEPTEMBER 12, 2016 - 6:00 P.M.**

Planning & Development Committee

Members Present: Chairman Bancroft, Aldr: Silkaitis, Payleitner, Lemke, Gaugel, Bessner, Lewis

Members Absent: Aldr: Turner, Krieger, Stellato

Plan Commission

Members Present: Spruth, Doyle, Frio Holderfield, Kessler, Pretz, Purdy, Wallace (6:12pm)

Members Absent: Schuetz

Others Present: Mayor Rogina; Mark Koenen, City Administrator; Rita Tungare, Director of Community & Economic Development; Russell Colby, Planning Division Manager; John McGuirk, City Attorney

1. Call to Order

The meeting was convened by Chairman Bancroft at 6:05 P.M.

2. Roll Call

Roll was called:

Planning & Development Committee

Members Present: Chairman Bancroft, Aldr: Silkaitis, Payleitner, Lemke, Gaugel, Bessner, Lewis

Members Absent: Aldr: Turner, Krieger, Stellato

Plan Commission

Members Present: Spruth, Doyle, Frio, Holderfield, Kessler Pretz, Purdy, Wallace (6:12pm)

Members Absent: Schuetz

3. Discussion regarding process for forwarding advisory recommendations from Plan Commission to City Council.

Chairman Bancroft said the impetus for this meeting is to clarify what the policy is for when the Plan Commission has advisory recommendations for Council or P&D Committee, and how to make that communication. He said this all started when he received 2 Resolutions from Plan Commission; a few things that struck him when he received those: 1) in 3 years on Council he hadn't seen that type of communication before; 2) the fact that it was in Resolution form and was going to be posted on the

website, it concerned him because it looked like action had already been taken; and 3) concern of an unending possible hypothetical list of issues that could come up, and as things come up in the ordinary course of the day, having another body bring this up with no application pending, no issue, and nothing active going on in the community that has to be dealt with being brought up in this fashion. Both bodies have full agendas and are only going to get fuller toward the end of the year, and do we really want to start having this type of discussion where there isn't something pending that we are forced to consider. He said he and Chairman Wallace had a discussion and felt there's a nice relationship between the 2 bodies in terms of how we work together; there have been a couple of joint meetings and all have been positive and he wants that to continue and in order to so they felt the best course of action was to get everyone in the same room to get all perspectives to determine the mechanism.

Vice Chair Kessler said it's good to have a reason to have a meeting and he agrees that the relationship between the bodies is one of the most important things Plan Commission deals with. He said he understands all the questions/concerns and he'd think the same thing looking at it through Committee's eyes and the fact that Commission does/will bring items to Committee, there does need to be some sort of parameters or guidelines that can be used. He said in regard to the 2 resolutions from Commission not being attached to anything; maybe they failed to explain, but those were part of something that they had previously finished but the Commission felt that they should have further looked into, and that may be one of those parameters that needs to be discussed as to how those can be framed to be part of something that's already been done. He said at the time Commission thought they would just send over the resolutions and see what happens, but since then there was a conversation had by Todd Wallace, Todd Bancroft and John McGuirk regarding the mechanism by which Commission did propose the recommendations and now we need to discuss this and figure it out. He said at the Council retreat things are discussed that may be coming \and when they want to deal with those, because there is only a certain amount of time and staff resources. He said and knowing that does make a difference as to how Commission may propose things to the Committee. He said maybe if Commission knew of this beforehand they could have some input into things that Commission may discuss or think are important for Council's retreat; just to keep the lines of communication open to be involved in each others areas.

Aldr. Lewis asked if "findings of fact" are questions dictated by the state or did the city come up with those questions. Ms. Tungare said our findings of fact are based on state statutes; the words may not be exactly what are in the state statute, but the criteria is the same. Attorney McGuirk said that is correct, they parallel the statute, in speaking of PUD's and Special Uses, the criteria is very close. Aldr. Lewis asked how you state unequivocally that something is a fact when you have 20 different people trying to decide whether it's a fact or not, and it seems like some of the questions are really open and personal feelings come into it. Mayor Rogina said the applicant fills out those "findings of fact" and responds to those things and the Plan Commission then reviews it and says whether it's true or false. Aldr. Lewis said the applicant will always answer the question to be positive. Mr. Kessler said depending on the application, there are some that require finding the affirmative for all the findings of fact and there are some that come before Commission where they have to find preponderance. Ms. Tungare said by state law the Plan Commission has a quasi-judicial capacity and conduct hearings where they have to take evidence into consideration and then make their findings of fact.

