

**NORMAN PLANNING COMMISSION
STUDY SESSION MINUTES**

SEPTEMBER 8, 2011

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Study Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 8th day of September 2011. Notice and agenda of the meeting were posted at the Norman Municipal Building twenty-four hours prior to the beginning of the meeting.

Item No. 1, being:

CALL TO ORDER

Chairman Jim Gasaway called the Study Session to order at 7:17 p.m.

Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Cynthia Gordon
Diana Hartley
Tom Knotts
Chris Lewis
Curtis McCarty
Roberta Pailles
Zev Trachtenberg
Jim Gasaway

MEMBERS ABSENT

Andy Sherrer

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &
Community Development
Doug Koscinski, Manager, Current
Planning Division
Roné Tromble, Recording Secretary
Leah Messner, Asst. City Attorney
Jane Hudson, Planner II

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Item No. 3, being:

DISCUSSION OF DUTIES AND RESPONSIBILITIES OF THE PLANNING COMMISSION

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Article XII. Norman Planning Commission
3. Annotated Section 4-1201 – Duties and Powers of the Commission
4. Charter Article XIX. Planning; Zoning and Subdivision Regulations
5. State Statutes – Article XLV. Municipal Planning Commissions
6. Planning Commission Resolution PCR-9899-1

PRESENTATION BY STAFF:

1. Ms. Connors briefly reviewed the materials that were provided for this meeting. She noted that the Planning Commission also has purview over Chapter 18, the Sign Code, which was not mentioned in the staff memo. In PCR-9899-1, the Commission might want to consider §3 where it says that meetings start at 6:30 p.m.; the language could be much more general so that the Commission could change the time of the meeting at some time in the future.

DISCUSSION BY THE PLANNING COMMISSION:

1. Mr. Trachtenberg suggested deleting Section 4-1201(b)(2) as duplicative of (a). Ms. Connors pointed out that (b)(2) addresses amendments to the plans that are not discussed in (a) and addresses rezoning.
2. Mr. Gasaway noted that Chapter 18, the Sign Code, needs to be added to (b)(7).
3. Mr. Knotts noted the need to renumber the paragraphs because of those being deleted.
4. Mr. McCarty commented that the Commission may want to make a recommendation that the Charter be amended, in Section 2, by deleting the last sentence which gives the Commission the power and authority to employ personnel.
5. Mr. McCarty asked if there are things in the state law that are different than the way the Commission is set up. Ms. Messner responded that state law requires that we have a Planning Commission, but how we govern and regulate it is up to City Council. She thinks the annotated version before the Commission accurately reflects what the Commission is currently doing.
6. Mr. Gasaway noted the staff recommendation for more flexibility in the meeting time as set by the resolution. Ms. Connors suggested: "The Planning Commission meetings, both Regular Session and Study Session, shall begin at a regular time and place as designated by the Planning Commission" or something similar. Ms. Gordon asked if there was any interest in changing the second paragraph of that section where it says "shall not begin consideration of any new items after 12:00 midnight" to an earlier time. Mr. Kosciński explained that provision was put in because in the 1980s it was common for the Planning Commission meetings to last until 1:00, 2:00 or 3:00 a.m. The adoption of the Consent Docket made a big difference in the length of meetings.

At that time, the meetings also started at 7:30 p.m. Mr. Trachtenberg suggested changing that provision to 10:30, because that is four hours. Mr. Gasaway suggested that it wouldn't really be fair to postpone an applicant for another month. Mr. Lewis pointed out that the rest of that paragraph indicates remaining items will be at a Reconvened Meeting, rather than the following Regular Meeting.

7. Ms. Messner commented that there are some Open Meetings Act requirements about posting and setting the meetings at a regular time, possibly for the calendar year, so you couldn't change the time without setting it for a year. The time doesn't have to be in the resolution.

8. Mr. Gasaway proposed leaving the Regular Session meetings at 6:30 in the Resolution, but saying Special Meetings and Study Sessions to be determined by the Commission. Ms. Connors indicated that could be done.

