



MEETING MINUTES

Planning & Zoning Commission

Thursday, April 11, 2019

CALL TO ORDER

Chair Newell called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE

Ms. Newell led the Pledge of Allegiance.

ROLL CALL

Commission members present: Ms. Newell, Mr. Fishman, Ms. Kennedy, Ms. Fox, Ms. Call and Mr. Supelak.

Commission members absent: Mr. Wilson

Staff members present: Mr. Papsidero, Ms. Husak, Mr. Boggs

ACCEPTANCE OF DOCUMENTS

Ms. Kennedy moved, Mr. Fishman seconded to accept the documents into the record.

Vote: Ms. Newell, yes; Mr. Fishman, yes; Ms. Kennedy, Ms. Fox, yes; Ms. Call, yes; Mr. Supelak, yes.

(Motion passed 6-0)

Ms. Husak stated that because no applications were eligible for this meeting, in-depth training on a couple of topics will be provided, which should be of particular value for the two new members. She will be providing information on Planned Unit Developments (PUDs) and Mr. Boggs, Law Director's office, will cover the legal responsibilities of the Commissioners and the Planning and Zoning Commission (PZC) Rules and Regulations.

- **Vice Chair – Additional Responsibility**

Ms. Husak stated that the PZC Vice Chair also serves on the Dublin Housing Council, which meets annually. Staff will be providing information on that role to the new Vice Chair, Ms. Kennedy.

Presentation: Public Records, Open Meetings, Public Ethics, Conflict of Interest, Distinction between Legislative Actions and Administrative or Quasi-Judicial Actions

Mr. Boggs stated that the information he will be providing is on the roles of the City's boards and commissions. He is the primary legal representative for the City's Planning and Zoning Commission. Feel free to contact him with any legal questions, such as possible conflict of interest. Ms. Readler is the Law Director for the City of Dublin and is directly involved with City Council and City leadership. Mr. Hartmann is involved in land use, zoning and the Bridge Park development. Although any of the three of them can be resources for the Commission, he will

be the primary contact. The topics that will be discussed tonight are all covered in the PZC Rules and Regulations, which have been provided to the Commissioners.

Open Meetings

The following requirements are mandated by State law and are incorporated in the City's laws. Any public body that is either making decisions or advising another public body on decisions is subject to these open meeting requirements.

- Public officials are required to take official action and conduct all deliberations upon official business only in open meetings so that the public may attend and observe.
- "Meeting" is defined as "any prearranged discussion of the public business of the public body by a majority of its members" and "an occasion for the transaction of business." A public body must not circumvent the act by scheduling back-to-back discussions of public business, which, taken together, are attended by a majority of its members.
- Minutes of regular and special meetings of public bodies must be maintained and open for public inspection.

The City does an excellent job of keeping very comprehensive minutes, particularly for this Commission. Members will find very helpful and comprehensive minutes of the discussions that are held here. The very minimum that is required is enough of a summary to understand why a decision is being made and what decisions are being made in front of the public body. Dublin citizens can be reassured by the fact that Dublin goes above and beyond what is required in the context of the Planning and Zoning Commission. If the Commission or Council were to create a subcommittee of the Commission, a quorum of that body could constitute a public meeting. Even subgroups designated out of a larger public body have the same requirements for meeting notices and minutes.

- Public officials cannot participate in meetings via Skype or similar videoconferencing technology under Ohio law.
- Be careful that message exchanges over the internet (on personal and on City social media pages), as well as emails and text messages, do not become "meetings."
 - Group emails or group chats of the Commission online would be a concern and have become subject to litigation in the state of Ohio in recent years, as collaboration online has become more common. If a meeting is held that is not open to the public, the remedy is that any action taken as a result of that deliberation can be voided. Adhering to public meeting requirements, particularly in the digital realm, is important. It is important to make sure that we are operating in a transparent and effective, efficient manner.
- Executive sessions are an exception to open meetings.
 - These sessions are strictly limited to certain topics for which the City may authorize closed sessions to the public. Most of those topics would not be ones that the Commission typically would consider. The only one that has infrequently come up for the City's various planning commissions/boards is the executive session topic of "discussions with an attorney for the public body about pending or imminent litigation concerning the public body." In that case, an executive session is scheduled on the meeting agenda for that specific reason; a motion and roll call vote is taken to enter

into executive session; and the Commission members would retire to a private space for that discussion. In executive session, there can be no decisions made, no voting or polling.

- An executive session is a portion of a meeting from which the public is excluded and at which only such persons as the public body invites are permitted to be present.
- Before a public body can hold an executive session, it must conduct a roll call vote of its members (need majority of quorum).
- The minutes for authorized executive sessions only need to reflect the general subject matter discussed.
 - As a caution, any documents or records that are distributed or discussion in the executive session are not exempt from the public records law. Often, people conflate the two – open meetings and public records, but there are distinct exceptions. If the discussion in executive session references a document that is kept by the City, that document is susceptible to public records requests.
 - Any notes taken during an executive session that are shared with another Commissioner has now put that into a public record realm, and those notes could be subject to open records requests. The attempt is made to be cautious regarding the documents that are incorporated into executive session discussions.
 - There are records that are exempt from the public records for other reasons. For example, an “Attorney Client Privilege Memorandum” is exempt from public records disclosure because of the privilege, but going into Executive Session to discuss a document does not provide an exemption from the Public Records Law for that document.
- Meetings must always begin and end in open session. The meeting cannot be adjourned from Executive Session.

Ms. Call inquired if the reason for entering into Executive Session could be stated within the Executive Session series of topics, for instance, making a motion to enter into executive session to discuss topics related to the following: property acquisition, pending or imminent litigation, or personnel. Or does the motion need to be specific to the particular discussion that will occur in the executive session?

Mr. Boggs responded that the motion has to include every topic that will be discussed in that executive session.

Public Records

- A “record” is any document, device, or item, regardless of physical characteristic, created or received by or coming under the jurisdiction of any public office which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.
- A “public record” is any record kept by any public office.

