

MINUTES
Tuesday October 20, 2009
Planning and Zoning Commission Work Session
Grant County Administration Building
1400 Highway 180 East
Silver City, New Mexico

Commissioners Present

Chair David Gershenson
Ken Foster
Gillian Sherwood
Teri Matelson
Alice Jones
Lori Ann Bonomo
Doug Abbott

Staff Present

Peter Russell
Luan Mitchell
Alexandra Perrault

Commissioners Absent

Other Town Staff Present

Members of the Public

Jim Goodkind
Herbie Marsden
Curt Smith
Torie Grass
Rick O’Ryan

The work session of the Planning and Zoning Commission for the Town of Silver City to discuss the Land Use Code Task Force’s recommendations for revisions to the town’s land use code was called to order at 5:15 p.m. by Chair David Gershenson. The Pledge of Allegiance was recited. A roll call of commissioners was taken and a quorum present.

To start, Chair Gershenson reported that he had had a brief meeting with the mayor and Councilor Simon Wheaton-Smith earlier in the day and that Councilor Wheaton-Smith had requested a definition of “grandfathering” to be included in the Land Use Code – does grandfathering run with the property or with the owner? Mr. Russell said that would be covered in the discussion of non-conformities that is on the agenda for this meeting.

Commissioner Abbott made a suggestion for a correction on page 228, Section 7.5. In this paragraph the terms “building” and “structure” should be preceded by “non-conforming” building or structure, as that is what the paragraph is discussing. No one had any further comments regarding non-conformities, other than defining “grandfathering.” Commissioner Abbott pointed out that the current code says in section 7.1.2 that the right to continue a non-conforming use goes with the land. It was agreed to stay with that. In reply to a question by Commissioner Foster, Mr. Russell explained that a building with a non-conforming use that is destroyed by fire or other calamity may be rebuilt for that non-conforming use as long as it is done so within one year; and also that if a non-conforming use is suspended for one year or more, that “grandfathering” is lost. Mr. Marsden asked if that would apply to a building that was rented for a non-conforming use that was unrented for that use for a year. The answer was yes, the grandfathering is then ended.

Article VIII Enforcement and Penalties was discussed briefly. The task force had made no recommendations for change and it was left to the Town Council to decide if they wanted to make any amendments. The same was decided regarding Mining and Extraction Uses, Section 3.3.1 (P).

The next topic was Section 3.3.1 (P) Mobile Homes. Mr. Russell said there had been some confusion by the public regarding the new suggested standards for mobile homes and he suggested inserting language that plainly states that the new standards apply to mobile homes that are moved into the city limits after the date of the adoption of the amended land use code. Handrails were added as a requirement to a porch built onto a mobile home. Ms. Perrault inquired if there should be a time limit for building the required additions of a porch or deck, garage or addition, and 90 days was decided on. Commissioner Jones questioned why the standards did not apply to mobile home parks and Mr. Russell explained that was due to their transient nature..

Commissioner Sherwood reported on the mobile home park regulations from the Land Use Codes of Santa Fe, Las Cruces and Deming regarding streets, sidewalks, lot size and landscaping. Paved streets were required. Mr. Russell voiced concerns requiring paved streets because \$300,000 for 300 feet of paving considerably increases the rent required to offset the developer's investment. Mobile homes are affordable housing and higher space rent makes them less affordable. Also, the more impervious surface area there is, the more storm water runoff there will be. He suggested recommending concrete sidewalks, but allowing all-weather paving on roads. Ms. Sherwood agreed but said she wants to be strict about landscaping and a wall around the park. Mr. Russell questioned requiring extensive landscaping and expensive walls that are not required for site-built homes. Landscaping is required for street sides of parks. All agreed that internal streets with all-weather surfacing within mobile home parks be required to prevent residents from having to back their cars out onto a main street. The city standard for sidewalks must also be met. Requiring a wall was objected to, but would be offered as an alternative to landscaping. Mr. Russell said he would draft the new language for the next meeting.

