

City Council Work Session Transcript – 05/20/2014

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>> Good morning, I am Austin mayor, Lee Leffingwell.

The quorum is present and I call the Austin city council work session on May 20, 2014 at 9:04 a.m., and we are meeting at Austin City Hall, 301 West Second Street, Austin, Texas, Austin city hall, and I believe we can take items 5 and 6 together, pulled by council member Martinez.

>> Martinez: Thanks, mayor, I have questions on 5 and 6, the economic development items.

There is Rodney, I didn't see you up there.

We reached out to you yesterday and I think my office got you some questions.

I wanted to be clear what we are doing since economic development and economic incentives has been a hot topic the last couple of years.

I want a little more understanding over what exactly the enterprise zone program is and what the Texas enterprise project is as well.

>> There it is.

>> Rodney Gonzales, deputy director for the city's economic development department.

The Texas enterprise zone program is a state program.

What it does is it utilizes state sales taxes as a reimbursement for capital investment and for job creation.

The state allots what are called 105 designations or allocations for the Texas enterprise zone and those allocations are available for any city or any county in the state to make those nominations, and so it is a competitive process in that any city or any county in the state can make those nominations, and once

those allocated allocations are gone, they are gone and we can no longer apply for the state to that capital investment or job creation.

We have utilized this numerous occasions for Otis Spunkmeyer for Home Depot and other capital investment prompts as well.

The benefits for the company is when they create the jobs and capital investment they use the investment as tax sales taxes.

>> It talks about jobs, 105 which will be economically disadvantaged workers.

Do you have a definition for an economically disadvantaged worker?

>> I certainly do and I want to introduce dusty McCormick to the office and we will describe that for you.

>> According to section 2303 I am sorry.

Can you hear me?

Good morning.

Dusty McCormick.

It is in state Texas Code 2303.

States that the economic disadvantage individual is an individual who was unemployed for at least three months before obtaining employment with the qualified business, receives public assistance benefits including welfare payments or Food Stamps based on need and intended to alleviate poverty.

Number 3 is a low income individual as defined by section 101 of the workforce investment act.

It is an individual with a disability as defined by the U.S. code section 705, paragraph 20A is an inmate as defined by section 498 and also is entering the workforce after being confined in a facility operated by under a contract with the Texas Department of Criminal Justice for imprisonment of individuals convicted of felonies other than state jail felonies.

Also has been released by the Texas youth commission and is on parole, meets also the current low income and moderate income limits developed under the section 8, the United States housing act, as well as under permanent managing conservatorship of the department of protective family services on the day preceding the individual's 18th birthday.

Those are the definitions that are cited in the act.

>> Martinez: To be clear, convicted felons are not part of that pool?

You said crimes committed other than felonies.

>> Let me read it again.

Is entering the workforce after being confined by a facility operated by or under contract with the Texas Department of Criminal Justice for the imprisonment of individuals convicted of felonies other than state jail felonies.

>> Martinez: Perfect.

>> Yes.

>> Martinez: Thank you.

>> Sorry.

>> Martinez: And does a resident have to live in the enterprise zone to qualify for the employment opportunity through this program?

>> They have to live in the in other words, they have to be yes, in the enterprise zone, yes.

>> Martinez: How do we verify residency.

>> The company, actually on the back end, the comptroller's office verifies the address of where they actually reside at.

>> Martinez: Does it require them to stay in that zone, like they wouldn't be able to move out of that while they were employed under this program?

>> That's a question that we can ask the state.

This is a state run program so we are not involved in that certification or compliance review process.

It is a question that we can ask.

>> Martinez: The reason I am asking is because when we went through the economic incentives rewrite, it is one topic where we couldn't pin it down from a policy perspective.

Folks wanted Austinites to gain those jobs and wanted them to stay in Austin and we struggled coming up with a policy that precludes you from that.

[Captioner lost audio].

>> Martinez: ... that each one of these companies provide?

>> We've got some of that information, and, you know, if there were specific questions that you have and we don't necessarily have the answer for that, we can certainly ask the companies for that information, but we do collect some information.

I am not sure if it's all of the information that you would want currently.

>> Martinez: And on Flextronics, it shows the average wage is \$36,276 a year, which if you take the average it's about \$14.50 an hour, but do we need what the hourly wage is which is it \$11 an hour which is adopted living wage?

>> I don't know that specifically but I can get that information for you.

>> Martinez: Great.

>> Martinez: Do we know if any of these companies will provide workers compensation insurance or OSHA 10 safety training?

Can we make that request?

>> We can ask that question as well.

>> Martinez: I appreciate it.

Last thing I want to be clear, by adopting these items there are no taxpayer money from Austin taxpayers being utilized.

This is a state program.

We just have to be a local sponsor of these items?

>> You are correct.

These are state dollars that we are talking about completely.

>> Martinez: Okay.

Thank you.

>> Yes.

>> Martinez: Thank you, mayor.

>> Spelman: Mayor.

>> Mayor Leffingwell: council member Spelman.

>> Spelman: Do we put in our question since you are here, I may ask you.

What was the selection process for us choosing Flextronics and Spansion for this program.

>> We don't use the 380 program because as council member Martinez pointed out there is no city dollars involved so the company will bring it forward and look at capital investment and look at the jobs created and retained because this is one of the very few programs where job retention is incentivized and it is key for Austin as well, making sure we can keep the jobs in Austin and we of course look at the location.

We certainly are not going to bring forward something that is over the nondesired development zone.

We look at project in a broad general way because 380 doesn't apply to this program, it being a state program.

[technical problems]

>> Spelman: Okay, pretty much if anybody puts something forward, if it looks like reasonable proposal and it looks like it will be creating and retaining a bunch of jobs in the proper location, we will send it forward.

>> Will it be worth or trouble to, I am not sure advertises will be the right word, but are firms aware of this in Austin or is it something pretty much known

>> It is something that we do advertise when we talk about our city program of economic development, so we have it as a listed economic development program, and fortunately, there are at least a couple of consultants, if not more, in the city that are very well aware of the program and are out there making companies aware of the program as well.

>> Spelman: Okay.

You said there are 105 allocations, is that there is 105 allocations, is it because there are firms that have moved out or a rolling program where every year there are allocations available or

>> Let me be clear.

The city doesn't receive 105 allocations.

It is 105 statewide.

>> Spelman: I understand.

>> What the state does is allot those allocations every quarter.

>> Spelman: Okay.

>> Every quarter you will see across the state, kind of a rush, if you will, for these cities to get or for these companies to get designations and nominations from their appropriate cities or counties.

So in that regard, they relief a certain number of allocations every quarter but they get used up rather quickly.

>> How many allocations have been released this quarter?

>> Whatever that one fourth would be, 25% of it, yes.

>> Spelman: So this is a yearlong program?

>> Yes.

>> Spelman: After a year you roll off, you can apply, somebody else can apply.

You end up with 21 22 allocations become available every quarter?

>> Yes, and the state does that for the purpose of not running the well dry, if you will, immediately start of the biennium, so they purposefully allow a sedge of the allocations every quarter.

>> Spelman: Okay.

Is it possible to apply a second time or you apply once and you are off for a while?

>> It's a good question because in the case where that project was didn't pass the state primer, they didn't come back to us, because, of course, you know, then then they deal with the timing issue.

They they have a capital investment and they make the decision with another quarter and do you go ahead and move forward with the capital investment?

>> Spelman: Got it.

Thanks very much.

>> Spelman: Morrison.

>> Morrison: Thanks, thanks for the information.

I guess I want to point something out and ask a question.

P. sales tax dollars at the level actually are still some Austinites' tax dollars so I think the questions we are asking are fair questions to ask and I appreciate the program, especially if it's harder to employ folks.

So but one of the things we talk about when we talked about 380 agreements and I submitted the question is would they be coming here, or would they be doing what they are doing even without the incentive?

So IE, is the incentive needed, and do you have any sense of that for Spansion around Flextronics what we are talking about?

>> With the but for, they don't make that a requirement of the state.

They don't make a requirement in you get this or if you make this, can you get the capital investment.

We can certainly ask the company, of course, for their need for this program.

I suspect they have applied for this program because they need these incentive dollars.

Now, I think your question is if they don't get it, will they decide not to do the project.

We can certainly ask the companies that question but keep in mind the but forward requirement does not apply to in program but we can certainly ask them that question.

>> Morrison: I understand.

I think it's an interesting part of the discussion and I can see I think Spansion is talking about retooling their fab.

Is that right?

And so, you know, maybe they are maybe they have options of which fab they retool at this point or whatever.

So I get that, and and if I were running a company and the money was there, I would seek it out, whether I, quote, needed it or not.

I mean, that's just good fiscal responsibility.

So, anyways, whatever you can find out would just be interesting, I think in terms of our deliberation.

>> We will certainly ask the question and it is it is not lack for knowing, the but for requirement is not part of this program.

>> Morrison: Sure.

Thank you.

>> Mayor Leffingwell: council member Tovo.

>> Tovo: I was just looking over the information on the website.

So I have a couple of quick questions for you.

On our city website, it talks about 8 nominations that the city has made since 2004 and only two have been approved.

Can you tell us which ones I am not seeing a list anywhere of the ones that we've nominated or the ones that have been approved.

It seems like we did one recently for eBay.

>> Yes, so we had eBay which was December of 2013 and U.S. Farathane which was March of 2012, DEELA which was September 2011, Samsung, September, 2010, saint David's which was June 2010, bizarre voice which was June 2010, Spansion which was December 2007, Otis Spunkmeyer, December 2007, and Home Depot, which was September 2004.

>> Tovo: So eBay and Farathane were the first, how did they receive at the state level?

>> I will check on the Farathane but eBay did at the state level.

>> Tovo: And this information is on the economic site?

>> It is on the economic development website.

>> Tovo: That will be great because I am looking at description of the Texas enterprise zone and it must be somewhere else on your site and it would be helpful to see.

The backup talks about the City of Austin's eligibility to receive up to 9 designations based on the competitiveness of the project every two years.

I am trying to square that with the information that you talked about with council member Spelman so every two years you can submit up to 9 designations.

>> We can, but that number is not locked in so it is not reserved for us, if you will.

If state says if you want to, you can have up to 9.

For example if you go up to a year of nominating that 9, then some other city has the benefit of that nine.

>> Tovo: What cycle are we in now?

Have we nominated just one at this point?

And this would bring us up to three in this two year cycle until.

>> Yes, one.

>> Tovo: So eBay would fall in that two year cycle.

>> So far, yes.