- “Kept by” means any record that is actually in existence and in the possession of the public office or person responsible for public records.
 - Examples of records not “kept by” a public office: a record not yet in existence, or a record that has been disposed of lawfully.
- Records are analyzed based on their content, rather than their storage medium.
 - Electronic records (e-mails and text messages) are treated no differently than any other tangible record.
 - A private e-mail account can be subject to the Public Records Act if the content of the e-mail serves to document the organization, functions, policies, procedures, operations, or other activities of the public entity.
 - It is advisable for the Commissioners to keep any Dublin Planning and Zoning Commission-related emails on the Dublin.oh.us account, as it will ultimately be easier for the Commissioners. It is more difficult to search private email accounts for public records or to be required to turn over the contents of a private email account for a discovery request.
 - Text messages can also be public records.

Ms. Husak noted that the primary reason the City issues an iPad to each Commissioner is to enable them to keep their City-related business separate. The City I.T. department is able to remotely push out any apps or updates that the Commissioners will need. Commissioners are required to take the City’s cyber training course. Delivery of electronic documents in a protected manner has become a more critical matter.

Mr. Boggs noted that he has heard of cases in other jurisdictions where members of a public body have texted each other during a meeting about the merits of an application before the body for consideration. Those texts are public records. It also presents a problem for the quasi-judicial role that the Commission plays. However, communications between members that are not related to City business are not public records. The Clerk’s Office and Law Director’s Office review documents to determine what is responsive to a public records request, and what is an exception that should be redacted. We are careful to maintain a balance between transparency and making sure that people are aware at the outset of when a public record is being created.

- Personal Notes can be “records” and are often considered “transitory records” (created for the purpose of transferring their content to an official file, database, report, etc.)
 - Notes are not records if they are (1) kept as personal papers; (2) kept for the employee/official’s own convenience; and (3) not accessible to other members.

Ms. Kennedy inquired if notes Commissioners take during a meeting and discard in the recycling bin at the conclusion of the meeting are ~~not~~ considered public records.

Mr. Boggs responded that they are not public records if they have been taken for your own personal reference, to help you with your review during the meeting or your review of an application prior to the meeting, as long as the notes are not shared. That is the distinction – if the notes are shared with your colleagues, then the note documents the activity of a public official. As a personal habit, he will make notes in Outlook and email them to himself. Even though they are on the City’s server, they are not a public record because they are not shared with any other person.

Legislative & Quasi-Judicial Roles

- **Legislative**

The Planning and Zoning Commission, much like City Council, participates in an administrative and a legislative role. The legislative role is where law is being made or changed. Within PZC's legislative role, it makes a recommendation to Council, which has the final legislative role in the City of Dublin's system of government. Rezoning and approval of preliminary development plans (PUDs) are examples of legislative acts. PUDs create a zoning text for specific changes to be made to the existing zoning for a parcel of land. Again, PZC recommends the decision; Council makes the final decision. When PZC is acting within its legislative role, it has more freedom to evaluate policy and subjective opinions for the City. There may be standards that PZC is to consider in assessing a rezoning application, but they are more to guide the PZC's use of their discretion; ultimately, it is PZC's discretion as to whether it would be good for the City to rezone that parcel, and would make a recommendation to Council accordingly.

- **Quasi-Judicial**

The quasi-judicial role is very different. In school, students are taught about the separation of power in our federal and state governments, but it is not applied that rigidly in the way most municipal governments are structured.

PZC members act as quasi-judicial officers, applying existing law to a set of facts presented to the Commission in a controlled and orderly hearing process. Final Development Plans; most Bridge Street District applications, which have a straight zoning; and conditional uses are all Administrative actions. Decisions are based on the documents submitted and the testimony at the meeting. When those types of applications are being considered, the PZC Chair will swear in anyone providing public testimony due to the opportunity that the applicant will have to appeal PZC's decision. While legislative decisions cannot be appealed to a court, quasi-judicial decisions can be. The City's boards and commissions attempt to build a record so that there is a defensible decision made. This will protect the City from re-hearings on the matter.

Ms. Husak requested a description of the need to be able to justify PZC's vote, particularly if it differs from staff's recommendation.

Mr. Boggs stated that with most applications, staff will make a recommendation for approval, disapproval, or approval with conditions, but the recommendation does not tie PZC's hands. The purpose of these proceedings is to create a record of why decisions are being made with respect to how the property may be used. If the Commission disagrees with staff's recommendation, or adds an additional condition, it must be possible to reference those decisions to the established standards for that application type. If the applicant should decide to appeal PZC's decision, it will be referred to either the Common Pleas Court or the Environmental Court. The judge will have a transcript and copies of the documents that were submitted to the Commission for him/her to base their decision on. Although the applicant will have the option to request a hearing in front of the Court, it would add time and expense. The goal is to put a good record before the Court from the outset. That is why referencing those standards when Commissioners are making their decisions is critical, particularly those cases where an appeal may be forthcoming. In the last two years, the City has had one appeal, which ultimately was dismissed because the City had a good record as to why the decision was made.

Ms. Fox stated that early in her term, she was told of the need to “cite your authority.” She often refers to her copy of the City’s Zoning Code and would recommend that every Commission member have a copy. To be able to cite your authority, it is helpful to know your authority, and you will begin to know that authority after you have paged through it enough. She finds the printed version more helpful than the digital version.

Ms. Call inquired if in regard to legislative action, which is subject to referendum, there is advice for PZC members when they are making legislative decisions that have been referred to the Commission by Council.

Mr. Boggs responded that with legislative actions, PZC is only a recommending body. The final decision for a rezoning rests with Council. The referendum timeline will be based on Council’s action. For zoning text amendments, where PZC is a recommending body, standards are set forth in the Code to be considered. Because it is legislative, it is inherently political. Even if the standards are considered, if a citizen is determined to get a referendum on the ballot, that will occur, assuming they secure a sufficient number of signatures. Council has the ability by a super majority vote to declare legislation an emergency measure. If an ordinance is declared to be an emergency, courts are very deferential to Council findings on the question. Therefore, if it is an emergency, the legislation takes immediate effect, and there can be no referendum. Oftentimes, that will be a politically fraught decision. If the legislation is not passed by emergency, the referendum period is only 30 days. Ohio municipalities have home rule under the Constitution, and per their Charter, municipalities can extend that referendum period beyond what the Ohio Revised Code (ORC) states. Although the default is 30 days, there are municipalities whose charters provide a 60-day referendum period for rezoning decisions.