Section 5.13 deals with temporary sandwich board signs. Commissioner Matelson stated she believed they should be illegal. She said they are unattractive and dangerous, taking up too much room on sidewalks. Commissioner Jones remarked that they are used extensively in large cities such as Boston and Washington DC and in Europe and add character. She suggested regulating the size and appearance. Mr. Russell said the current draft regulates the size, number and placement of sandwich board signs. Chair Gershenson recommended allowing the council to decide on any other regulations. Commissioner Jones requested that an addendum be included that there were strong objections to sandwich boards and Mr. Russell assured her that dissents would be noted in the minutes.

The solar rights issue was discussed. It had been suggested that solar rights be a separate issue to be dealt with after the current revisions have been approved. Commissioner Matelson felt strongly that solar rights should be included now. She referred to a document that she thought was acceptable to be included in the code and that it wouldn't take much time to discuss it and include it in the new code. Chair Gershenson said he spoke with Councilor Simon Wheaton-Smith and Mary Stoecher of the mayor's climate committee and both believe the issue should be tackled on its own. Mr. Jim Goodkind spoke, saying that the New Mexico solar rights act is good but needs some changes. He would like to see solar rights considered fully in the future, not quickly now. Commissioner Matelson asked if Mr. Goodkind would like to be head of a committee to study the issue. He replied that there were some personal issues involved that might prevent him from accepting that position and also that perhaps another committee isn't necessary. Commissioner Jones asked if the question is one neighbor's solar rights versus another neighbor's property rights, as property rights are the main thing the Land Use Code addresses. She believes legal advice is needed. Commissioner Abbott commented that the LUC already references the

state solar rights act and questioned if more stringent requirements than state law were necessary. Commissioner Matelson said the Town's attorney, Robert Scavron, feels we should refer questions and issues to the state, but she feels we should be able to help our citizens through our own ordinances. Mr. Herbie Marsden commented that the state law does not go far enough. Ms. Torie Grass reminded everyone to look at the issue holistically. She said it's not just about solar panels, but also about proper placement of trees and vegetation. Commissioner Abbott recommended the reference to the state solar rights act in the LUC should be changed to read "All applicants shall (or must) be aware of and comply with pertinent provisions of the solar rights act..." Peter Russell stated he felt it would be important to bring in an advisor on this issue. Solar rights now are based on ideas that emerged in the 1970s and 30 years later there is probably more information. The mayor's climate change group applied for a grant for a sustainability advisor and that grant has been awarded. We should be able to get advice from the sustainability advisor. He said the issue is opportune and timely and very complex. Chair Gershenson said he thinks everyone wants the same result, just has different ideas on how to get there. Mr. Rick O'Ryan spoke to the issue of enforceability and how much scientific knowledge would code enforcement officers need to have. Mr. Russell agreed that is part of the issue. We do not know how it would be enforced. It was agreed the issue should be put aside for further work until after this code has been completed.

Peter Russell reported that Bud Melaney had not had time to address the questions regarding the Floodplain Overlay District and FEMA's rules and what could and could not be changed. Commissioner Jones said she felt Mr. Melaney had deliberately obfuscated the issue and did not address the questions that were asked. She said she did not think the requested change was as big a deal as Mr. Melaney tried to say. Mr. Russell explained that when he spoke with Mr. Melaney after the last meeting, he said the difficulty comes with the fact that there are different zones and what is done in one would have an effect on another and it would be unwise to tinker with federally mandated language. He suggested it might be possible to get someone from FEMA to explain things better. Mr. Russell said he would ask Mr. Melaney to attend a work session.

The next regular commission meeting is November 3. The new language regarding mobile home parks will be discussed at the end of that meeting. The revisions to the floodplain overlay will be discussed in a special meeting with Bud Melaney.

Adjournment

The meeting adjourned at 7:33 pm.

Approved:

David Gershenson
Planning & Zoning Commission Chair