9. Ms. Gordon again asked about changing the second paragraph of §3. Mr. Trachtenberg asked about the possibility of juggling the agenda if there is going to be a long, contentious item. He noted that changing the time from midnight to 11:00 p.m. actually retains the length of meeting that was originally anticipated when the meetings began at 7:30 p.m.

10. There was discussion of §3 where suspension of the rule would require a two-thirds vote. It was decided to change that to "simple majority."

11. Mr. Lewis commented he believes the changes so far bring the Planning Commission more in line with what we are actually doing today. He asked that the Planning Commission consider §5 of the resolution. He asked if the Planning Commission regular meeting is deemed a public hearing by this document. Ms. Connors responded affirmatively.

12. Mr. Lewis voiced his concern with the contentious issue of WQPZ and the zoning overlay district, when we took a recess in order for a document to be printed, and there was a considerable amount of information that was changed in that document. I would suggest to the Planning Commission that we make a resolution that this Planning Commission will not take into consideration an item that has not had due diligence to read over, thoroughly understand, and I would say that could be five days or whenever we receive the packet. For a document to come to me, and as a Planning Commissioner be asked to make a decision on this document that I haven't even had time to read every word in it, is certainly not due process. I think we just need to strengthen that a little bit.

Mr. McCarty asked if the Planning Commission has the right to postpone an item when somebody brings forth something that's different than what is in our agenda packets that is lengthy. Ms. Connors responded that § 5(4) says: "When the Planning Commission determines that circumstances warrant further study." That's one of the reasons that you could table an item.

Mr. Lewis suggested that if the item is not in the Planning packet that we receive on that Thursday or Friday prior to a scheduled Planning Commission meeting, then something that is presented ad hoc within 5 minutes of the meeting beginning or 15 minutes into the meeting should not be allowed as changes or anything else, unless we

bring that amendment forward. I mean for me to get a document 15 minutes into a meeting that still is warm from a copy machine – that's not due process.

Ms. Connors – I would say you could still table it. If it has been advertised, you have to take some action on it. Staff cannot pull an item that has been advertised off the agenda. We don't have that authority. So once it has been advertised, the applicant has the right to be heard at the Commission, so that's their right once that advertisement in the paper has occurred.

Mr. Lewis – Didn't we pull either water quality protection zone or the zoning overlay district off? Ms. Connors indicated the zoning overlay district was withdrawn by the applicant, which was the City. At the request of the applicant, we can pull an item off the agenda. But once it's advertised, staff can't act arbitrarily and pull it off if the applicant doesn't want it to be.

Mr. Lewis – Regardless of the changes that have been made from the printing of the actual agenda to the time we get to the meeting? Ms. Connors said that's correct.

Ms. Messner – My understanding is that you all made a motion to substitute the one in the book for the one that you received prior to the meeting, and when you made the motion to substitute, that became the item under consideration.

Mr. McCarty – I think we had a postponement that failed and then moved.

Ms. Messner – That's commonly what City Council does. If there's a typo in something or a last-minute change or something, we will see them make a motion to substitute on the floor of the Council meeting and sub one version of the ordinance for another, or something like that, in order that they can consider the latest draft.

Mr. McCarty – So no matter the differences. And what I'm saying is you have a document that just has some grammatical errors in it, versus something that's a completely different document. It doesn't matter.

Ms. Connors – It doesn't matter as far as the applicant having the right to make a presentation to this Commission. Your action can be what you choose. You do not have to substitute.

Mr. McCarty – If someone stood up and had a whole substitute ordinance that was from the public then they could submit that to us and we could vote on that?

Ms. Connors – You could choose to substitute it and vote on that.

Ms. Messner – You have the ability to make any amendment on the floor. This was, instead of a piecemeal amendment, saying I'm going to change A(2) to say this, it's just one whole document for another. But, in essence, it's the same action – you're just making one amendment instead of 20. Does that make sense?

Ms. Gordon – I'm guessing the problem is if you're essentially on the losing end of that substitution vote, because then you are forced to make a decision on a document that you just got. Does that make sense? If the Planning Commission says we're going to substitute and we're going to vote on this new document and you didn't want to substitute, you still have to vote on the new document.