Mr. Papsidero stated that he believes there are still some municipalities, particularly around Cleveland, where rezonings are subject to a public vote.

Mr. Boggs responded that there are a few such suburbs, but their decisions have been challenged from time to time. While there is broad discretion, it is not possible to make any kind of legislative decision, zoning or otherwise, based on certain grounds. You cannot deny a rezoning on a basis that there will be too many of a certain group that will be attracted to the site. Attempts have been made to challenge automatic referendum-type of rezonings, but they have been largely unsuccessful as the motives are speculative when the entire electorate is involved.

- **Ex Parte Communication**

Mr. Boggs stated that in their role, the Commission’s decisions are made based on the documents that are in the public record and the testimony presented at the public hearing. Commission members also can drive to the property and view it. Commissioners do not need to leave their education and experience at the door. A PZC member trained as an architect or engineer will bring that knowledge and experience to the table, which is often why Council appointed them. Their background will shape their perspective, and that is appropriate. Projects are made better by Commissioners asking the right questions.

Commissioners must avoid conversations with the applicants, and it is also recommended that they avoid substantive communication with the neighbors. Sometimes it is unavoidable, however, so if substantive conversations with residents occur, it is important to disclose those.

Ultimately, it is desirable for the applicant or a different neighbor to have the ability to respond to any comments that have been shared with the Commissioners. The goal is to have an effective and fair hearing process that is defensible.

Ms. Fox stated that Council members have more leniency, and occasionally, a developer will want to run a concept plan by a Council member. However, for the Council member currently serving on PZC, as well – which is her status, that would appear to be a conflict. What is Legal's recommendation?

Mr. Boggs stated that in the context, perhaps, of a Concept Plan for Bridge Street, that should not be happening, but there is an inherent push and pull because Council members are elected to be representatives of their constituents. This can be addressed, however, by simply stating to the applicant that people have approached them and shared their thoughts or concerns, and ask the applicant what their response to those comments would be.

Ms. Husak noted that when applicants come to Planning with an Informal Review application or even just an idea, staff advises them to go to their ward representatives and have a conversation. It would not be serving their purpose as an elected Council member to remove themselves from that process. The Council representative on PZC serves a very unique role, but it would seem that their role as an elected representative of the citizens would supersede that of a PZC member.

Mr. Boggs agreed. Council has the final word on PZC's function, unless there is a Charter provision on the matter. Dublin's Charter provides limited direction concerning PZC's power. With an Informal Review, no appealable type of order is issued; it involves looking at a plan in relation to an existing law. Any attempt to appeal the denial of a Concept Plan would be difficult, as well, as it is difficult to argue that PZC does not have the discretion to do that, because of the manner in which the Concept Plan provision is written. When the conversation moves to being about Final Development Plans, then those standards become easier to apply.

Ms. Fox requested clarification -- if she is approached regarding her probable support or Council's likely support of an idea, and that Concept Plan does actually end up before PZC, is she not required to divulge that earlier conversation to her fellow Commissioners?

Mr. Boggs stated that a Council member also serving on PZC would not have been irreversibly prejudiced by having the prior conversation. Since that conversation, either the idea or the Council member's perspective could have changed. The applicant would still be able to receive a fair hearing.

Mr. Fishman inquired if a Planning and Zoning Commission (PZC) member is approached by a future applicant who has not yet made an application to the City, and they are asked their opinion on an idea – would that be acceptable?

Mr. Boggs responded that if there is no case filed at that time, they can talk about the idea. If a Commissioner ever feels that they are in a "gray" area, feel free to contact him. Any conversation asking for legal advice, even an email, is considered privileged.

- **Administrative Appeal**

An appeal is the end result, if a decision is challenged. If the record shows that the Commission's decision was not an arbitrary decision and was not based on anything unconstitutional, the City will win the case.

- **Conflict of Interest/Ethics**

These rules apply to any public official. If a member has an immediate family member bringing forth an application, legislative or quasi-judicial, that member is not permitted to participate in the hearing. A family member is inherently a conflict of interest under the Ohio Ethics Law. If the potential conflict of interest is with a business association or an organization with which the member is involved due to other work within the community, it is a matter of degree of involvement. If the PZC member is involved in the leadership of that work or business, it would be considered a potential bias, and the member would need to abstain from the discussion and vote. Typically, the member is asked to leave the room. Other less involved relationships would not require abstention, although it might be best to disclose them.

Ms. Newell inquired if a Commission member is also a member of a church that has an application before the Commission, would that be considered a conflict of interest?

Mr. Boggs stated that being a member of a parish would not be a conflict of interest. It is typically a matter of how closely involved the public official is with the project. A recent example in this City that was handled correctly was the Memorial Tournament headquarters application. Commissioner Fishman is a member of the Club, but he was not involved in the project. He disclosed his membership, which would have no effect on his decision, and he participated in the case discussion. Typically, a church would be viewed similarly; however, there is some gray area. For instance, if the church organization in which the PZC member is involved is quite small, a greater potential for bias would be expected.

Ms. Call inquired if PZC members are required to file financial disclosure statements.

Mr. Boggs stated that PZC members are not required to do so. State officers and City Council members are required to file financial disclosure statements.

Presentation: Planned Unit Development (PUD) Process

(Zoning Code Sections 153.050 - 153.056)

Types of Planning Applications

- **ART Review**

Initial reviews for Bridge Street, West Innovation District and Wireless Communication Facilities (Exchange of Equipment only). Initial review is conducted by the Administrative Review Team (ART), which then forwards a recommendation to ARB or PZC for final review and approval (excluding Wireless Communications Facility).