>> Tovo: And this will be three and so we used a third of our allocation and we have about another year, if there were other businesses that stepped forward and were interested?

>> Yes.

>> Tovo: Okay.

Thanks.

So for the for Spansion, it talks about well, actually, I think the text is same in both resolutions, it talks the enterprise, at least 25% have been a resident of the enterprise zone or economically disadvantaged individuals and I wonder how that works for companies who already have employees.

>> I am not sure I am understanding your question.

>> So and there were some additional backup in the project summary and the next page.

Basically they already have those employees and they aren't proposing to hire any new ones?

>> Right.

>> Tovo: So as I understand the backup, it is just those employees as those employees leave and are replaced, they would be replaced with

>> Yes, according to that special rule, that percentage rule.

Yes.

>> Tovo: So how does that work, though?

I wonder if you can sort of walk us through that.

If an employee leaves, does that employee need to be replaced with an economic disadvantaged employee because Spansion is not at that 25% already?

>> Council member, sue Edwards, assistant city manager.

We can get that information for you, but since we do not monitor this program and it is a state program and the state monitors it, we do not get to that level of detail, so we can find out for you.

>> Tovo: I would appreciate it because it does seem like this Spansion as an existing business with existing employees and they aren't proposing hiring any, I am real curious how they are going to meet that threshold of hiring 25% economically disadvantaged or perhaps yes, 25%.

>> I think part of it is that the state goes in part of their eligibility is that the state goes in to see whether or not they do have 25% or not.

You know, as we talked about, not all companies are accepted by the state.

So they have certain requirements and we can find those out for you, but that's why a number of companies do not get approved.

>> Tovo: I ski see, but it I see but it may be the state goes in and assesses the current pool looks like as far as economic di disadvantaged and if they are far off the 25%

>> That may be and there are companies that do apply for the state monitor.

>> Yes, and there are that even if they replace every single departing employee of one who is economic disadvantaged, they may still have challenges getting to 25%.

>> Then with regard to Flextronics.

So they are proposing to create new jobs and it is your understanding of those 300 new jobs, 100 would be would fall into that category?

P.

[Technical problems].

>> Mayor Leffingwell: 49, pulled by council member Tovo.

>> Cole: Mayor pro tem.

>> Cole: I am a second part of this and I have discussed it with council member Riley but I would like to make a motion to postpone this item and there are several stakeholders who are concerned about it and I thought it may help council member Tovo in her line of questioning whether she wants to pursue this item.

>> Mayor Leffingwell: until June 12th.

>> Cole: We don't have a request yet but I think we need to meet with the stakeholders.

>> Mayor Leffingwell: I think that's the requested date, June 12th.

>> Cole: Whose requested date?

>> Mayor Leffingwell: the real estate Council is requesting June 12th.

>> Cole: I am not putting forth a specific date.

I am just saying I want to I am pulling my sponsorship and we will postpone it.

Item 49.

>> Mayor Leffingwell: okay.

>> Tovo: I probably have some questions, any.

If it's not being withdrawn, since we have it on our agenda

>> Cole: If it will make it easier, it will withdraw the item and we can discuss it if that will save us some time.

>> Spelman: Yes.

>> Mayor Leffingwell: council member Tovo, that will be withdrawn, not postponed but withdrawn?

>> Tovo: That's fine.

I do have a lot of questions about this item, because it would, in effect, really undermine and override lots of Council adopted neighborhood plans including our imagine Austin plan which committed to the

public that any actions to increase density in our neighborhoods would be done in accordance of neighborhood plans so I appreciate the sponsor, if their intent is to withdraw this item for consideration.

For right now, I would ask you to whether that is an intent to come back with modified one, or are we withdrawing it and allowing the Land Development Code rewrite process to go through and allow these to bubble up within our existing neighborhood plan amendment process, as as that has

[Technical problems]

>> so you presume mf2 and mf3, that you might be coming in and have the standard setback from 25 feet from the front and 5 from the sides, ten from the rear, and it takes on the site development stands.

>> Could you

-- maybe this is a question to submit through the q and a process, do you mind sending a passage of code. My staff spent considerable time and the 771 that deals with multifamily but not dmU and could not find anywhere really in the code that says dmU is subject to the same development standards?

>> I will go back and look to see if we can send you that section.

>> Tovo: That will be helpful and it is my understanding that mcmansion will apply to dmU. Is that what we are talking about here, the mcmansion site development standards? Not assess three standards generally?

>> Guernsey: What I understand from this resolution is that there must be situations where there is a commercial building that may already exist and somebody is trying to convert it into, say, a single family home and mcmansion regulations would be triggered and the only case this has come up specifically where this was an issue where council denied zoning on deep eddie where we had a situation where somebody was trying to construct a building that didn't meet mcmansion standards and seeking zoning changes at the same time kind of got caught because I think they were doing building construction before the zoning was complete but in the end we ended up with a building that was larger than mcmansion that didn't have the benefit of commercial zoning. It was for them, even to this day to bring that building into compliance because even though they were trying to build a commercial structure and exceed the far, to bring it back to single family home, it would pretty much need a variance on the far limitation, and that's the dilemma that's incurred.

[03:33:17]

>> Tovo: Can I interrupt for a minute? It's my understanding in that case, it was a duplex use and it was in an sf lot, so it is not a single family use on dmU lot so there is two different circumstances there?

>> Guernsey: I think at one time the owner was trying to seek commercial zoning to make it into an office, if I remember right. I may be

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>> Tovo: And so the challenge was converting it back to commercial?

>> Guernsey: To keep it as residential because the building already exceeded the far limitation.

>> Tovo: Again, that was a factor of the mcmansion regulations, not

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>> Guernsey: Correct. So if we had buildings elsewhere in the city where you are trying to convert from commercial to residential, the far limitation has come up as an issue simply because you are trying to do single family residence, if it was an accessory in maintaining the family use, there is a statement in the code if you have commercial and are adding it, that's allowed and people have taken advantage of that section. I don't think it is what we are talking about here. I understand we are converting the entire structure to single family residence.

>> Tovo: Can you give me

-- it says the next whereas and maybe this is an answer for the cosponsor, it talks about this triggering time from the board of adjustment. Isesomeing this that the board of adjustment has talked with.

>> Guernsey: I talked to the board of the chair add adjustment last night at code next meeting and I asked him if he is aware of cases. I don't think there is a specific case that he could give me. He had general knowledge, I think that, this has come up before, but he couldn't cite the specifics to me, at least not last night.

>> Tovo: We couldn't find either in my research and there certainly could be some but I think it could be helpful if there are examples that you have, chris, as a cosponsor, to help them to see if this is really addressing the issue.

[03:35:29]

>> Riley: Mayor.

>> Mayor Leffingwell: Council member riley.

>> Riley: If I could apply a little context. This applies to the dmu area, downtown mixed use. And in connection with a particular case on west 11th street near peas elementary, that's where the neighborhood for a very long time sought to promote for residential use. Of course not long ago it was single family residential use and now it is since approximately an office area, although it is a long-standing goal for that area to get back to more residential use. The lot in question is zoned -- as I say, it is zoned dmu but occupied by a single family. They have some time ago, before mcmansion ordinance, they built a secondary unit in the back of the lot and there was an office use there for many years. It was occupied by a law office that had their main offices next door. More recently, the law office has moved out and the family has decided they don't like to

-- consistent with long-standing goals of the neighborhood, they would like to make the unit available for residential use, but come to mind out, simply to

-- come to find out simply to make the existing structure available for existing residential use on dmu site, the code requires them to get three variances from the board of adjustment, which seems to many of us as peculiar because it was existing structure that was legally built at the time before the mcmansion was built and what they would need to get from them is a mcmansion ordinance which was spended to apply to new structures, to ensure that new construction would comply, so it seems like a case where the code is having effects that is unintended. I don't believe that the code

-- that anyone really intended the code to create those kinds of obstacles towards taking an existing building, especially in that downtown mixed use area and making it so hard to actually make it available for residential use, which I say, as I say, is a long-standing goal for the neighborhood. So this is simply aimed at making

-- a adjusting site regulations for dmu zoning regulations to permit existing structures from commercial use to residential use. It strikes me as a fairly benign effort and so that's why I was happy to bring the resolution forward.

[03:38:10]

>> Spelman: Mayor.

>> Mayor Leffingwell: Council member

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>> Tovo: Okay

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>> Mayor Leffingwell: Are you still

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>> Tovo: That's okay.

>> Spelman: That is certainly a benign situation and I can certainly understand where we can make it easier for that particular owner to be able transition back to residential use. The concern I think a lot of people are going to have

-- and I may be second guessing council member tovo on this

-- but a concern a lot of people are likely to have is the developer seeing an opportunity to create a house that is too big by mcmansion standards, claiming this for commercial use, perhaps even in making it available for commercial use for a nominal amount of time and then try to transition for residential use and using that sideways means as a means of avoiding mcmansion and other residential regulations. Is there a way that you can envision where we can avoid that problem?

>> Riley: That is certainly a scenario that can be considered in the course of the code amendment process but this is simply initiating the process and I feel certain that the

-- that the planning commission and the codes and ordinances committee and so on will be glad to think through all of those possibilities and make sure that we address all of those concerns.

>> Spelman: It might be appropriate to add

-- if you have no objection, I will come up with a couple of whereases, just to cue that this is an issue that we are concerned about and something that we want the planning commission to consider when they are crafting whatever to this resolution?

>> Riley: Sure. Sure.

>> Tovo: And I guess I would like to sort of better understand some of these elements. The last one talks about

-- the last

-- your last be it therefore resolved talks about code amendments should include but not be limited to real setbacks which I assume are triggered again by the mcmansion site development standards, not sf, building height, and allowable interior space for accessory unit. Can you explain what we are talking about there? Are we talking floor to area ratio which is also part of mcmansion? Are you talking about the

-- allowing

-- really I am not sure. How that fits into that.

[03:40:26]

>> Riley: And what we were doing there is tracking the variances that the owner in question was

-- was required to obtain in order to make this transition. One of the transitions

-- when they legally built this

-- this building in the back of a lot, it was built with 1,130 square feet of interior space. Typically with a secondary unit on a single family residential lot, it would have been capped at 850 square feet, so now they need to show a hardship in order to get a variance to allow 1130 square feet of interior

-- to allow 1130 square feet of interior space so it is important to recognize something like this, that there are existing structures that can be made available for that use.