Mr. Lewis – I think it's the understanding of the information that's included.

Ms. Gordon – What I'm saying is if, by majority, the Commission says yes we want to substitute and work with this new document, then you're forced to work with that document. You're now forced to look at that, because you didn't want to, but everyone else did.

Mr. McCarty – I think it's a bigger issue. I was here that night when it was handed out. But you get a whole new document and there's no way you can sit up here and go through it and understand what's in it. So then you're forced to make a decision.

Mr. Lewis – I think the entire issue is the Commission being presented a document that no one on the Commission, including myself, has even had time to read.

Ms. Gordon – I think it depends on how many changes are made in that document, and I think that's what Curtis was saying. If I recall, I remember seeing some developers or other people occasionally along the way hand us changes to documents as well that we just get that day. So, I mean, what if somebody in the audience is presenting a case and hands us a change to something and asks us to review it. At that point do we table it and wait?

Mr. Lewis – I don't recall that has ever happened.

Ms. Gordon – It's not as simple as just saying we're going to need five days ahead of time. I guess my question is, if it's just simple small changes, where do you draw the line between these are small enough changes where we can substitute it, and these are big enough changes to not substitute it? I don't know the answer.

Mr. Lewis – I do agree with that. If it's a significant 20-page document, certainly that takes a lot more process for me to read than if somebody said we're going to, instead of doing a 400-foot setback, need to change that to 200. Okay. No big deal.

Ms. Connors – Well, I don't think that happens too often.

Mr. Lewis – But the one instance – let's be honest – was contentious.

Ms. Connors – You do have the right, through your resolution and Robert's Rules of Order, to table that item.

13. Mr. Lewis – I have a question for Leah. I spoke with an attorney this week who was very clear on this item: does the Planning Commission truly have the right to postpone an item under its rulings? In other words, table an item. Not even forward it to City Council. In other words, hold up the process. Postpone it.

Mr. McCarty – I think what you're saying is are we forced to either make a decision yea or nay, and this was something that was brought up before? I think this was something that came up a couple years ago.

Mr. Lewis – The way it was presented to me was this Planning Commission, under State statute, does not have the right to postpone any item or hold it up.

Ms. Messner – I think that when you all fail to make a recommendation -- a vote fails and you send something forward essentially without a recommendation, which does happen, that does automatically go forward. As to if you postpone it, what happens, I don't want to answer that without double checking and doing some research. I don't want to off-the-cuff answer that tonight. But I will check. I know you frequently do postpone things at the request of the applicant. Then, of course, it doesn't roll forward because the applicant is not ready. But if you were to postpone something and the applicant were to challenge that postponement, that's the question I want to research and answer.

Mr. Lewis – And that was what the attorney was speaking to.

Mr. McCarty – What you think you heard from your attorney is we have to either move it forward or deny – or not approve. But we don't have the authority to remove something or postpone it? Is that what you're saying?

Ms. Messner – Again, we're guided by Norman, not State law. So I want to look and I will have an answer for you.

Mr. Koscinski – Let me say one thing that used to happen; it has now changed. The Planning Commission used to be the final authority on preliminary plats. That has obviously been changed in 2000 by the City Council. But at the time when Planning Commission was the final authority, you could choose to postpone a preliminary plat

because you were the regulatory body, in that sense. Applicants often challenged that decision, because they wanted a final plat processed all the way through Council, and were willing to take the chance on an unapproved preliminary with an approvable final plat. The system has changed at this point and that has become less of a contentious issue.

14. Ms. Hartley – I have a question about protest letters, because we got one today and I was in meetings in Oklahoma City and so I didn't even get to look at it until I sat down here. Granted, it was only 2.8% and wasn't a big deal, but I didn't know that there was a protest so, unlike Cindy, I didn't get to go look at the site. I was too busy today, and then I saw the protest. How close to the time of the meeting can citizens file a protest?