Application Types:

- Bridge Street – Administrative Departure, Basic Development Plan Review, Basic Site Plan Review, Development Plan Review, Development Plan Waiver Review, Site Plan Review, Site Plan Waiver Review, Open Space Fee in Liu.
- West Innovation – Administrative Departure, Development Plan Review, Site Plan Review
- Wireless – Wireless Communications Facility – ART only

Ms. Husak stated that at the last Council meeting, substantial changes were made in the Bridge Street Code review process, which will reduce the number of applications to be reviewed by ART. The applications will be reviewed by PZC in the future.

- **ARB Review**

Application Types:

- ARB – Review of applications within the Historic District. For those properties in the Historic District that are outside the Bridge Street District, there is a non-time-limited ARB review, and those do not require ART review.
- Informal Review – (same as above)

- **BZA Review**

Application Types:

- Administrative Appeal
- Non-Use-(Area) Variance
- Use Variance (don't currently do)
- Special Permit
- Board of Building Code Appeals

- **PZC Review**

Application Types:

- Concept Plan
- Preliminary Development Plan/PUD Rezoning
- Final Development Plan
- Amended Final Development Plan
- Conditional Use Informal Review
- Preliminary Plat
- Final Plat
- Standard District Zoning/Zoning Map Amendment
- Zoning Code Amendment

The discussion tonight will focus primarily on the first four of the above. For all of the above, PZC will be making recommendations to Council, or will have the administrative authority to approve.

Development Areas in Dublin

- **PUDs**

These developments are the preferred method of zoning in the City. The PUD process began with Metro Place in the 1970s, and the development of Muirfield Village elevated it to a greater level. Approximately 65% of the City has been developed in PUDs. Every PUD has its own zoning code and can have only a few pages or hundreds of pages of guiding text. The amount of text available can depend on how old the PUD is and the amount of records that have been retained.

Mr. Papsidero stated that when an inquiry is made concerning the ability to make a change or do something within a particular area, that is the reason it is necessary to review the PUD text/zoning code.

Ms. Husak stated that some PUDs are so large that there are subareas within the PUD, and each subarea has its own zoning text; the Thomas-Kohler PUD, for example, encompasses 80 acres.

- **Standard District Zoning**

The Bridge Street District, 1,100 acres, is a standard district zoning, but has 126 pages of zoning code. It has unique standards and processes that other standard districts do not have. With a typical standard district, such as River Forest, nothing will come before PZC for review. With the Bridge Street standard district, some application types will come before PZC for review. The West Innovation District, which is also a standard district, involves ART and PZC review. In the southwest area – Tuttle, Cosgray and Houchard roads – there is vacant farmland, all currently zoned Rural. The City's Community Plan has Future Land Uses assigned and Area Plans in place that show the Future Land Uses. There are issues with utilities in that particular area. Only a wealthy owner of a large amount of that land will be able to bring in the desired utilities.

Mr. Papsidero stated that the area is zoned Rural, not because it is Dublin's intent that it remain Rural, but with most Ohio municipalities, when properties annex to the municipality, they are automatically zoned into a Rural District as a type of holding zone until an application for a development is submitted and the area is rezoned. That area was annexed with no utilities and zoned into a district with the lowest density.

Ms. Call inquired if that would also have property tax implications.

Ms. Husak responded that some of the areas have been designated agricultural, so are not in a City zoning.

Mr. Boggs stated that a CAUV status, a Common Agricultural Use Value property, is independent of zoning. An application for that designation must be filed with the County Auditor. This status does significantly reduce the property taxes on the property.

Ms. Husak stated that the area on the east side of I-270 just south of the Bridge Street District, next to the Frantz Road area, is in the Dublin Corporate Area Plan. The intent behind that area plan was to have a similar zoning process as is in place for the West Innovation District – creating subareas of standard zoning that would apply to certain areas, which means many PUDs. There is a lot of vacant land and older office zones that need to be rezoned and revitalized. Attempts are being made to have a new Code in place. Council will prefer PZC to have input on those development applications and have an avenue for the public to be more involved. The public has not been involved in the ART review process, even though the agendas are published.

Mr. Papsidero stated that the change in the Bridge Street Code review process will make that review more consistent with the PUD process. The intent is also to have a consistent review in the DCAP area and eventually the West Innovation District. There is a goal to have a consistent development plan process across the City.

PUD Steps

- **Concept Plan**

Ms. Husak stated that this application type allows PZC to provide non-binding feedback, comments, and suggestions on an illustrative development proposal. This application is required if the proposal does not meet the Community Plan Future Land Use map, involves the development of 25 or more acres, or if the proposal has substantial community impact. The Informal Review is very similar to a Concept Plan review; however, the Code contains certain provisions that require a Concept Plan. That first step is with the PZC. The Code does permit the applicant to also request review by City Council, but typically, that does not occur.

- **Rezoning with Preliminary Development Plan**

Ms. Husak stated that this application type establishes the development text including all zoning regulations and the zoning district boundaries. This review would include potential phasing of development, overall site layout, density, open space locations and approximate sites, public streets and connections, architectural character, and similar items. This is a Legislative type of review with PZC providing a recommendation to City Council. The “plan” shows how the “words” will be translated in a preliminary manner. The words are the law, but the plans illustrate what the law says.

Ms. Fox stated that the Concept Plan is non-binding. Are there any criteria involved?

Ms. Husak responded that the Community Plan serves as a guiding policy document. It does not contain criteria, but it does contain policies, which could be translated into criteria.

Ms. Fox stated what while the Concept Plan is non-binding, the Preliminary Development Plan is binding, so it is very important to take time with the details. It is the only review at which PZC or Council can make any real changes. When the Preliminary Development Plan is approved, it is very important that it be correct, as it is binding.

Ms. Husak stated that the text document is more binding than the plans. Ultimately, the text would overrule the plans. If there is a discrepancy between the two, the words are the law, and the maps or plans accompany it. If the text does not address certain things, such as signs, the default is the Zoning Code

Ms. Fox stated that when the Preliminary Development Plan comes before the Commission, a lot of time is spent on the drawings, but it is more important to read the text carefully.