>> Tovo: And that arises from this individual case but I want to understand how it

-- since this is a coat amendment, not a situation we are carving out for a particular user, I guess this question would be for mr. Guernsey. So right now, it's my understanding we don't allow two family residential

-- to family residential on lots that are smaller than 5750. Is that true within the downtown area as well?

>> Guernsey: We can look as to how that relates to the dm, but generally the 850 square foot limitation is for that second unit for two family residential use. It limits 550 feet for the second floor, so as council member riley suggested, if the building is over 1,000 square feet, that would trigger the board of adjustment variance. It could be used as an office, that is not the issue, but when convert to it a residence, because we changed our ordinances back in the 2004-2005 time, they could not do it, unless they actually eliminated square footage from the unit, possibly from the second floor and the first floor to get down to those limitations. So I better understand the request that's for the amendment and that's not so much the mcmansion in particular as it is with the two family residential use and its limitation.

[03:42:55]

>> Tovo: Okay. And then what about the question I asked about two family residential on lots that are smaller than 5750? Is that applicable in this area as well?

>> Guernsey: I will have to take a look at the map where we allow secondary apartments and see if that is one, for the different areas of town, where that was selected as an opt in option.

>> Tovo: I see.

>> Guernsey: But this will apply whether it's an area opted in or not, as far as being less than 5750.

>> Tovo: Okay. Okay. I think I may have some follow-up questions but I can submit them in writing and

-- okay. So I do want to ask about building separation. That was in the other resolution. Never mind.

Thank you. Well, actually, while building separation, are you contempt plaiting council member riley that building separation may be a problem, too? Because it strikes me downtown if you are allowing accessory dwelling units to be the limitation of size that building separation might be an issue and I saw that in the other resolution you withdrew but certainly in the downtown area that I think would be a concern that we maintain the separation codes for health and safety reasons.

>> Mayor Leffingwell: Council member riley.

>> Riley: That issue has not come up in this context, but it does seem something that might be worth considering.

>> Tovo: Can you clarify, you think it might be worth considering changing them? I was asking if you envisioned

-- so you are open to changing the building separation requirements as well?

>> Riley: Actually, I would

-- I guess I would to know the history of our building separation requirements. Here, the issue is that we have had a flum of regulations that have

-- a number of regulations that have come into effect since this

-- this building was built, which was not that long ago. I think it was around 2002 or so, and it just predated both

-- the number of the regulations that we have been talking about and I don't know if there have been changes in the building separation requirements that would create similar issues.

[03:45:16]

>> Tovo: What if the building is an older building? If it's an 1890s building that's was a residence dense, now an office and converting back to a residence, does that trigger mcmansion.

>> Guernsey: The separation requirement would still come into play.

>> Tovo: I am sorry, I am talking about the site development standards now.

>> Guernsey: From the separation from building and back building?

>> Tovo: No, in terms of size.

>> Guernsey: Terms of size, we would look at the mcmansion regulations in that area, which would be .4 overall. There are limitations on what you can exempt from the allowable square footage. So generally attached structure, like a garage unit could be accepted out of about 450 square feet.

>> Tovo: So even if it was built 100 years ago, if it's converting from

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>> Guernsey: If you are converting and we would apply current code, like residential to commercial, the commercial requirements would be triggered for that property, if, for instance, like parking requirements might be different if you are converting it one way or the other. Dmu, since we eliminated the parking requirements doesn't matter in this particular case.

>> Tovo: Okay. Thanks.

>> Mayor Leffingwell: Okay. Ready to go to item 59 pulled by council member morrison.

>> Morrison: Mayor, I want to make a comment about 50, a brief comment. And that is to say I appreciate and encourage council member spelman in his development of a whereas that says watch out for unintended consequences. Because this brought to mind, especially the line in here that says single family residential use and mixed use in zoning districts are currently subject to the same development standards as sf, I question that because I know there is a line in the code that says if you are in mf and you are building sf, you are subject, it is explicit with regard to ms and I wanted to mention

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[03:47:19]

>> Guernsey: That's why I want to go back and confirm. I didn't bring the code with me today and I don't remember off the top of my head and I will check back on that and get back with you on the answer.

>> Morrison: This was unintended consequence and this was in my neighborhood where we have a lot of mfs springled in sf properties and somebody went to build a single family house on mf property so it didn't trigger compatibility, but they got 60 feet, so there was a 60 feet single house next to a single family house which is really not compatable. So that's why it is 25 to 771 is a little starred line in the code, in my book. Thank you.

>> Mayor Leffingwell:59. Council member spelman and morrison.

>> Morrison: So when we last left vested rights one thing we were talking about was mgas and we had gotten as far as discussing the idea that we were open to having mgas that were submitted and accepted concurrent with the original application, so you know ahead of time that it's going to be a complicated project and we were also open to mgas, like we have been doing in the past, and that is, we call

-- I have been calling them the oops mgas, and that is, you get a ways into your project and something happened, and so you then realize that you are going to need some more time and we had several of those recently. I have something to pass out. And so what we didn't do was

-- last time was start talking about exactly what the criteria for each one of those would be, so what I have done

-- and I want to see if we can hand this to the clerk in case anybody wants a copy of what I am handing out. What I have done is gone through and this handout talks about the original

-- excuse me, the overall framework and I have actually labeled them and I am open to changing the prospective mgas which came with staff and new recommendations and the staff came up with last time were known as retroactive mgas and in the background section I went through and looked at what was recommended by whom and I divided each into two sections. One is what are the entry criteria, what are the sort of black and white requirements before you are even considered for an mga, and then what consideration should be made in terms of the actual approved recommendation from staff or from the approval, and so I guess what I would like to do

-- then on the back of the page is a recommendation I have for a motion that I probably plan to make on thursday, be I am open to discussion and I would love to hear folks

-- hear folks comment today about this, and obviously in the next couple of days we can have more conversation with folks that are not here on the

-- at the table today. So just to briefly

-- I want to briefly walk through to look at, for the prospective mgas that were recommended by staff and pc, the entry requirements for applying for one were for both of them that they weren't grandfathered, that there had been

-- they had no variances except for residential with site plan exemption, that they were in r zing jurisdiction, which means not in the etj. That they were outsideive rules that staff had been using for what we used to have as mgas because I thought that might provide a little guidance too because as far as I was concerned, that was sort of working all right. And to briefly go over them, they had a requirement, although I don't think it was always fulfilled, that it meets or exceeds the current code

-- the code at the time of the mga application, that it doesn't impede or delay other city initiatives, and

then they had

-- you had to meet one of three criteria, that it's large, that it's long term or there is special public benefit. So working through all of those, if you turn the page over, I have what I think might be a reasonable way for us to craft our mgas, and so I will walk through that. With regard to the prospective mgas, for the most part, these align with what staff and pc had recommended, but I have italicized where they don't align. I will point those out. Keeping with the entry requirements that the project not be grandfathered, with regard to the no variances that seemed a little harsh

-- and I know at least there are some administrative variances that really don't rise to a level of even getting public transparent discussions, so I changed the no variances to no nonadministrative variances. With regard to not being in

[03:53:20]

-- not being in the etj and losing interest in considering them in the etj but we have something called title 30, so there was a suggestion that what if the county approves of it, also, if both the county and city are willing to consider it, but that could require some changes to title 30, so my motion would be that we limit it to being in the zoning jurisdiction but direct staff to work with the county to see if there could be a collaborative, both of us allowing for, if we both agree, to allow for an mga to be considered in the etj. And then I also have outside of the barton springs zone which was both in staff and pc recommendation, and then of course the number of acres or what staff had in the town or regional center. I am not comfortable with the "in a town or regional center" as an alternative to the size requirement, because I think that we want to promote development now in our town and regional centers, so give me extra long consideration to those areas, I don't see that as a good policy to set. I know there has been discussion about a number of acres, and I have, as I have thrown in, changed it to greater than or equal to 150, because I know there is concern that 250 is too much. With regard to the considerations, those are just the same as before. And then I will also go through the retroactive mgas, that it be submitted at least one year prior to expiration of the project. That aligns with council member spelman's, I believe, amendment, on the 7th of may. Entry requirements. We stick with not grandfathered, no nonadministrative variances, the same thing on whether or not it is in the etj, the same as outside the barton springs zone. Then I added and carried over one of the elements from the administrative rules because I think it's something that we do want to watch out for and make sure it won't impede or delay other city initiatives so if we are about to embark on something that we think will be an important element of our sustainability goals we want to make sure this doesn't get in the way of it. And then the staff had as their rule that it meets current code at the time of mga application. I know there was some concern about that so I thought it would make sense to loosen that up a little bit, so I have added a phrase that says, it either meets the current code at the time of the mga application or under extraordinary circumstances, it includes benefits in superior development that mitigates noncompliance with the current code. The idea would be that the norm would be, yes, the mga

-- the project subject to the mga a&m is current code except if it's not

-- this would allow for some discussion

-- allow for some discussion of is there really a driver that we want to keep it on the table? Does it relate to discussion that staff may have with the applicant to make improvements in some way, so it opens

that up and I think we have an example where that happened on, for instance, the rio vista mga that was for apple, and apple was getting an mgas for a large project to allow for their growth and their campuses, but it didn't comply with heritage trees. And so I think it

-- staff had an opportunity to find some other ways that they could raise the superiority of it and there certainly was a development of interests for this study for other reasons. So I would love to hear people's thoughts. I know there is going to be some discussion in the community about this, but hopefully laid out enough background information so you can see where

-- where

-- what my proposal is, where it came from.

[03:57:44]

>> Mayor Leffingwell: Council member spelman.

>> Spelman: You know, I have a formal proposal. The biggest reason I pulled this item is to see if we could surface any proposals that are out there.

>> Morrison: You got one.

>> Spelman: I am happy we got one. [Laughter] this is obviously an extremely important ordinance, if we pass it on thursday or if we pass it on second reading on thursday or if we choose to postpone it for some future date and then take it up again later, I think giving everybody fair warning on what proposal is out there and what changes we might be making is a good idea. That's the reason I asked to pull it today, in hopes that we surface things like this. If there is anything else out there, I would like to hear about that.

>> Spelman: I have one class of questions in addition to the mga ongoing issue. I think it is a very interesting proposal we ought to consider carefully. On the next section which is 251552 on project expiration, I made a failed attempt of simplifying this very simple language. I have given by some interest groups under the term of rat excrement. So clean up as much as the rat excrement as possible. The problem I see in this language is there is a whole bunch of, well, less complications to it. This is a project expiration period established by the section goes on to no more than 9 years but as bren explained to us a couple of weeks ago, if there is a site plan that is in place at that 9-year period, then under the provisions of the current version of the ordinance, the developer would be able to develop -- would be able to pull a building permit that is consistent with that site plan so it could go longer than nine years under those circumstances. Do I understand that correctly, greg?