Ms. Tungare said going back to the introduction provided by Chairman Bancroft and Vice Chair Kessler, the discussion tonight is related to policy recommendations outside of the typical development

applications that the Plan Commission will consider and then forward to Committee. If there were a policy recommendation/direction that came from Plan Commission in an advisory capacity, staff would need direction from Council to initiate an amendment to the city code. More likely than not, any policy recommendations that would come out of either Plan Commission or City Council will necessitate an amendment to some portion of the city code, whether it's the zoning ordinance or some other portion. Staff would typically need direction in a formal setting/public meeting from the City Council to tell staff to initiate a general amendment to the ordinance, after which she or one of her counterparts from another department-as a representatives of the city-would initiate an application for that amendment in the city code; staff could not just do that on their own.

Chairman Wallace said he sees the role of Plan Commission as 2 separate duties: One, to conduct public hearings on applications that come before it and in a quasi-judicial capacity and the application that comes in is the applicant's position on those things. They also open up the floor to any type of evidence or testimony against or in support of the application in order to make a recommendation to Council. The other role is to suggest changes in order to advance the Comprehensive Plan. In talking about modifications to the zoning ordinance because of an application that come before us, if the Commission determines that something is advisable in order to better advance the Comprehensive Plan, then he feels it's part of the Plan Commissions duty to advance that suggestion to Council. A lot of times staff will bring applications on changes if something needs to be cleaned up in the zoning ordinance which is pursuant to Council to make those changes, and this really is the same idea, it's just originating from the Plan Commission. Originally when discussed they thought of the possibility of actually putting forth a resolution stating the issues and that staff should submit an application. Then they dialed it back and thought it would be better and more in accordance to request that Council direct staff to do that, because he doesn't feel it's Commissions role to direct staff to do anything, it's their role to make recommendations to Council. One of Commission's thoughts for an alternate procedure as opposed to the inherent negative connotation of a resolution coming from Plan Commission to Council would be for Commission to vote and direct the Chairman to draft letter to the Chairman of P&D Committee to consider. He thinks that would have the same affect in notifying Committee that this is an issue that's been discussed and they are requesting that staff submit an application, without the negative connotation of a resolution. He said Commission doesn't want it to look like we are officially ordering Committee or Council to do anything.

Mr. Doyle said when the question came up for the application for general amendment that Commission recommended for alcohol sales tobacco sales, he questioned whether the Plan Commission were empowered to create applications on its own or to make recommendations to Council on its own. He said Chairman Wallace advised that yes that is in the outline of the powers that are in Commission's charge. He said they then talked about the fact that it's not appropriate for Commission to direct staff, that it has to be brought to Committee, and also what format it should be submitted in. He said this has to be done within the context of the Open Meetings Act and in order for Committee to consider a recommendation, advisory resolution or advisory recommendation, it first has to be established that the majority of the Commission recommends for it. Plan Commission then has to know what they're recommending and know what the rationale for it is; he then offered to draft the item for the Plan Commission's consideration and the Chairman suggested that be in formal language. He said to the point about proliferation of spurious advisory resolutions; he thinks that's one reason for the Commission to consider something formal, vote on it formally and to have the rationale for it in front

of them so the Commissioners can say whether they really want to commit to it and does it really fit within the framework of what we are empowered to do, which is to make resolutions, not on just anything, but things that specifically further the pursuit of the Comprehensive Plan. He said we adopted a very formal process to deliberate on this and record our findings and resolution, and to his surprise it was unanimous on both counts and to him these kinds of documents are very specific to what they are saying and not saying, and to him it's very clear that it's not legislating or enacting anything. He said it simply states that it is a resolution of the Commission, like any other advisory resolution extended to Committee, whether it's attached to an application or not, which P&D Committee has the prerogative to agree or disagree with. He thinks it's important for us to establish that consensus and for the Commission to have the framework within which to deliberate on something to make certain that it's substantive and well thought out and is something the Commission agrees with and he's curious to know what other format would be considered if this one is too stuffy. Aldr. Lemke said he thinks this is a good format, not every month but maybe once or twice a year because to get us all in the same place because he thinks there are probably things that Committee may be dealing with as well. Chairman Bancroft clarified that Aldr. Lemke meant that this is a good format for this meeting, not the format for the resolution.