Ms. Husak stated that the staff report with the application points out where the text deviates from the Code.

Mr. Fishman stated that it is preferable for the Commission to table the Preliminary Development Plan, if there is anything that is missing or in any way unclear. The Final Development Plan (FDP) is a routine review, and it is unfortunate if the Final Development Plan details reveal what was missed with the Preliminary Development Plan review. He has been frustrated several times through the years when the Final Development Plan did not look like the Preliminary Development Plan.

Ms. Newell stated that when the Final Development Plan Review is scheduled, sometimes a different Commission is in place than the Commission who reviewed the Preliminary Development Plan. At times, some elements are approved by the previous Commission that would not be approved by a subsequent Commission.

Ms. Husak stated that the Thomas Kohler Plan is one such example. There was only text, and no illustrative plan.

Ms. Fox inquired if a PUD has no expiration period. If a Preliminary Development Plan was approved in 1995, but the development was never completed, is there any way to address plans that were approved earlier that the Commission would prefer not to adhere to today?

Ms. Husak stated that the Code is vague. Expiration may be considered if no Final Development Plan ever has been submitted. The Thomas Kohler PUD Plan is comprised of almost 100 acres, and many Final Development Plans have been submitted, approved and buildings have been constructed. With some parcels, no construction may have been started. The other component with that is the City would need to take action to zone the land back to what it was previously. Ms. Husak stated that in her experience with the City, this has not happened.

Mr. Boggs stated that is where legislative discretion begins to get tightened up. It is one thing to deny the property owner something they are requesting; it is another matter for Council to tell the property owner that, although his property is zoned one way, Council will zone it differently. There are property rights that would be implicated.

Ms. Call inquired if a property owner has a certain zoning and brings forth a Concept Plan that is not pursued for many years, and when the owner attempts to pursue the project several years later, the Code has been updated and the standards are higher within the same zoning, at that time would the applicant be required to comply to the higher standards?

Ms. Husak responded affirmatively. The Concept Plan is non-binding; it does not give the applicant any vested rights.

Mr. Supelak stated that there is the City's Community Plan, and there are Special Area Plans within that which provide guidelines and policies for future development. None of that is triggered until a landowner wants to develop within that said area.

Ms. Husak stated that, essentially, there are three layers – the existing zoning, Future Land Use, and in some areas, Future Area Plans.

Mr. Supelak stated that subsequent to those are the PUD developments, which have their own set of rules.

Ms. Husak stated that in Dublin's Zoning Code, there is a PUD section. That section does not provide a blueprint for a PUD. It states what a PUD ought to contain and address – arrangement of buildings and yards, landscaping, roads, access, utilities – but it remains vague on specifics. It does not specify numbers of parking spaces that would be required, or number of trees necessary. It provides review criteria for the Commission to use, but nothing more.

Mr. Supelak stated that if the PUD does not contain criteria on an item, such as required parking spaces, the requirement would default to the Zoning Code, correct?

Ms. Husak responded affirmatively.

Mr. Supelak inquired how a Special Area Plan comes into being. Is it City-initiated?

Ms. Husak stated that until October, the Thomas-Kohler PUD was not within a Special Area Plan. Today, the vacant parcels on the east side of Emerald Parkway are included within the Dublin Corporate Area Plan.

Mr. Papsidero stated that the Community Plan is prepared by City staff and adopted by City Council as official City policy. There are also subareas that are addressed by Special Area Plans, which are developed and adopted in the same manner. Those plans provide more detail for a specific geographical area. The majority of the Plans were completed the last time the Community Plan was completely updated. In recent years, Council has determined that it makes better sense to have periodic updates for special parts of the City, as opposed to attempting to update the entire City at one time. The last complete Community Plan update was a large project that included traffic modeling and utility modeling and cost approximately \$3 million. For a more mature community, it makes sense to have Special Area Plans. It is more about infill and redevelopment than development of vacant land. The Dublin Corporate Area Plan is one such plan. The Bridge Street District Plan also concerns infill and redevelopment.

Ms. Husak described the boundaries of the Dublin Corporate Area Plan.

Mr. Papsidero requested that she point out the challenges of the Waterford Village PUD.

Ms. Husak stated that Metro Center, as well as a large portion of the nearby residential area, were all zoned together in 1973 as the Waterford Village PUD. There was little information with that ordinance. Thankfully, the residential lots were plotted. Typically, if there are no development standards, staff attempts to find like standards in the Zoning Code. For example, if the lots are 10,000 square feet, the Zoning Code contains standards for R3 or R4, which allow 10,000-square-foot lots. The R3 and R4 standards also contain side-yard and rear-yard setbacks and lot coverage requirements. That is what is used today for that PUD. It is similar with Metro Center. Because it is an office district, the uses permitted within a standard Office District are allowed, although there are no requirements pertaining to parking spaces, building location and setbacks. Eight-story buildings cannot meet the SO setbacks, but those buildings do exist on I-270.

Mr. Papsidero stated that because there are no rules in place, staff had proposed doing a comprehensive rezoning for this entire area, particularly the Metro Place area. Currently, property owners are hesitant to update their landscaping, because the rules are unknown and there is no certainty. There is even less likelihood they will invest in a building. It is a challenge to encourage new investment, as it is unknown what process and rules might apply.

Ms. Husak stated that the Dublin Corporate Area Plan provides the current Future Land Use map and current zoning. Parking analysis was conducted. The 72-page document was adopted October 2018. Staff is attempting to determine how to write Future Land Uses that really

address what the public wants, corporate residents want and the City wants in redevelopment and revitalization. Consultants worked with staff on this plan.

Mr. Supelak inquired what authority does this special area plan have over the Thomas-Kohler PUD?

Ms. Husak responded that, currently, it has no authority.

Mr. Supelak inquired if that could be triggered if there were to be development of some sites.