[03:59:48]

>> Yes, it was changed in first reading to get a little bit more time but you wouldn't be able to get go to the commission and ask for an extended period of time.

>> Spelman: Right. So it would be one administrative approval as I understand it?

>> Correct. That's my understanding.

>> And if the site plan expires, even if it's at the nine year point, as soon as it expires, that's tend of the project.

>> Guernsey: That's my understanding as well. [One moment, please, for change in captioners]

[04:01:51]

>>> I think that council member spelman, the approach you had suggested, I don't think at the time it was initially suggested. Staff had had time to really contemplate all the potential impacts, but I think that was definitely a move towards simplification. But aside from some approach like that, I think the basic structure that's provided in all the difference ordinances provides a way for council to fashion appropriate rules as you deem fit. The number of years can be changed, that's one area that's easy to tweak in the ordinance. Additionally the other, I think major component of the expiration periods is the ability of developers whose project life is expired to get site plan extension if a site plan is arrive at the end of the project life. And council, as said, has landed at a place where only a one-year director extension is available, but certainly if council wants to alter that within the structure of this ordinance that's a very easy thing to do. But in short, I think other than a kind of bare bones approach, like you had suggested, owner that, I think basically a more detailed structure that sort of deals with all the different kinds of projects there are based on what the first permit for that project is, which is the approach that's in all the ordinances that have been put forward. It seems like those are the two competing methods that we can identify. >>Spelman: I understand that and we can pick one, we can pick the other. What we seem to have done is pick both. So the one approach is choosing how much time you get if it's a final plat, how much time you get if it's a fair notice application, so on. The other you get nine years and you're done. We have both of those things written in this ordinance. It seems to me it would be cleaner if we chose one or the other. On the other hand, I understand there's a lot of discussion. A lot of people wanted to have that nine-year flat period. I can understand arguments for that. I'm not sure what the argument would be to having both of those in the same ordinance. Do you understand what I'm getting at?

[04:04:25]

>> I do. And I don't have an immediate response. I feel council really understands the issue. To your credit you are delved into the

-- and I think the issues are well framed. It's a policy issue as to how council wants to balance these concerns.

>> I would like to ask a question of my colleagues. Does anybody hear my concern that this is more complicated than I had needs to be and should be simplified?

>> Mayor leffingwell: I get the impression somehow that this is still evolving. The structure of this ordinance is still evolving and obviously it's very sensitive to a lot of stakeholders. It's also sensitive with regard to state law, so I think it behooves us to take the time to get it right. I would support your earlier suggestion to postpone this and give folks time to look at these new proposals. At the very least, do second reading only, but I think it's very confusing. First I would support that effort to postpone and I think stakeholders have requested that already, that it be postponed until june 12th. Go ahead.

>> It's not understanding they are asking for postponement is they are not sure whether it is going to show up and are concerned about making spur of the moment decisions

-- [overlapping speakers]

>> I do not necessarily support making a decision on second and third reading on thursday. But it does seem making progress would be a good thing and I think all the interest groups would support our making forward progress.

[04:06:28]

>> Mayor leffingwell: I really think that kind of makes sense and formalizing all the suggestions in place. That would still give time to do some more analysis before the third reading by anyone who wants to. Council member morrison.

>> I think it would make a lot of sense to do second reading so we can settle on what it is we're talking about as opposed to we don't even know what the council has a whole is going to adopt in terms of the direction of going forward. And if we

-- and I think probably, no matter what we do, we're going to want to separate second and third reading. So if we didn't do second reading or consider second reading this thursday, that puts us to the 12th of june, which puts us then for the third reading all the way to the 20-something or end of june. I think

-- I hope we will consider going forward with the second reading. I do have one other proposal that I want to float.

>> Mayor.

>> I would be happy to yield the floor.

>> When you were talking about PROSPECTIVE MGAs, YOU SAID YOU Didn't like the language of using regional town centers. Can you explain why you don't like that?

>> Yes, regional and town centers are the once in our growth concept map in imagine austin, for the next 30 years. And so I'm concerned about adopting extra long development projects in those town centers and regional centers because we want those to be the hub of our growth in the next 30 years, so having allowance to do projects that aren't going to be done for the next 25 years or 20 years, doesn't seem to really align with saying we want those to be the hub of our growth in the next 30 years. We want stuff to be starting now there as opposed to allowing for extra long projects.

[04:08:55]

>> I'm going to give that rational a little thought because I thought the exact opposite. I thought that the places where we were trying to concentrate our growth needed the most flexibility and encouragement in consistent with the imagine austin plan and all we were trying to do. Of course we talked about centers in connection with transportation. And those would really be the hub of the city. Our next mini downtowns and domains and they do take an extended period of time. Let me ask the staff what were you thinking when you made that recommendation?

>> We varied the size because we thought there needed to be flexibility in the town center. You might have projects that are more complicated and provide more certainty to those packages that might come in those town center areas. More complicated from a financial standpoint. There may be more issues about reliance and development rules and making sure those stay in effect for a longer period of time. So there's more stability to build out. So it was one where you have a lot of moving pieces that come in

to those areas. And we want to make sure there was as much stability as we could put in place for the development community, the property, to fully develop those properties to the maximum extent. We want to develop those areas but we want to make sure it went as smoothly as possible.

>> Thank you, mayor.

>> Mayor leffingwell: Council member morrison.

>> Thank you. I appreciate getting that other perspective on the table. The other amendment I'm going to raise and I think that the city attorney will have some language for this on thursday. And it has to do when the clock starts for a project. As you will recall, on first reading, we set the clock to start with the submission of your first application and the rational is if you're tying your project to a code at some time then the project clock, it would make sense to start at that time too. Afterwards, I was thinking that actually with our fair notice application that we're going to have, which is the new app, that's actually the time that you're tying yourself

-- that's actually when you're tying yourself to the code. So to follow the saying, the fair notice application is staking the ground I'm going to do the project and I'm going to be using the code at this time. It seems to me that we should consider also starting the clock at the time of a fair notice application as opposed to

-- I forget exactly how it's crafted, so that fair notice application isn't included as the clock starts. That's my understanding from staff of the reading of the code. The motion will be to start the clock at the submission of the fair notice application if we should have one. I do want to say I think that has another benefit in terms of making sense, that's always a good benefit. And that is I'm a little concerned about the workload or the potential for people getting in the habit of putting in fair notice applications just to get their stake in the ground, even if the project isn't really that realistic, although staff is going to have rules to say you have to have your development plan or some plan there. And if you knew that the clock was starting when you submit your fair notice, then that would mean you're really not going to submit a fair notice application unless you're serious about the project. That will be my rational and I give you that food for thought.

[04:13:27]

>> Mayor leffingwell: Council member. >>Spelman: I like this idea for providing this incentive for napkins or fair notice applications, but we can provide a further disincentive by starting the clock at the submission of the fair notice application but starting the clock if you don't submit a fair notice application at the approval of all other projects. That would mean that if you wanted to drive your stake in the ground, you're going to cost yourself a little time. But if you're not willing to drive your stake in the ground and say, let's wait until it's a real project and we have something real, you start with that. If it takes a long time for the staff to work its way through, work its magic through its review process, that's not going to cost against you project. It's going to be a good reason for you to develop the project further and make it real before you submit it.

>> I'll give that some thought. >>Spelman: I'll give yours some thought if you give mine some thought.

>> Mayor leffingwell: It's sill evolving. Any other comments on this item? We'll go to 68.

>> Mayor.

>> Mayor leffingwell: Tovo.

>> I want to thank council member spelman for raising this but I want to ask if there are other amendments that we haven't discussed?

>> Do you have any by chance?

>> I don't nor do I expect to but I'm going to go through the new draft and be sure about that by thursday, but I did a bunch last time so I think I'm finished for now. But and I would say I appreciate the compromise it sounds like we're reaching about thursday. I do think it makes sense to hear it on second reading, but to continue to move forward. Because I know many of us have probably spent a lot of hours on it up until now and met with stakeholders. There has been a considerable amount of work and I think we do better when we keep moving forward rather than take it up again a couple months later and try to have to remember it. >>Spelman: One more thing, if I might. I would be able to talk to council member morrison about our proposal, except in an open meeting. In advance of thursday, one of the things I was concerned about our discussion a couple weeks about about mgas, if a prospective mga was harder to get than an retroactive, I think it is going to take longer than the usual process. Instead they would pretend to go through the motion and see if they could get it done in nine years but not expect to, because it would be easier to get a retroactive mga. I'm looking at your proposal where it might be easier to get the retroactive kind than the prospective kind. That seems to be backwards and I think we could discuss that on thursday. The number of acres is greater than than 150, but there is no such requirement, so we are providing an incentive for people to do the oops route.

[04:17:08]

>> Mayor leffingwell: Council member morrison. >>Morrison: Although the prospective mga gives you certainty from the very beginning, so I think the whole idea of one being easier than the other would be mitigated somewhat by that issue. Of having the predictability and getting it approved in the beginning.

>>Spelman: That depends on what the city council is going to do.

>> Good luck with that.

>> Mayor leffingwell: Do you have anything else?

>> I don't.

>> Mayor leffingwell: We'll go to 68. And that's pulled by council member morrison.

>> This is a zoning case I know had a lot of discussion at the planning discussion and they voted to deny 1307 waller. I understand it's a complicated zoning case and that maybe we'll get into that on thursday, but I started hearing that there was some kind of work arounds that might not need council approval that the applicant might look at and I would like to understand that a little bit better. Because some folks had come to me and raised concerned.

>> First of all, I would like to state that although we have not yet received it, we are anticipating a postponement request from the applicant. They told us that tuesday. We simply haven't received the case yet. Let me go back a little bit, the neighborhood plan has a tool called the urban home. The developer submitted taking advantage of this tool in the neighborhood plan and was allowed to plat lots that were less than the standard 5,000 square feet. Under the code, if you have a lot less than 4,000 square. This particular lot I have seen two different surveys but either 4119 square feet, so it's 120 square feet over.