Vice Chairman Kessler said Commission is bound by the findings of fact; so if something came before Commission and we found in the affirmative for the finding of fact, that would be the recommendation passed on; Committee then has the opportunity to take the neighbors and the neighborhoods into consideration. He said to speak of the process by which we might promote a recommendation or resolution, as informal as a letter between both Chairmen or as formal as a resolution, it seems to him that Commission responds to P&D on applications that come before them by a recommendation, not a resolution. He said whether or not Committee accepts the recommendation, we need to figure out how to respond to it; would it be something that goes on the P&D Agenda, something that would be tabled or something we don't want anything to do with, and that's the process he would like to figure out. Mr. Doyle said he was curious about that as well and in looking at the P&D Packet materials for one of the Agenda items, the Commission recommendation is presented in the form of a resolution, and all that means to him is that the Commission has resolved on a particular point. Ms. Tungare said it's an instrument to communicate the advisory action taken by the Plan Commission. Mr. Kessler said but it is strictly advisory.

Chairman Bancroft said the communication is great; a meeting of the 2 bodies could go a different way-that's your job, this is our job, and then we all leave, and that is not what we are encouraging; we want this type of dialogue and its important. He said he's had his share of governance as well and format can be assuasive to the public and he is thinking that as a policy body they do have a wide variety of considerations before bringing something up. His concerns was that because there wasn't an application pending or a reason to deal with the issue that it might be better from our constituency standpoint to not deal with something, and he doesn't want that to be insulting. It can get tiresome if people are making recommendations that are not being acted upon, and that's not because the framework, structure or background isn't right, but there may be other considerations that come up that influence why it does or doesn't come up. He want to be sure there is mutual understanding of yes, it is an advisory body and those are very important things, but sometimes there are considerations that are going to trump that kind of advice, and if that's how this is going to work, it's not a personal slight on either individuals or the role of Plan Commission. Vice Chairman Kessler asked if there is any way to

communicate that; he believes Committee has issues to consider that do not ever come before Commission and not that Commission would have a flood of recommendations, they would be specific reasons like advancing the Comprehensive Plan. He said this particular recommendation/resolution that Commission submitted came on the heels of an application that they recommended approval to Council but felt it should be expanded a little more; it was not just out of the blue for no reason. If there was a way to have communicated back through the chairmen to say yes, they considered it, and here's some reasons why it will not go through right now; just a reason why.

Mr. Holderfield said often these resolutions or recommendations come on the heels of an application brought before the Commission and he thinks it might be better to instead of in the heat of the moment to get all those facts off to maybe put that off to the next meeting to have time to think it through and decide how to resolve it. He just doesn't see a rush to judgement because sometimes it comes rocketing out of left field and they are not sure exactly where they are going with it, so time to think about it and how it will affect things; he thinks it's important. Vice Chairman Kessler said with this particular resolution it went over 2 meetings and he hates being blindsided and he sees in this particular case how Committee felt, especially because they never talked of doing this before. Chairman Bancroft said if this were done over 2 meetings a lot of things can happen; including phone calls and discussions all within the Open Meetings Act, to kind of take the temperature of people to know how it will be received and what the thought process will be. More often than not you might find it's not something that forestalls it, it's something that encourages it to have a conversation to get that off the ground for us and the potential goes both ways for it.