Ms. Husak stated that is part of the process under City Council consideration at this time. Now that the Plan is in place, the districts are outlined and the intent is to write the language for those districts that would provide rules and regulations for redevelopment and development. There are some options for this area, including:

1. The entire planning area could be rezoned into the various districts at one time.
2. The districts could be created and incorporated into the Zoning Code, and potential developers could request to be rezoned into one of those districts and develop under those rules and regulations.
3. An applicant could choose to remain a PUD but request to be planned into a new Planned District with those rules in place.

Ms. Fox inquired if there might be a fourth option. If Council does not do an area rezoning, a property owner remains as they are and builds whatever they want under their current zoning, which provides them those vested rights.

Mr. Papsidero stated that is correct; those rights remain. Staff did share these options with Council. Council's direction was to rezone the lower part of the Frantz Road area including Llewellyn Farms as one phase, and rezone the western half of Frantz Road including Metro Place as a second phase. Staff will begin that process later this year. The remainder of the geography in that area will not be impacted. The area north of Rings Road is zoned straight zone, OLR, which has a narrow set of uses, including Laboratory or Office.

Ms. Husak stated that staff discussed having auto-oriented uses as a Conditional Use.

Mr. Papsidero stated that no review would be required; the request would proceed straight to building permits.

Mr. Supelak inquired if the City can set in motion an area zoning, which would invalidate the PUD.

Ms. Husak noted that occurred in the West Innovation District.

Mr. Supelak stated that he understands the City would be using that authority strategically.

Mr. Papsidero stated that although the City has the authority to propose the rezoning, they would be working with the property owners throughout the process.

Ms. Husak stated that an area rezoning occurred with the Bridge Street District, as well as the West Innovation District. In both cases, there were two vocal landowners in strong opposition, so both area rezonings have a Code provision that permits a property owner to have either the uses of the new district or the uses and development standards of the district that was in place beforehand.

Ms. Fox inquired if an area rezoning occurs, and an existing landowner chooses to redevelop, are they grandfathered in under the previous zoning?

Mr. Papsidero responded that with the DCAP area rezoning, the intent is for a complete replacement of the current zoning. In the Bridge Street District, there is the provision that allows the existing property owners to maintain the pre-existing uses.

Ms. Husak stated that the Bridge Street District was intended to be a mixed-use district, every property owner was allowed to maintain their previous uses. There have been some issues related to preexisting Conditional Uses versus current Conditional Uses, but it has not happened ~~that~~ often. Cardinal Health has a large vacant piece of land south of I-270 that is zoned PUD, and they want to redevelop under that zoning, which permits development in a campus setting away from the street, maintaining the rural-like character of their current campus. In the Bridge Street District, the term "non-conformity" has been avoided. Many times, property owners have issues with refinancing, if their use is considered nonconforming. In the Bridge Street District, they are considered existing uses.

Mr. Boggs stated that existing use standards in the Bridge Street District are very similar to the standards for expanding a nonconforming use in other districts. It was an accommodation to that financing concern. Prior uses are technically permitted as existing uses rather than being nonconforming. Complete redevelopment, however, operates under the new criteria.

Mr. Fishman inquired if the building with a nonconforming use is torn down for redevelopment, does the redevelopment have to conform to the new zoning?

Ms. Husak responded affirmatively.

Mr. Fishman stated that there were two businesses in particular with which there was controversy about those property owners' inability to retain their current businesses if they were to tear the buildings down to remodel. Was the decision that if their buildings were to be demolished for renovation, the new development must conform to the new zoning?

Ms. Husak responded that if the building is completely torn down, that is the case. With a nonconforming use, the Code currently permits a 25% expansion.

Mr. Fishman inquired if the building is altered more than 25%, are the new zoning standards in effect?

Mr. Papsidero stated that a number of the nonconformity provisions were modified with the recent Code amendment. More specificity was added where there were "gray" areas, but he believes the 25% rule remains. The property owner can expand up to 25% of the existing

square footage and not have to comply with the new zoning, unless the expansion is towards the street and transparency must be added.

Ms. Husak stated that language has been added to strive to meet Bridge Street standards and materials, development patterns, etc.

Mr. Papsidero stated that there are similar provisions with DCAP, but they have not been discussed in depth. The next PUD that PZC likely will see is the OSU Ambulatory Care Facility. The City has agreed to let them develop as a PUD rather than developing under the West Innovation District standards, because it is a better fit for their program. That will be an approximately 500,000-square-foot, two-phase project.

Ms. Fox stated that review of a preliminary development plan is not a minor review. How can a PZC member prepare for that level of review?

Ms. Newell stated that it will be critical to read the PUD text, because that is the Code that they are submitting.

Mr. Papsidero stated that this PUD may not be that complex. The development will consist of box buildings, an exterior area, and the uses will be basically medical. There may be some issues with the site layout, parking and stormwater; otherwise, the development will be fairly straightforward.

Ms. Husak stated that staff can share with PZC members the previous Dublin Methodist Hospital development text, which was not that complicated. It created a beautiful facility. Some of that occurred with the Final Development Plan stage, where certain architectural elements, building materials, and application of building materials is fleshed out. The Commission still has a lot of negotiating ability with those elements at that stage.

Mr. Boggs pointed out that was a product, however, of how the text was written.

Ms. Fox requested if the Preliminary Development Plan would define the overall site layout, density, open space location, approximate sizes of the buildings, public streets, height of the building and square footage of the buildings, and exterior materials around the buildings.

Mr. Papsidero stated that for this project, some aspects are defined in the development agreement. Certain elements may already be fixed, including the square footage and height of the buildings, and some uses may also be defined in the development agreement.

Ms. Fox stated that her understanding was that when a Concept Plan is reviewed by Council, it becomes binding.

Mr. Papsidero responded that is the case with the Bridge Street District only. This development agreement for the OSU Ambulatory Care Facility provides for a PUD. This area does not meet the requirements for submission of a Concept Plan, as it is less than 25 acres.

Ms. Husak stated that is correct, although from a Future Land Use perspective, it likely meets the requirements.