Ms. Tromble – Generally they're due on the Monday before the meeting at 5:00, but because Monday was a holiday, they were due on Friday at 5:00 for this meeting. And then it takes a while for staff to prepare the protest map.

Ms. Messner – Actually, we take protest letters after the Planning Commission meeting and they will go to City Council, also. I know the protest letters may affect your decision making, but what they do with City Council is if there's more than 50% protest within the protest area, it triggers a super-majority vote of Council.

Ms. Gordon – So it doesn't matter when we get it. If we get it, great. If we don't, great.

Ms. Messner – If they turn it in before Planning Commission, then we do our best to get it to you.

Mr. McCarty – If we're going to change this resolution, should we put language in there about protest letters and when they're due? Does that make sense to put in here or not?

Ms. Connors – I don't believe so, because the affect is at City Council.

Mr. Knotts – And they can show up here without anything.

Mr. McCarty – The problem is, it doesn't count against the protest map if they don't send in a letter.

Mr. Gasaway – But the map doesn't really have any affect on us in terms of how many votes it takes to pass something, where it does on City Council. And somebody doesn't have to protest at all in writing. They can come as a citizen and speak at the meeting before us with exactly the same effect.

Mr. Trachtenberg – And then we tell them to be sure to file it on paper to affect the City Council vote. Where are those rules set forth? Is that Council procedure?

Ms. Messner – They're in Chapter 22 in the Zoning Code. It talks about protest letters. The ordinance would be controlling over the resolution. So whatever you put in here, the ordinance would control.

15. Mr. Gasaway – Let's go back for a minute to Chris's comment. Since this will come forward at the next meeting, are you going to research it and email us?

Ms. Messner – I can do that.

Ms. Gordon – So what Chris is asking is already in this resolution. Are we just going to further clarify? You're basically asking if we have the ability to table.

Mr. Lewis – Postpone.

Ms. Gordon – And it says we do in here. So you're wondering if that's legit or not.

Mr. Gasaway – So it will come with this language to the next meeting, where, depending on the answer, we're able to leave it or amend it as desired then.

16. Mr. Lewis – Do we want to look at the amount of percentage of change that we're willing to look at in that regard?

Mr. Trachtenberg – I don't think there's going to be any way to predict in advance exactly what kinds of cases require what percentage changes. It seems to me that is always going to be a judgment call. Any member of the Commission has the right to make a motion to table.

Mr. Lewis – And we're going to find out with clarification whether that actually can happen.

Mr. Trachtenberg – The point is anyone can bring a motion to table if they feel they have insufficient information to make an informed vote, and then it's a judgment call on the part of the rest of the Commission as to whether they feel the same.

Mr. Gasaway – I think there are times where one page might have too much information, and there are times where 15 might be easily discussed. I don't think you can set a number of pages or a number of items on the pages. I think you just have to look. It might be something that's easily explained by staff, or not.

Mr. Lewis – Let's be honest. The Planning Commission is just a recommending body anyway, so is it really going to matter? In reality, as Doug mentioned, the Planning Commission no longer is that decision-making body. So we're either going to recommend or we're not going to recommend, or we're just going to tie and say you deal with it.

Ms. Messner – Even if you put this in the resolution, Zev, for example, could come to the meeting with two pages of changes and make a motion to make those changes, and if you voted for the motion then you'd be considering his language on the fly without having seen it. You have to consider some things on the fly because you can't meet outside of the meeting.

Mr. Lewis – And I think there's a reasonable amount, but when it's overwhelming, like what we saw with WQPZ and the zoning overlay, I tend to think process has just gone out the window.

Mr. Trachtenberg – Since we're being candid here, I think it's fair to say there was a political judgment there. That was a political decision. I think some people felt there wasn't enough information to act on; other people didn't. I don't think there's any way of writing in the amount of change in advance. It's always going to be variable, and people are just going to have to decide whether they're able to vote or not.

Mr. Lewis – Again, the bottom line is we're a recommending body. It really doesn't matter.