[04:19:41]

[Inaudible] after the house was built the owners came in with an application for a swimming pool and the staff incorrectly approved that permit for a swimming pool under the assumption that the property was entitled to 65% pervious cover. Because the lot was over 4,000, it was only entitled to 45% pervious cover. The smaller the lot the more impervious cover. I think that was put in on the assumption you would need a smaller lot. That swimming pool was built. In addition a pump for the pool was installed. And a pump house, if you will, structure was put over the pump structure. That structure and that pump may have an issue with regard to crossing the property line and being on the setback, that's a separate issue from the zoning case. But the impervious cover is larger than that which is allowed under the code. So the applicant submitted a rezoning request which would get him up to the 65% pervious cover. That request was recommended for denial. The applicant has approached with an alternative idea which is to find a way to get the lot to less than 4,000 square feet. What the applicant has proposed to do is shave a little off the front of the lot deeded to the city as right of way, get to less than 4,000, then he would be entitled to 65% and there would be no need for the zoning request. We put him in contact with the public works department, the right of way management section, and I don't believe that those conversations have occurred yet between the property owners and that section. I think there was initial contact made. The staff called yesterday from public works and said do you know what's up with this and I explained it to them. A second part of that is there is a note on the plat that limits it to 45% impervious cover. That was put on there because at the time the developer who did speak at the planning commission meeting did not wish to provide for a retention pond or participate in the storm water management system which would allow him to pay a few in lieu of an extension. By placing the note on the plat he was able to get out of the retention and fee. However if he were to succeed in shaving off the lot and getting it less than 4,000 he would still have the plat note to deal with. We referred him to the water protection department where he can request of them to have the plat no longer apply if he pays a few in lieu of -- which the original developer got out of. There's two proposals. One is to try to shave the lot by giving the land to the city and the other is to pay into the rsp because of the retention. That's why he is requesting a postponement.

[04:23:07]

>> A couple of questions to this mind boggling case. First of all, can we refuse to take an offer of land? See, I'm concerned because there's a lot of underlying stuff here. Not just that other -- the nearby neighbors are concerned about the flooding and all of that, so making it okay is -- it's a real question. And so they can offer land to us, but what says we have to take it? >> Council member, I had a conversation with howard lazarus yesterday regarding this issue and mr. Lazarus of the public service works department is reviewing it. There's nothing that stops a property owner from offering, the question is if the city will accept it. I don't think jerry has heard back or the applicant, if the offer was made, what would happen. There's a unique circumstance because it's part of a sidewalk easement that crosses the front workings of this. I think that's the area that would be included with the dedication, so I don't have an answer for you. Certainly we're working on that issue to

see what that might be. But I wouldn't be able to answer it.

>> I guess it's also a question for legal if you all could look into are there ways that we can really raise up that decision and look at the criteria we want to use as opposed to just a public works right away decision. I have other questions but it sounds like somebody else might want to jump in.

>> Mayor leffingwell: Don't we always have an easement for right of way on the street side of a residential lot?

>> It's either done through an easement or dedicated right of way. In this case, the property owner is suggesting they dedicate additional land

--

[04:25:16]

>> mayor leffingwell: In addition to the easement.

>> That the dedication be given over to the city or perhaps the easement would not be required. I don't know how far the dedication goes over, but I know it would include an area with the sidewalk.

>> Mayor leffingwell: You got the street and right of way easement and then you've got additional land.

>> That's right. And then the lot. You have the the street and then you have the the sidewalk easement on private property and then you have the remainder of the property. The suggestion is to dedicate the area of the sidewalk easement and dedicate more lot to the city.

>> Mayor leffingwell: That's a little confusing. They want to donate land to the city that the city has a right of way easement on for the sidewalk?

>> That's correct.

>> Mayor leffingwell: I don't see what the advantage is of doing that. It seems just like a legal gimmick basically to make this thing work.

>> Mayor?

>> Mayor leffingwell: Is that right?

>> Yes. The city already has the right to do sidewalk easement. It's a matter of whether or not we would like to accept all of the rights. If you think of land as a bundle of sticks, they have given us one stick, which is the sidewalk easement, for public pedestrian access. They are offering us the rest of the sticks for the area to get the land down to be less than 4,000 square feet. And the question of whether we want it or not

--

>> mayor leffingwell: Doesn't it obligate the city in some way to maintain that property?

>> Yes, it would be an area that would be in there. Typically sidewalks are still the responsibility of property owners. Whether it's in an easement or not in front of your property, is my understanding, but typically a sidewalk that's in public right of way, the property owner is required to maintain it is free and clear.

[04:27:23]

>> Mayor leffingwell: We're not talking about just the sidewalk, we are talking about additional property.

>> We are talking about taking the sidewalk property back along with some additional property.

>> Mayor leffingwell: How does that affect the setback from the structure to the street?

>> Because all the lots were platted as an urban home, that their setback requirement is only 15 feet.

>> Mayor leffingwell: And they have plenty?

>> They have plenty, so it might be less than 15. But they would meet the front setback. I don't think that's the issue. I think the larger issue is the issue of the impervious cover. If you have a larger lot, you are entitled to less impervious cover. If they remove 200, they get less impervious cover.

>> Mayor leffingwell: Part of the problem with the excess impervious cover was they put down granite on the property?

>> I understand there was an issue brought up at planning commission, which I was told there was a concern raised by neighbors that they were parking on the alley and the property owner asked to pay a portion of the alley. It would not be required parking. I think what I understand, what was expressed at the meeting is that the public works department said they could put down gravel on the public alley, so that occurred.

>> Mayor leffingwell: That becomes a pervious cover, right?

>> It certainly would have a runoff that would be larger than grass. Less than pavement, but I'm not sure if that's really the issue that's before the blue-collar works department as far as reducing the lot size.

>> Mayor leffingwell: I just heard it was an issue at the planning commission.

>> I do believe if they do get the 65% impervious cover, there will be a need on their own to remove more to get down to 65%. Not too much.

[04:29:33]

>> So impervious cover would -- serve if

-- certainly if you put down crushed granite. But even if it's plain old dirt and you park on it and it's still a regular parking spot it's still impervious cover.

>> It's one they were basically working in the public alley which was not their property and that was the concern that was raised by the neighbors.

>> Mayor leffingwell: Council member martinez.

>> Martinez:

>> Was this

-- was the error determined after a complaint was filed?

>> Yes, the permit for the swimming pool was issued. The swimming pool was built and it was well after the fact that a neighbor complained about the code enforcement.

>> For me that's the larger issue that we're struggling with is the city issuing things in error and then going back and trying to find a cure to fix an error that we made. And I appreciate the efforts, but there's a bigger issue at hand and that's approval construction in error. And this is not an isolated case, so I don't know at this point if I can support this, but I also don't know that I can put this family or this appropriate owner in a position where they would have to tear up their swimming pool, I presume; is that correct?

>> Yes, the swimming pool itself does not count as impervious cover but the deck around the pool.

>> The pavers?

>> Exactly.

>> So the staff is recommending the case only to get up to the 65% impervious cover. I believe they may be at 66% or 67%. They would have to take out some of the gravel work or whatever they have done to get down to the 65%. But we would only recommend going up to that which we mistakenly approved. In this case you are working on deeding property back to the city, that doesn't take a council vote, does it?

[04:31:45]

>> No, it would not.

>> It just takes an acceptance or rejection from city staff?

>> Yes.

>> Mayor Jefferingwell: Council member Tovo is next.

>> And I know council member Morrison still has the floor, but I have a couple of questions that relate to impervious cover. It is my understanding that the impervious cover calculations don't count the cover that the property owner has installed on adjacent property. I believe they did a concrete approach, because they have created a parking space in front of their house, they did a concrete approach in the right of way and got permission to do so, but that is impervious cover that does not count in the calculations?

>> Correct.

>> I mentioned that and I'm going to mention one other because the appropriate owners adjacent came in yesterday and talked about flooding issues. So as we talk about impervious cover, it all matters for those folks next door, whether or not it counts as impervious cover. With regard to the pump house built over their property line, it is my understanding they got an easement, a surface rights easement, then they went ahead and installed a concrete pad for garbage can for surface easement. Is that allowed?

>> I'm not sure. I just understood that there was a question about the adjoining property. That would be a question between the two property owners and there may be a setback issue relating to the structure built around the pump.

>> And the pump structure was not permitted. The owner went beyond the permit issue to do that construction of the pump house itself.

>> I was going to raise that point here in a minute, but while we're still on impervious cover, it sounds like there was a concrete pad installed in the surface easement they have from their neighbors and that also, I would guess, counts as impervious cover, but it wouldn't be included in their calculations because it's not on their property, but it matters to the folks adjacent who are experiencing flooding and drainage issues. With regard to the pump house because there have been comments about staff errors, it was my understanding and I think you verified it, that the pump house did not appear on the pool permit, but was not a staff error. They made errors in building.

[04:34:36]

>> What they did was they built a wooden structure over the pump apparatus. That is not allowed in the setback.

>> That was not a staff error? That was built without a permit?

>> Correct.

>> Is it accurate to say

-- I know you talked about the pool decking being something that would likely have to come out. I had heard that maybe the removing the roof of the pump house could help too?

>> Correct. This will not help solve the pump house issues. That would need to be solved by deconstruction or board of adjustments.

>> Are there alternatives for them in terms of removing impervious cover that don't involve closing out the pool?

>> No, because the house was built at 44.7% pervious cover. So anything over that right now would be not in compliance. So I think the pool would have to be removed in order to get down below 45%.

>> Also there's an area in the front of the house that's paved.

>> The parking spot.

>> And they might be able to alter or remove some of the impervious cover of that front parking space. That might be another way they could address it.

>> So they do have some options, it sounds like, beyond the most drastic one of removing the pool.

>> They have some other options. They study have a request before the board of adjustment is pending right now.

>> Okay. And then I have a couple of questions, but I forgot I was just going to ask impervious questions.

>> Council member morrison.

>> Thank you, but I think council member spelman was going to jump in because I was going to move on to something else.

>> Something else? A different item?

>> I was still talking about impervious cover.

>> Please.

>> As I understand it the reason we regulate impervious cover is as a shorthand for ensuring that a particular lot is not going to be having rain water running off into an adjacent lot.

[04:36:53]

>> That's correct.

>> And 45% is a fairly rough and ready number for a single family house, but it applies to everybody. It's easy to measure, and it pretty much does the job that we're looking for which is to ensure that the rain water that falls on your lot stays on your lot and doesn't run off in vast majority of cases, is that right?