Mr. Papsidero stated that from a use standpoint, it meets the Code. Perhaps an Informal Review would be possible.

Ms. Husak stated that the applicant would not object to an Informal Review. In her experience, no one has objected to an Informal Review before the Commission.

Ms. Fox stated that in preparation, the PZC members can review the PUD section in the Code and compare the PUD text with that Code section to verify that no item is missing in the text that has been provided. If the PZC member has questions/concerns about the architectural character, how much discretion is permitted in the Preliminary Development Plan?

Mr. Papsidero responded that the Code permits a lot of discretion. There is the political aspect of the nature of the applicant, their goal and their branding. The Commissioners should look at what was approved in Powell, as Dublin will be getting an identical structure; it is also what will be built in the Columbus portion of New Albany. The applicant has some expectations that will be very firm. The existing structures in the other location appear to be very attractive.

Ms. Fox stated that she was not referring specifically to the proposed PUD, but was speaking of the PUD process in general.

Ms. Newell stated that the idea of a PUD instead of a straight zoning is that a PUD involves a "give and take" between the applicant and the City. Where a straight zoning permits no exception, a PUD will permit an exception to be made in the interest of a better quality development. For example, she will compare what the Zoning Code says the setbacks should be for that property with what the applicant is requesting. Staff will indicate when they have concerns with such a request, but sometimes there are reasons why the Commission would want to make an exception. Occasionally, there have been PUDs where the architecture is too open-ended, there is insufficient detail in the text for new staff to interpret and a new Commission to have the ability to determine what the architecture should be. That is exactly the struggle with the Thomas-Kohler PUD. The original text must be written in such a manner as to give future staff and Commissioners the ability to interpret it.

Ms. Fox stated that is helpful. The processes are different with a PUD, a Basic Plan, etc. Being able to understand the intent of a PUD, the criteria to be used, the ability to define certain things, and the intent for a give and take process is very helpful.

- **Residential PUD vs. Commercial PUD**

Ms. Husak stated that the differences between a residential and a commercial PUD are vast. In a commercial PUD, the Commission will see every elevation of a building and the interior layout. In a residential PUD, particularly with single-family houses, the architecture is provided in the text. For example, in the Ballantrae development there are 650 single-family homes. Staff nor the Commissioners have looked at all of them. The architecture of the individual homes is approved in building permitting per the existing requirements. In those developments, the client needs to be able to choose their preferred elements. One of the exceptions with a residential

PUD was Tartan Ridge, where there was a very detailed review process, whereby every house was reviewed by the Planning Department. Eventually, they had to establish an architectural reviewing board, on which an architect served. Although that architectural review process produced excellent results, it is not a realistic task for the City to perform. On the other hand, there is the Riviera residential development, where 75% of the lots were sold to MI Homes, which has one model that every customer wants. As a result, there is an issue of achieving diversity in the architecture. A single-family PUD is very different from a commercial PUD, where PZC approves all the elevations and building materials.

Ms. Newell inquired if there were architectural character sketches for the Riviera development.

Ms. Husak responded affirmatively. The southern side of the development is more diverse than the northern side, and there is an empty-nester area near the rear. The current customer demand is for farmhouse architecture. Inside Dublin and elsewhere, that architecture style is seen everywhere.

Ms. Newell stated that, as a design professional, she would recommend that the developer be required to submit five or six styles of farmhouses ~~that~~ instead of one farmhouse design.

Ms. Husak stated that occurred in Tartan Ridge, which is what made that development nice. The developer met with staff and had five or six architects creating diverse sketches. With Riviera, however, the development text provisions were not strong enough to force the developer to do that.

Ms. Call inquired if there are provisions that require within some areas that articulations or elevations be different between adjacent properties.

Ms. Husak stated that with each development, either at the Preliminary or the Final Development Plan stage, they must show diversity between every two houses on one side of the street and the two across the street. It is difficult to determine if the homes are sufficiently diverse.

Ms. Fox inquired if the Commission could require stronger wording in the PUD text in regard to diversity in architecture, and frequency of repetition of the architecture within a certain number of homes.

Ms. Husak responded that those requirements can be added, but from an administrative standpoint, it is difficult to invest the amount of time required for that level of review.

Ms. Newell stated that some PUDs, such as Muirfield Village require that the community ~~—e,~~ have an architectural review board, which alleviates staff of that task. Would it be appropriate to require that?

Ms. Husak responded that Council Member Reiner has strong objections to that suggestion. That type of attempt was made with the Stansbury at Muirfield development, and his preference is that should not be repeated.

Ms. Call inquired if the Building Standards division could use the necessary criteria and administer that review within their permitting process. They could ensure certain components are in place, such as ~~that~~ the same floorplan is not be repeated within a certain number of houses.

Ms. Husak responded that the criteria are in place, and the Building Standards Department administers that review now. A member of that division has the task of conducting those reviews.

Mr. Fishman stated that the Preliminary Development Plan text locks in the development. Over the years, he has heard ~~so~~ many times from builders that an element is not negotiable because it was set by the Preliminary Development Plan. Therefore, it is very important to make sure that the conditions, architecture and building materials are clearly established in the Preliminary Development Plan. There have been several situations in Dublin where compromises were made later and those features changed. The Preliminary Plan is really not preliminary; it is in essence a Final Plan.

Ms. Newell stated that there have been cases where portions of a PUD were developed later, and the Commission at that time has to respect the terms approved by a previous Commission. She has learned that in some cases, a PZC member can review their packet materials and have a certain opinion. However, during the public review process, the member will hear the views of the applicant, staff, the public and fellow Commissioners and will end up with a completely different opinion. She attempts to honor previous decisions recognizing that she does not have the benefit of having heard all the discussion at the past meetings that led to the decision.

- **The PUD**

Ms. Husak stated that each PUD is a unique and separate zoning district, although some may have been modeled after others. Each PUD has its own name and its own rezoning ordinance. The PUD Preliminary Development Plan is adopted at the same time as the rezoning/zoning map amendment.