Mr. Doyle said to the point of whether or not there is a present issue that is informing the application; as a case in point he brought up the resolution regarding gun shops and stated that a year ago we had an application in front of Commission for medical marijuana. He stated he wasn't sure if there were an application from the city or if it was anticipated there may be one coming in the future, but there was feeling that if that came forward we needed to have clarification as to where such establishments could be located. As he reviewed and inspected the city code and brought it forward to Commission, it struck him that the use was not defined anywhere in Title 17. He's not sure if staff has considered this, but let's say the city receives an application for a public firing range, what land use category would apply and how do we determine where that can and cannot operate. Mr. Colby said we have had inquiries for that use and we've informed the applicant that the use was not currently identified in the zoning ordinance so therefore a general amendment would be required to establish where the use could locate. Mr. Doyle clarified that if the use is not identified and not defined then it is implicitly prohibited until it is defined. Ms. Tungare said that is the position we have historically taken with our zoning ordinance in St. Charles. Mr. Doyle said he assumed it opposite; that if it's not defined it goes anywhere it wants to. Ms. Tungare said some communities take that position, St. Charles has chosen to take a more conservative approach. Chairman Bancroft said the most effective discussion on this topic has happened when we all had this meeting, which is really the right mechanism for approaching these items, it lets all speak freely and this is the right forum for it. Aldr. Lemke added that if somebody wanted to build an expressway through town we, might change our zoning, but these are things that could require more detail or work in the Comprehensive Plan and he thinks that's appropriate for us to identify as a group with staff's insight.

Mr. Doyle said regarding the P&D Committee's expectations regarding when an advisory resolution or recommendation is appropriate and when we have concerns that may create a problem, we identify an omission and we think it's one that should be clarified, and in this case the resolution doesn't specify how it should be clarified, it just says it should be investigated and clarified. Is there a value of the city doing that proactively versus waiting until an applicant comes forward and leaving it to the applicant to propose what the zoning should be? Does that create a problem if the applicant says it should be where they want it to be, and now the city really hasn't thought about that and is caught flat footed and could have been more proactive? Ms. Tungare said from her experience it can cut both ways for the Council terms of the politics and policy. If it is not an issue in a community like St. Charles, even just bringing up the issue could get people concerned when there's probably no cause for it. At the same time, I think there is value in what Mr. Doyle is saying; there might be situations where proactively dealing with it makes sense. There are many times we come across things in the zoning ordinance that doesn't make sense from a technical or practical standpoint and that's when we will proactively initiate a general amendment which is done at least a few times a year. If it's something that has a potential to be politically charged, those issues are not initiated by staff, as much as it might be proactive, there's no reason to do that. Politically-charged issues have the potential to develop a significant amount of community interest and are the kind of topics she suspects we the Plan Commission may be making policy advisory recommendations on. If it were something like a zoning setback that didn't work, more often than not, staff would propose a change on their own.

Chairman Wallace said he thinks one of the benefits to setting out a specific procedure for making recommendations to Council from the Plan Commission's standpoint is that in the past, there's been Commission members and situations where if the policy issues could not be addressed directly, they would be addressed indirectly; and it ends up disturbing the Commission's process because we end up addressing those in the context of individual applications as opposed to bringing them out front and directing them to Council to make the policy decision. Instead we are making a quasi-policy decision and incorporating it into our recommendation, which isn't fair to the applicant and it's not appropriate. He feels the driving factor in setting forth a specific procedure is to allow Commission to fulfill our obligation to advance recommendations to improve the Comprehensive Plan to the Council and to also allow Commission to address applications based on the zoning ordinance as opposed to intervening policy issues, which Commission shouldn't be addressing anyway. The way he envisions it, if there is something that is politically-motivated that Commission sees as an issue where the Council could potentially act to improve the Comprehensive Plan, yes, he could see recommendations from that standpoint, but he thinks Commission could do the same thing that staff is doing, to correct technical issues within the zoning ordinance. He said over the course of discussions Commission has found some of those that exist and most of time its due to the lapse of time where it's become obsolete or its changed in same way that a modification would be appropriate. He continues to feel it's important to have a procedure specified for advancing these things to P&D Committee. Chairman Bancroft agreed; we already have legal Counsel's opinion that the right exists, so something should be put in place that plans for it. The other thing to think about is that as something progresses into an advisory situation that is a policy question that needs Council's consideration; it's no different if Committee comes across something that needs to be fixed, but he wouldn't prepare a resolution and drop it on the Agenda the Friday before the meeting, that doesn't allow anybody to have any conversation or thoughtful consideration. For example, typically what happens is, he would call another alderman to discuss an issue and ask what they think to at least formulate an understanding of "this is what I'm up against" or

things he hadn't thought about" and he thinks that dialogue going back and forth is invaluable in terms of how we approach it. It's not that feedback isn't wanted; it's the manner in which it comes across that is really important. He mentioned, as an example, the question of whether assault weapons should be prohibited, was the most well attended meeting he's ever attended. If he knew of this type of issue coming, his first inclination would be to start contacting people to understand what to expect. He is just as worried about the perception back to the Plan Commission on their advice as I am about getting the advice, and if we are going to continue to keep having really productive communications and dialogue, we need to understand each other, and the only way to do that is by this meeting. He thinks it's a great forum and we could probably do these every 6 months or every quarter.