Mr. Trachtenberg – I think our role is a little bit stronger, because what we're deciding on is what's going to be in the record that goes forward. We're a recommending body, not a decision-making body, but we have an influence on the subsequent discussion that goes to the City Council and that's not nothing. It's not being the decider, but it's not nothing.

Ms. Connors – I do want to remind you we send verbatim minutes forward from these meetings to the City Council, so they see all sides and read all sides.

Mr. Gasaway – And Mr. Rieger is very fond of telling Council exactly what our vote was.

17. Mr. McCarty – When we recommend something and move it forward to Council are there times when the language changes a little bit? Is there any type of rule that, when it leaves here and it moves forward and the document gets some changes done

to it, where that document would not be able to move forward because it was substantially changed and would have to come back to us?

Ms. Messner – That also did come up with WQPZ, but they did what you all did and made a motion to substitute the amended version that they wanted to consider that night at the meeting.

Mr. McCarty – I didn't know that. So there was another document that came up at that time?

Ms. Connors – Yes. I believe there were some.

Mr. McCarty – But is there any type of rules in our City that if a document leaves here with approval or denial and it gets changed substantially – I don't know what substantially would be, but let's say 30%, that Council couldn't hear it or would it have to come back.

Ms. Messner – No. I think that did happen with the lighting ordinance and what happened when the Council agenda book was printed, they put the version you all approved and made the recommendation to approve in the book and said here is the Planning Commission's recommendation. Here is the version that the committee looked at and made some suggestions to. If you wish, you can substitute this version for Planning Commission's version, or you can make amendments to Planning Commission's, or you can approve Planning Commission's. They had all those options and they were given both versions and both versions were in the book for all the public to look at and have an opportunity to compare.

Mr. Lewis – If they consider a new document, then it has to come back through the Planning Commission. If they choose to amend it at Council, then it does have to come back through the body. Correct? If they had two documents, one from the committee and one from the Planning Commission, if they chose to go with the new document, then that new document from the committee would have to come back through this Planning Commission.

Ms. Messner – No. That's what they did. They made a motion to substitute the committee's version for the Planning Commission's version, and then continued to consider that version. Because they had the option to take your version and make the amendments from the committee's version one-by-one – instead of doing it one-by-one, they just swapped one for the other.

Mr. Lewis – So the Council considered something that was in zoning without it going through the Planning Commission?

Ms. Messner – But it did. And they had that item in front of them, and they had the option at their meeting to make any amendments on the floor. So instead of making 20 amendments to reflect what was in the committee's version, they made one.

Mr. McCarty – So, basically, it can change completely by the time it got to Council, as long as it had the same title.

18. Mr. McCarty – Many years back I remember there was a Mayor that wanted the Planning Commission to be split up by wards. We're by appointment. It doesn't matter what ward you live in.

Ms. Connors explained there are only three commissions right now that are determined by ward and one is the Reapportionment Commission, and the others I never can remember.

Mr. Gasaway – Our ward is listed.

Ms. Gordon – But it's not a requirement.

Ms. Messner – I don't know if it's a matter of mayoral policy that they try to keep one from each ward just to represent the whole community. I don't want to speak to her decision making.

Mr. McCarty – But that would be up to the mayor.

Ms. Messner – Yes.

Mr. McCarty – So it's nothing that we should move forward and say that we think that this is a good way to do it, whether we think it or not. I'm just throwing that out there, because I think it was Harold Haralson that, many years ago, tried to move in that direction. And maybe that was just his decision.

Ms. Messner – That's certainly your option if you would want to make that recommendation to Council that it be included in Chapter 4, that you all be from all the different wards – if you wanted to suggest that to them, then they could take your suggestion.

19. Mr. Lewis asked whether we need to change item number 9? "In order to allow broader representation ... shall be limited to two consecutive terms ..." Mr. Gasaway indicated it refers to the elected officers: Chair, Vice Chair and Secretary.

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Item No. 4, being:

MISCELLANEOUS DISCUSSION

None

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Item No. 5, being:

ADJOURNMENT

There being no further business, the study session adjourned at 8:13 p.m.

Norman Planning Commission