- **PUD Concept Plan**

As mentioned previously, the Concept Plan is the first step in the PUD creation. It is always reviewed at the staff level. Complex projects larger than 25 acres or not compliant with the Community Plan require PZC review and feedback, and the applicant may also request review by Council. The Concept Plan is non-binding; no comments made should be construed to indicate approval or disapproval. For staff's review, the Community Plan is considered, which includes the Future Land Use Map, the Thoroughfare Plan, Roadway Character and Special Area Plan. Staff provides PZC with the discussion questions to guide their review, but tries to remain neutral on the analysis.

- **PUD Preliminary Development Plan**

- Zoning Map Amendment (Rezoning). The Preliminary Development Plan makes an amendment to the zoning map, which has two zoning code sections, 153.232 and 153.234, that authorize PZC to recommend the zoning map amendment to Council.
- The PUD Development text should address the following:

- Any dimensions or other provisions that depart from applicable standards in the Zoning Code
- Adequate provisions for maintenance (HOA)
- Uses
- Arrangement of Use Areas, Buildings, Yards
- Landscaping, Screening, Buffering
- Open Space
- Protection of Natural Features
- Pedestrian Systems
- Street Design/Vehicular Circulation
- Off-Street Parking
- Signs
- Utilities
- Phasing
- Common Facilities

Tartan West is probably the largest, most intricate development texts the City has on file. City PUDs development texts range from not very detailed to very detailed.

- The PUD Preliminary Development Plan also contains the following plan sheets:
 - Site Plans
 - Preliminary Landscaping
 - Preliminary Tree Inventory – staff will visit the site with the applicant and verify the species, and the condition of the trees. This is important when evaluating what will be removed and how much needs to be replaced.
 - Preliminary Utility Plan
 - Preliminary Stormwater Management
 - Traffic Study – This is a PUD Code requirement, which the applicant must conduct. It is a time-consuming, lengthy study, involving traffic engineering experts for the applicant and for the City. Depending on the location, Union County can be involved.
 - Preliminary Plat - Although regulated by Subdivision regulations, a preliminary plat is required as part of the process when property is being divided into parcels.
- Review and Approval.
 - Planning and Zoning Commission. PZC provides recommendations on both the zoning and the preliminary plat.
 - City Council is the final reviewer and approver.
- **Final Development Plan (FDP)**

This application type verifies compliance of proposed developments, or phases thereof, with the approved preliminary development plan.

 - Requires all final details. For Commercial PUDs and residential condominiums, detailed architecture would be provided.
 - The FDP must be in accordance, match or even exceed the Preliminary Development Plan.
 - The FDP process may occur in Phases and could take a long time.

- PZC review of the FDP is required.
- Must include with a Final Plat, if parcels are being divided.
- PZC recommendation is provided to City Council for approval.
- Council provides final approval.
- Building Permitting – permits to build may be applied for after the approval process has been completed.

- **PUD Administrative Approvals – Minor Modifications**

The PUD permits the following 10 criteria to be approved administratively:

- Lot Line Adjustments
- Location or Layout of Parking
- Building Footprint Adjustments, 10% or less
- Landscape Material Substitutions
- Redesign/Relocation of Stormwater Facilities
- Redesign/Relocation of Landscape Mounds
- Sign Face Changes
- Building Materials or Colors
- Outside Agency Changes
- Any other minor modification approved by the Planning Director.

Any modification other than the above requires an Amended Final Development Plan (AFDP). No modifications are permitted for Uses or Density.

- **Amended Final Development Plan**

An Amended Final Development Plan (AFDP) is exactly like a Final Development Plan. The criteria and submission requirements are the same. This application requests review of significant modifications to an approved FDP, verifying conformance with the Development Text and Preliminary Development Plan. It can cover modifications to signs, building elevations, site layout, open space design, or a completely new iteration of the Final Development Plan.

- **Minor Text Modifications**

The Planning Commission can approve a Minor Text Modification with either the Final Development Plan or an Amended Final Development Plan. The following five provisions must be met.

1. Still consistent with the Community Plan and compatible with surroundings
2. No significant change to Use or Density
3. Equivalent or high quality development
4. The PUD development criteria will still be met
5. No adverse impact on health, safety, welfare

A parking modification is the text modification most often requested.

[Training session ended.]

Ms. Kennedy expressed appreciation for the in-depth training, and particularly appreciates having the importance of the Preliminary Development Plan review pointed out.

Ms. Newell stated that the PUDs are large, detailed documents, but as an architect, she does not find them that difficult to navigate. It is a matter of knowing where to look in the PUD text,

and it is typically clear when the requirements default to the Zoning Code. In addition, many of the PUDs contain similar text portions.

Ms. Fox stated that, for the lay person, the PUD document seems quite complex. She is the lay person on PZC and was, as well, when serving on the ARB.

Ongoing Training

Ms. Fox stated that on behalf of Council, she can share that Council is interested in creating a professional development program for its board and commission members. That program may involve online learning opportunities; some memberships that are paid for by the City; an updated calendar to advise Board and Commission members of upcoming conference opportunities; and better communication with Council. Their goal is to have consistency in the level of professional development provided to future board and commission members, as well. Council's objective is to facilitate an exemplary citizen commission of high integrity that is well-trained, well-informed and well-prepared to pursue the public interest, advise Council and perform in a fair, proficient and deliberative manner. This will be a topic of discussion for a future work session.

Ms. Call stated that she appreciates the efforts of previous Planning and Zoning Commissions and staff for compiling adequate and thorough resources to help the Commissioners make their decisions. Some of the ambiguities that existed ten years ago in the City of Dublin no longer exist because of the due diligence of staff, the Commission and Council.

Ms. Husak noted that she sent an email reminder to PZC and ARB members regarding the Planning and Zoning Workshop on May 17. If members are interested in attending, please contact either her or Ms. Rogers-Liston, Planning Division, to facilitate the registration.

As there were no further matters for Commission consideration, the meeting was adjourned at 8:55 p.m.



Chair, Planning and Zoning Commission



Deputy Clerk of Council