>> Also it's about aesthetics and open area. Prior to our current code that's in effect today, we used to require just the site be left open and we didn't have impervious cover requirements until the new zoning ordinance that went into effect in 1985 that brought in in place. So zoning impervious cover. If you look downtown, it's 100%. So it's not necessarily just an issue of rain water runoff. For the purposes of this discussion, when we're talking about the plat, that was certainly an issue about paying or not paying a fee in lieu of to the storm water retention program, but just generally zoning impervious cover, it's not just runoff, it's also for opening space or the aesthetics of the lot as used undersong regulations.

>> It's a nice two fer. However, I can imagine a defense if someone were seeking a variance. They would

like their impervious cover to be higher. In their particular circumstance, due to peculiar situations of swell or the topography of the land, we can be assured that the water that fell on their land was not going to run off on to somebody else's. I can imagine someone making that claim. Saying the water is running in, why is it running out, be able to go over 45%. I can imagine going over that claim. In this case the claim has been made. Water is currently running off of this land past the alley into an adjacent property. As a city, do we have any means of verifying that sort of a claim and getting beyond the 45% impervious cover, which is just a number, and back to at least one of the reasons why we have an impervious cover requirement in the first place, which is to prevent exactly that situation from occurring. Can we measure that?

[04:39:39]

>> I think we can certainly take a look at that. When the subdivision came in there was an engineering report that was submitted and I can have my staff take a look at that. With regards to the initial impervious cover, the 45% used in the original, said when the property was developed, it was already limited to 45. If they kept it to 45, they were not increasing the amount of impervious cover. I think the difference here is that by making the lot smaller and if the impervious cover were to go up and the retention issue is still there and the question is is the runoff that goes on the neighboring property one where it would require something on site or could they still participate in a regional detention? And I think that's the question that I can ask my staff and water shed staff to look at.

>> Holding this lot aside, I don't know what topography will have to say, but in general we could allow someone seeking a variance an option of either contributing to regional storm water system or on site.

>> They say ways themselves to try to argue to get more impervious cover by putting in rain barrel collection systems, showing they are going to capture most of the of rain water. I don't know if that's the case on this property, but that has been raised in the past. Even if the water is not in a bowl or draining after on another property. >>Spelman: There are ways to have dealing with the problem. To the extent the problem is aesthetics and the maintenance of uniform and open space in each lot, that's another issue and would other means to deal with.

[04:41:51]

>> Mayor leffingwell: Can you get around the impervious cover restrictions by installing a rain water capture system? Or is that just a proposal?

>> The short answer is no. You know, rain barrels may come and rain barrels may go. To get a monitor to monitor those systems on a house by house basis. I can't imagine the staff

--

>> mayor leffingwell: Whatever comes out of this. I'm sure rain barrel wouldn't do it. If you want to talk about a 2500-gallon system. I know of some residential houses here in austin that have three 2500-gallon systems to pick up the rain water from a single house, but definitely a rain barrel isn't going to do much.

>> Mayor.

>> Mayor leffingwell: Council member morrison.

>> I wanted to highlight the issue about staff errors. We have concerns about this, but I understand there was pretty extensive discussion at the planning commission to have three cases and this one was distinguished and denied partly in contrast to the adams' house, which they did approve, partly because they felt there was so much going on here beyond just the staff error that was made. Can you speak to that, jerry?

>> There were three cases. We had a planning commission last week.

>> All in a row, as I understand.

>> All in a row. One was the adams' house where there were two mistakes made on site plan exemption was issued and building plan was issued. In that particular case, the applicant already started construction. Was forced to stop construction in the middle of the project. And then the case is there as well as it has been going back and forth. The planning commission, I think felt that the applicant in that case had done everything that the city told them to do, you know. Based upon that they went out to start construction and were told to halt. And was somewhat sympathetic to that situation. Another case we had was over on navasota which was approved last week. They consulted a planning consultant as well as an appraiser who stated the setback for the property. That was put out for bid by the city purchase with the assumption that turned out to be incorrect. We are working on fixing that. This case was the third one and was not approved. And I think there was a

-- some sentiment expressed by the planning commission that in addition to the pool that was permitted by the city, that there have been a lot of things, for example, the pump house is a great example, done around the edges by this particular property owner that pushed or exceeded the limits provided by the code, above and beyond that approved by the staff error.

[04:45:09]

>> I think they were all by unanimous votes, if I recall.

>> My recollection, yes.

>> And they have a lot of votes that are not unanimous. And I want to ask about the 45% on the plat. Does it say it would be 45% impervious cover in lieu of paying into the regional? Or does it just say 45 and you went back and figured out.

>> My understanding is it limits it to 45% which was done in lieu of a detention pond. Perhaps a swimming pool could become a detention pond?

>> That's an idea. Because I have a concern about removing that from the plat. It seems like we send to remove restrictions from a plat when it's to their advantage.

>> Council member, I think part of this has to deal with the purpose behind the note. For informational purposes regarding the issue of detention. What might be helpful, not today, perhaps, but at a later date to discuss the issue the notes on plats. I'm proposing an item that deals with parkland notes because we have basically a note on the plat that says it's nonresidential only, but it was there because the owner didn't want to pay a fee to do parkland payment at the time at the creation of the plat. This is the exact same thing where someone said I'll put a note limiting my plat cover so I don't have to build a regional system.

>> I think the frustration from the public comes when there are purely informative notice on a plat that something is subject to [inaudible] shed ordinance and then it is taken as grandfathering. If it is to the

advantage of the owner to wave it, then it's waived. If it's to the advantage to use it, then it's relied upon and developed. It's not there to have it both ways.

[04:47:38]

>> That goes actually back to the item we talked about previously and state laws allows a property owner to take advantage of certain notes.

>> Which goes to show we need to be very careful about what goes on plats.

>> Or not put the notes on at all.

>> Great. Lastly I wanted to make sure we could get those considerations from legal to make sure we could stay up to speed if this is going to be postponed, but going off into the world of public works, I think there were a lot of questions and a lot of interests. If we could be kept apprised.

>> Mayor leffingwell: Council member tovo.

>> I have one question and that deals with something we talked about earlier. What are our responsibilities if public works decides to accept that piece of land, what kind of liability does the city have if it increases flooding in that area?

>> Mayor leffingwell: It was.

>> I thought it was you. You talked about maintaining it and I guess I'm concerned about the liability that we would be assuming if it increases the flooding in the area.

>> I think we would have to refer that to the law department. The right away dedication could possibly allow them to keep the impervious cover they have on the ground, but any liability would have to be referred to the water department.

>> And so just to capture what is coming back to us, I think you're also, based on the earlier requests from council member morrison, going to get us some information about the standard which under public works would evaluate this request?

>> They are considering it and we'll let the council know before we come back with the zoning case. I believe they would be asking for postponement. I would imagine june 26th, but we will update the council with whatever action the public works department takes.

[04:49:51]

>> If this wasn't listed in the question before, I would be interested in what the general parameters the public works department, how they would evaluate a plat of land and do they have any requirements to accept it? They don't, right? They have that option. And so to what extent could a council offer an opinion on that? Do we have an option of offering an opinion on a particular acceptance of land?

>> Generally speaking, no, but we will check into that.

>> I agree.

>> Mayor leffingwell: Anything else on this item? If not, we will go to 77.

>> I know we need to get to the briefing because we have an out of town consultant. So I'm going to state two questions. This is the item about the excess far for something in the downtown plan and using the loopholes that were put in, the last-minute thing that was put in to the downtown. Would staff be able to prepare a response to whether or not the project plans to comply with the recommendation

number one of the downtown commission on april 6th, and also to what extent it complies with the original austin neighborhood association recommendations for benefits on february 4th?

>> We should have that information to you by thursday.

>> Thank you.

>> Mayor leffingwell: Then we can go to the next update.

[04:52:07]

>> Here with me is dan. Peter park, and lisa wise, who are all part of the team for the code next project. And dan is going to make a presentation about the code diagnosis.

>> Good morning. It's a pleasure to be here at the major mile stone about the code next project. You know, as we use this analogy of the 40-year-old first macintosh release and the code is as old as that early macintosh. Just like any other city zoning code, that's 30 plus years old, it has its issues. So our process

-- especially in this diagnosis phase, is to actually pull up the hood, sort of ep

-- open up that computer to find out what is wrong with it to give us some direction to move forward and we move forward in the rewrite process. And so really our major goal is to help every user, whether it is staff, whether it be the developer, whether it be the neighborhoods that have been struggling to your code and are looking for that help button to get them through the navigation of your current land development code and the using that code process. So I'm going to give you a brief overview. I'm going to start with a brief introduction, then dive into the core of the presentation, which is the top review and overview of the top ten defined in the report and then end with a brief conclusion and talk about the brief steps of the process. In terms of introduction, we also want to come back to the notion that the real goal of the process in terms of the land development code rewrite is to implement the vision you all adopted in your imagine austin comprehensive plan, especially in program number eight related to the development regulation, so we feel it is very important for us to continue to tie this process back to the efforts that you all put into and the community put into the imagine austin process. This is just a quick time line overview. Where we are at is sort of the very beginning of this process. Along the bottom here, I know it's a little hard to see on the screen, but are the major deliverables in orange. We have -- last month we released the listing of the community report. We're at the point now of discussing the code diagnosis. Another major milestone coming in september and october, and I'll talk more about this at the end of the presentation, we are going to take all the information we gathered in the code diagnosis to present you all with alternative approaches with land development code rewrite. This is an important milestone. We will be asking in september or october of this year for your all direction to select a preferred alternative so we can jump into the rewrite in early 2015 and work with the new council to move that forward. As you can see, the process really extends out of the drafting of the code through 2016. In looking at 2017 at the point where the new code would actually

-- and the new zones would be mapped. It's a pretty lengthy process and we feel good about the momentum that we made. I just wanted to briefly mention the listening of the community report. We're really excited that the council in particular made it a priority for the team to step back before we dove into the code process. So listen to the community. We feel it was a very successful process. We got over 800 participants in the process. We did workshops, sort of formal workshops. We did one or one

stakeholder interviews. We did interviews in the neighborhood and other groups. The great thing is even though we have released the listing of the community report, the public engagement is going to continue throughout this process. That was a really important milestone as we made our way through the process. I would say one of the challenges was that the process was so successful, that we had so much data in terms of input, that it took us longer than expected to digest that and to actually present it in a way that we felt would be informative to us and also those who participated in the process would feel it was worth their effort to help guide and direct this process. We broke down that particular process in the six things that are on the screen now that we feel can help direct this process. Jumping into what our code diagnosis report sort of states as the top ten issues within the current land development code. And I'm going to first just very quickly go through the top ten and I'm going to dive into them in a bit more detail. So the first one is simply ineffective base zoning districts. The second is competing layers of regulations. The third is opt in, opt out system that you have in place in your current code. The fourth is a lack of household affordability, as well as household choices. The fifth is a code that, to us seems to be very autocratic in terms of the development. The sixth is the land development code is not always in line with imagine austin. The seventh is just generally the lack of clarity and usability. Eight is, in addition to sort of the hard copy of the code being hard to use and understand that, your digital code only makes the usability of the code harder. Number nine is that the code changes over the course of the last 30 years have adversely affected the department organization and function. And number ten is that there are obviously some incomplete and complicated procedures that simply add to the issues that we have been hearing related to the land development code. Now let me dive into each one of these top ten issues and talk about them. The first one is ineffective base zoning districts. It was pretty telling to us that we found that less than 50% of the geographic area of the city is regulated without some sort of overlay on top of a base zoning district. That's not typical. That's a clear sign to us that the system is ineffective and it's not functioning well. What we found is it's really across all these categories and districts. In terms of the residential and single-family. There's a one size fits all approach, not think of the contents of the single family districts. In terms of the multifamily, we feel they have created -- it's not a compatible form. In term of the commercial zoning districts, there's no differentiation between a neighborhood serving main street like you have on fifth street in the old west austin neighborhood in the form of.