Vice Chair Kessler said he agrees and he's not sure if Chairman Bancroft is suggesting we all start calling each other. Chairman Bancroft said it's just that you're gravitating away from what the normal charge is. Vice Chair Kessler said we are a little bit by coming forward with these and he feels that's less procedural and more common sense, although we do need a procedure, that we should be able to pick up the phone to see what others think. He said we have to resolve it at Commission meetings; but he does understand what is being said, and perhaps the whole process of alerting the Committee that there is something being discussed that may come in the form of a policy recommendation could happen at these quarterly meetings, and the same for Committee to share with Commission. He said the process that we end up with is secondary to him, as long as it is communicated. Attorney McGuirk said the original concern was whether it could even be done, but clearly a recommendation can be made whether in resolution, memo or letter form. Vice Chair Kessler said it's being blindsided and not having done this that causes the discomfort and perhaps the quarterly meeting is the answer.

Mr. Doyle said this discussion starting during the course of the public hearing and deliberation about the general amendment regarding alcohol and tobacco sales. He asked if staff considered including firearms, and then after the item was concluded, we used the additional business part of the agenda at a couple meetings to discuss that and he gauged the temperature as to where the Commission was and would it be something that people are receptive to, and he to the sense they were. Commission then agreed that he would write the resolutions and debate them at a meeting and he thinks they failed to anticipate what the next step was when this was conveyed to P&D. The Committee, not having the benefit of being present during the public hearing, during the deliberation regarding that Agenda item, or the following meeting where it was discussed, had no background as to why it was coming forward. He said the real question is, if we produce something like that, how does it get transmitted and how does Committee have context, to not come out of left field, and that all makes sense to him.

Ms. Tungare summarized the process on staff's end: if there's an interest on Commission's part regarding policy issues or recommendations within the context of the Comprehensive Plan, we will use the joint meetings on a quarterly basis as a forum to initiate those conversations and to have dialogue. The conclusion of that meeting will be for staff to take direction from both groups, and because it's a public meeting, action could be taken to have staff move forward with preparing a resolution. If the Plan Commission wishes, in the spirit of the Open Meetings Act, they could then make that motion and have those resolutions considered at a Plan Commission meeting and officially take action there as well. In the spirit of transparency all of the conversations had in this group setting, which is a public meeting, staff will make sure that it goes through the right channels and public forum before any action is taken. Vice Chair Kessler said even beyond that he recommends to any of his fellow Commissioners

that if there is an issue that's been brought up, don't hesitate to call a member of the city council or your alderman. Chairman Bancroft said he agrees with Mr. Holderfield on the 2 meeting process, it tends to work when you're not in the heat of something to take a few minutes and come back to it, it would also help to allow notification for members to be in attendance.

Mr. Doyle asked if Committee would desire for the Commission to first establish that majority of Commissioners support the concept for the policy recommendation or discussion, as sort of a gate check, kind of like making a motion and needing a second before wasting the Committee's time. Mr. Pretz said it is important to have the check and balance at Commission level because at a future point there could be rogue Commissioner who comes up with more than 1 or 2 a year, maybe 1 or 2 a month, and he feels it's important that somethings in place to get it out of Commission, because 1 person's interest may not be everybody else's. Mr. Doyle said it could then be taken to a quarterly meeting, rather than just being conveyed as a document to discuss.

4. Additional Items.-

Chairman Bancroft noted that Commission still needs a response to the 2 pending resolutions and everyone should think about how we move that along.

5. Public Comment-None.

6. Adjournment-motion made and seconded to adjourn at 6:59pm. No additional discussion. Approved unanimously by voice vote. Motion carried.