[05:00:22]

[One moment please for change in captioners]

>> ... In central austin that were developed prior to the.

>> ... Mixed of housing types, old west austin, cesar chavez, holy, those sort of central austin neighborhoods, walkable urban, the transitional areas are the areas like rosdale or allandale, upper boggy creek but also have as you get further out from the center city, some of the characteristics, of a urban pattern and the urban pattern is similar to the 1950s and the urban area that was developed in at a pattern surrounded by integration and around a car to get from use to use. The second issue is -- issue that we defined is the competing layers of regulations, and so there are 6 possible combinations of zoning districts and zoning based districts, a little over 400, and that's a lot. And so what we need to

-- how you all got here is that

-- back to the first issue, you had effective based zoning districts and in order to achieve well intending objectives, there are these layers added on top to try to meet objectives of the neighborhood plans to implement them, and so the real problem here, though, was that the real root of the problem, which was your ineffective based zoning districts were never addressed, and so what we have been able to do in our work is very effectively to make sure that we are understanding and really reinforcing the intent of all of those layers but actually recreate a more effective system to establish both imagine austin goals and neighborhood planning goals and objectives. The way they have done this in the past is by compressing these layers by more effective pellet or district zoning based districts and we have done it that way in the past. We ended up with large strings of the different combinations of the zoning districts and the zoning based districts and we look for ways to simplify and clarify and achieve the goals of the neighborhood plans as well as imagine austin as we move forward. The third issue is this complicated opt in, opt out system. You have the combining districts, you have vertical mixed use. You have the neighborhood plan tools. Once again, the intent of all of those layers in the regulations was really good and so we need to reinforce the intent of those layers, but we need to think about how to make the application much more effective and much more clear, and just a couple of examples on the screen are neighborhood planning tools and which map the neighborhood areas they apply in. The corner store only applied to a few neighborhood planning areas. And then the small amnesty is the largest

-- or the neighborhood planning tool that's been applied to the largest number of planning areas, but you can see it created this piecemeal system of trying to achieve good results with tools that have been somewhat ineffectively applied to different areas, and just make it much more complicated to use. And before, the issue that is really obviously important to austin and to a lot of participants in the process is there is a real lack of household affordability and housing choices that are reinforced by your current land redevelopment code. In terms of house affordability, there are impacts on construction and development costs such as inefficient approval and permitting system. I think that's pretty straightforward. Restrictive limits on density in some areas. I think we need to look closely at not a one size fits all strategy but very carefully looking at these different defined areas that we have sort of studied in detail, in looking for ways in which we can encourage a variety of housing choices that kind of go beyond kind of the density limitations right now, without producing incompatible developments. Still doing that in a way that's very compatible in the right locations but actually meets the current demand for just market rate and affordable housing in austin. Our team feel there are few policy levers in place to actually preserve and enhance the existing affordable housing. We need to be looking at that. In that the current density bonus program are not yielding the needed results. I think what I have heard in more recent conversations, as the market has shifted, that the vertical mixed use in particular has really started producing a decent number of affordable housing units so we are still in conversation and will be working very closely with your staff to encourage and increase the household affordability options in austin, and I do think it's really important to state

-- and we have been telling this in all of our public meetings as well, is that code next and the land development code rewrite is not going to solve austin's affordable housing issue. It's just going to simply be one tool in the city's tool box to help address this problem and we are going to do our best to help integrate the tools that are needed to achieve these goals in the code next rewrite. In terms of housing choice, it's really clear to us, based on this assessment, that your code is providing a very limited range

of housing choices. We feel that these missing middle housing types that are represented in this diagram are really an important step in sort of helping austin achieve its household affordability options. On the left-hand side of this diagram, you have the single family home. On the right-hand side of this diagram, you have vertical mixed use projects. There is this entire range of housing types, the duplex, fourplex, the cottage courts that your current zoning code does not encourage and so we are going to think very carefully about where it would be appropriate to either reinforce this range of housing that exists, or look for places, such as transitions from corridors or maybe eve corridors along nodes to be incentivized and encouraged to meet the diverse housing choices of austin needs.

[05:08:32]

>> Martinez: Mbe, do we need to wait until the end or ask questions as we go through?

>> Mayor Leffingwell: I think if you have a quick question of clarification, that would be in order.

>> Martinez: On this one slide

-- if you don't have the full answer, we can wait and discuss it at the end.

>> Sure.

>> Martinez: I don't disagree with this, that we need this transitional area. I think the concerns and the questions that will arise is how you require it to be mixed, because if you create a zoning category for a certain level of density, all of that will become that maximum level of density and you won't see those mixed interspersed developments that's the concern, how do you create the zoning category that requires a townhouse next to a bungalow court, you know?

>> It's a really good question. I would say, number one, the standards would reinforce a compatible form first, and the density

-- there would be variable density within the allowed form to allow the market to decide that. We need to think carefully when we apply the broad range of types to make sure that if intent for where it's being applied is met, in terms of if the intent is very incremental in feel of neighborhoods to increase the diversity of housing so that it's not encouraged to the point where it would actually potentially sort of encourage the entire neighborhood to convert over toe that, so we will need to think very carefully about how that's supplied and where that's supplied and it will likely be different in different contexts and so we do think very carefully about that application.

>> Mayor Leffingwell: Approximately how much time is remaining in your presentation?

>> Five or less minutes.

>> Mayor Leffingwell: Okay.

>> So issue number 5 is simply that your code defaults to an a autocentric pattern of development, just like any other code sort of written in this particular era. Your code is creating what we are calling auto dependent density. We need to think carefully how to reinforce the imagine austin goals to get away from that development. The parking regulations are preventing a small pack infill which I think the neighborhoods would be happy for and your imagine austin is encouraging. Number 6, the land development code is not always in line with imagine austin, and just going for a few of the priority programs here quickly, in terms of investing in compact and connected austin, it's not necessarily a code specific issue but we wanted to reinforce the importance of the combination and the sort of consideration of transportation and land use at the same time and we understand that there has been a

lot of investment and transportation in the short term, but we feel that there is still a pretty large disconnect between the private investment and the public

-- and the transportation infrastructure that we just want to continue to encourage to the closing of that gap as infill does continue to develop over the course of the short term, midterm and long term. We also will be working very closely with staff on the watershed protection ordinance rewrite, to make sure that our processes and our tools are very well coordinated, and everything from storm water management to tree preservation, which is obviously an important tool, and refining those tools as the

-- the folks in terms of the staff that use those on a daily basis encourage us to make those small scale refinements. Number 7 is just the lack of clarity, usability, I think this one is pretty straightforward. But what we found is there is a really inconsistent structure to your code that we, as one of our first steps, we need to simply step back, create a consistent structure and organize the content in a consistent and coherent way so it is much more consistent to find the content in the code. Look at integrating graphics and table of contents at the introduction of each section so it makes it much more usable and clear as we go through the next code rewrite. Number 8 is an ineffective digital code to make sure the digital code makes it easier to use as opposed to adding complexity to the code. Feel strongly that place like austin that prides itself in its digital savvy should be at the forefront of digital code application and continue to encourage that as we move forward in this process. The code changes that adversely affected department organizations, so just simply that over the period of time the complexity of your code has led to the morpheme of the entity that actually deals with it and administers on a day-to-day basis, and this is an assessment that was particularly looked at but there is a lot of complexity, difficulty in maintaining a common interdepartmental mission, that is just inherent in the way the code has evolved and developed and that these continuous amendments have led to a very complicated administration and procedures by the staff. I mean, I think one of the points that we wanted to make is that this culture of like every week you all looking at amendments to the code is something that we are going to encourage to change once you have a new code in place, a new system that's much more efficient and much more effective. In the last item, it deals with specifically the incomplete and complicated administration and procedures. I think you are all aware of the lengthy and sometimes inconsistent review process and we need to make this a priority, making sure that we are not only rewriting the code but we are rethinking the process as well and making that clear in a streamline process for projects that meet the intent of imagine austin and meet if intent of the new land development code. And one of the points I wanted to make on this issue is also, just thinking about ways in which there can be some flexibility in terms of adding staff as needed as there is fluctuations in terms of increases in submittals

-- in the number of submittals so they can be sort of flexible enough to be able to meet the needs and the demand of the application of projects. So every project we do thinks very carefully about this and we will be doing this in the next code process as well. A few concluding thoughts. This listing the community and this core diagnosis is simply creating a foundation for us to move forward to create the series of alternatives that we will be proposing to you in the early fall and I just wanted to mention that based on what we have seen to date and our experience, that it's very likely that at least one of the alternative approaches will be what we call a hybrid code, that effectively combines and integrates form based

-- use based elements and performing based elements and very well coordinated and easy to use

system. We found out form based coding has been a really effective tool for achieving compatibility in other communities we have worked with. This is a graphic from our Cincinnati form based coding that will apply to 2 of the center

-- to the 42 center neighborhood graphics and this is just a starting point. We will provide information about all of these different zoning tools through the code next website and through if public participation process as the project continues to unfold. And back to the timeline as a concluding point, just wanted to reinforce the fact that the next major milestone will be us coming back to you in September with the three alternative approaches, with an annotated outline to define those. And will be working for you all to make a decision to give direction for us on a preferred approach. We will be coming back actually in early spring based on a recommendation from council member Morrison to actually reconfirm with the existing council that the direction that was selected is the route in which the code should go and then we will jump into the rewriting of the code in early 2015, and so we are really excited about the way that the process has gone to date. We are really excited to continue the public outreach, to help inform this process. There is a lot of questions still out there that we need to answer, continue to engage the neighborhoods in this process as well as you all, and we are really ready now, if we have the direction we need to creating these alternatives and coming back to you in the early fall with those to give direction to you. Thank you.

[05:17:32]

>> Mayor Leffingwell: Thank you. I think you have done a really good job of identifying the problems. And going

-- the next step, I think, is going to be more difficult. How do we implement solutions to those problems. I wish you well in that effort. [Laughter]. I did want to say one thing that kind of caught my ear. I think you alluded to the fact that one of the big problems is the complexity of the existing code, with the layering and so forth of other things. And that, I think, was a big contributor, and it has been in the past for backlogs for people who submit applications and have a long wait to get them reviewed. In fact, a while back

-- we aren't in a situation now where we did have huge backlogs and complaints about it, I made the suggestion

-- and you sort of hit on this a little bit

-- that we have some sort of flexibility in how we review them. Any specific suggestion was that we allow an applicant an opportunity to, at his or her own expense, to go out and have these plans reviewed by an independent, certified in some way, architect or engineer, and the answer I got from our staff was, we can't do that. Our code is so complex, nobody understands it but us, so. [Laughter]. So that -- that kind of really reemphasizes that that is a problem. That nobody else understands it but us so we have to be totally responsible. That might be one way even after changes are made to decrease the complexity to have that flexibility in staffing for reviews to account for ups and downs. Any other questions or comments? Council member Morrison.

>> Morrison: Thank you. Nice to see this presentation again. The comprehensive plan and transportation committee that mayor pro tem Cole and council member Riley and myself and then also council member Tovo have spent a lot of time working through what might be some

[05:19:43]

(indiscernible) and all of that and so I appreciate staff and the consultants team working with us. I wanted to

-- I think I mentioned this earlier during the budget work session but I wanted to raise just a couple of issues that we had talked about and were suggesting that might actually look toward

-- direct us towards a budget increase next year and this is an opportunity for everybody to understand what those are and one of them is we ran into what was decided was probably a whole bucket of what we call "hot topics," and those are things that are worrying people on how they will turn out down the road and being able to get those on the table and have up front discussion right now we thought would be a good idea and staff has come up with the idea of doing more code talks. I think there might be a need in the next budget for an increase to some degree to support those code talks. There are issues and I think staff is now in the process of gathering them and making that list, and then, also, there is a tool that's being used for

-- it's called envision tomorrow up at U.T. That's being used within this framework to take a look at various scenarios of different kinds of regulations, what we have in place now, as well as other ones that we might envision, and there is an increasing interest in making that modeling more robust and adding more of the regulations or various kinds of constraints that we might put in there so we get a better idea and understand that would cost some additional funds beyond what we might have. And then

-- and then lastly, I know it's a little bit hard to put your finger on this one, but the bottom line is through several controversial discussions at CPT, one of the things that I think everybody in the room

-- or a lot of people on both sides of the issue in the room agreed, and that was there is a certain lack of trust in the discussion. One of the things that we thought could be helpful to that is to increase the amount of face time that the community gets with the consultant, and to that would be a bit of a change in the scope of work and hopefully there is funding, and I understand there might be funding in CIP budget and things like that, but I would look forward to seeing an opportunity to fund those efforts, as we've discussed. Because we need to invest smartly but we need to invest in a way that will make this productive all the way down the line, so I don't know if anyone has any comments about any of those efforts that we were talking about. I will be glad to hear them. Okay. And then I do have one question. And that is, we recently all received a letter

-- and you probably did, also, from Eleanor Kenny about

-- for what degree we are taking environmental considerations into account as we go through our code development, and I think the bottom line was her

-- there is a letter that has some specifics in it, but I think it comes down to, are we paying as much attention to the priority of nature in the city in the development of our code as we are to the priority of compact and connected. And then a related comment would be, and what about climate change and how we are integrating that into our discussions. The letter we got

-- who do we integrate that into our discussion and so the letter we got didn't take that into account at all.

[05:23:37]

>> I think the chunk of dealing with the natural aspect of the build in environment will be handled within the watershed protection ordinance that is being rewritten. We aren't leading that but we are collaborating closely with the staff who is rewriting that ordinance. I think in terms of climate change, I would say there is

-- there is nothing specifically that we

-- there is not like a climate change line item in our work scope but I would say a lot of decisions you all made from a policy standpoint in imagine austin than simply the compacted and connected nature of development obviously relate directly to climate change and reinforcing a pattern that's going to be responsive to that, so I guess in terms of that, I feel pretty confident it's addressing it in that way.

>> Let me also add the envision tool, remodeling tomorrow that you indicated does have indicators like air quality, energy consumption and things like that have a relationship to climate change factors and those are to help guide us towards incorporating those types of conversation

-- those type of considerations into the code.

>> Morrison: When I think of climate change, I think about disasters which could be related to them and I wonder if I am doing an exercise that finds the highest disasters at which we are at highest risk and have the greatest consequences, which is what our hazard mitigation plan has in it and take a look at those, and see if they would tell us anything about what we ought to do in the code. For instance, one of them is wildfires, and so, if we are talking about wildfires, maybe we are talking about building code but we also should be thinking about how we place buildings and high risk areas and we naught a about that before as various intervals and the fire department said we are interesting, absolutely, and we will be at the table in dropping the code, so is there a process to take our greatest risk hazards in the city and take a look at them through the lens of code. I think the hazard mitigation plan actually recommends that.

[05:26:25]

>> We have not -- as dan said, we haven't written in that in a specific line item but it is something we can do in the future.

>> Morrison: I think it would make sense in terms of aligning our different plans, hazard mitigation is one thing but it can't be done in a silo with regard to this very important stuff in implementing imagine austin. I will be glad to talk to you about some about the very fact our mitigation plan has the plan every five years.

>> I am glad george brought up the envision tomorrow indicators with sustainability because I feel that's a really important part of our conversation of understanding the benefits of the potential code changes as we move forward and part of the reason that I kind of

-- it's not necessarily scoped yet and we aren't relying on it but I feel like it's part of the reason to have that tool as we move forward.

>> And in terms of expanding the depth of detail, I think that's great because the more we have and the more face people have in the modeling, that the more productive that will help us be.

>> Spelman: May i?

>> Cole: Yes, council member spelman.

>> Spelman: I agree with council member morrison, that face time is important and the opportunity that

all the interest groups have an interest in land development code to talk with you guys, the more they will be able to trust you will make good decisions because you understand what their concerns are and although you can develop a terrific code from a distance, it won't be perceived as one if people don't participate in the process so I think that's something we have to talk about is bringing you out here and twisting your arms so you spend more time here rather than your home so we get to see you a little bit more. The other issue that goes along with us in here is different from the code that we come to know and hate. Most of us can't imagine what the land development code will look like other than what it does look like, and you make it possible for us to understand what a difference based zoning district would look like so it would be more effective and so we can actually get the benefits of a simple law that doesn't have to have four levels of overlays and lots of different choices, such as accomplishing the value, it would be good, other than everything you are suggesting there is a problem, I know there is a solution for it. I haven't a clue of what the solution looks like but the whole thing would be a lot more real exercise for me and a lot of people would go along with it more easily if they have a clue. I know this is something on your radar screen and I want to see if it's something to bring up as front and center as being the next big threshold objection you will have to overcome among the local interest groups is the inability to imagine something new.

[05:29:33]

>> Cole: I think in cpt we actually discussed that point and the need to be able to envision where we are going and the fact that a lot of the concerns that were rising up to the level of this frustration of the process that we want to try to do something about needed to have more concrete examples and maybe even some scenarios actually played all the way out through the code so you would know what that looks like. So those discussions are going on. I also wanted to say that I fully support council member morrison in her efforts to make sure that we consider the needs of this process during the budget process because they can't be in a and I think there have been enough concerns expressed to properly get this done. We have to consider it during the budget process. Any other comments, questions? Council member tovo?

>> Tovo: A couple of quick ones, we talked about this in the land use session and I had the opportunity to talk about it in another session. However, since it has come up again, the comment about current density bonus programs are not yielding needed results, I want to thank you for mentioning dmU, which you said now the market is shifted, is yielding affordable units. And I don't want to be a broken record on this subject but I do feel it necessary to point out again, until very recently, we had two options in our code. One allowed additional density for developers who participated in the downtown density bonus program and we had a zoning program that allowed the owners to side step the zoning program and come in for a zoning change and so 100% of the time they decided to seek the option to come and seek a zoning change. I wouldn't say that

-- I don't think it suggests that there is a problem but a loophole that needs to be closed and I want to see that continue to be factored into our discussion about how effective our density bonus programs are. They won't be effective if we offer ways to screw around them and I think we learned that lesson with the cure zoning and our downtown interim density bonus program. Thank you for mentioning the policy leverage, and the options for them and I am interested in learning what the options might be. And

if there are some that might be worth considering earlier, I think it's something that might make good sense, and so also, I know you explained last time in the land use and transportation that this is not a map of where that missing middle housing would necessarily go and so I think it's a really important consideration. This is the picture on 35 and we have heard questions about it from the community meeting and thank you for clarifying for us ux that's in the the progression you see from a single family house to mid rise, that those would fall within them and you are giving us a visual of all of the different types of middle missing housing that we might consider in our code.

[05:32:45]

>> Thank you.

>> Tovo: And, in fact it might be worth having

-- if this is preserved on our website, it might be worth offering this clarification on traphicse of what the decision before us in the fall will look like, and what kind of information

-- what will be the different alternatives and how do these flesh out.

>> Council member, sue edwards, assistant city manager. One thing we have talked about is putting together a work sessions that an education work session before you make those decisions, probably at least a month, maybe even more than that, where the consultants will talk about and inform us about what the different alternatives are. Also, I think, council member cole talked about some examples and council member spelman talked about examples of things in how that code would look, so what we are planning is an education work session for all of us, and plenty of time for you all to have your questions answered before we actually ask you to make a decision on the way you go.

>> Tovo: Okay. Thank you. That's helpful. Okay. Great. And then lastly, I have heard this discussion in abbreviated form in a couple of places. I haven't had the opportunity to ask

-- I wanted clarification about the point you are making on page 29. You offer the example of corner stores, talking about the neighborhood planning tools and how those have been ineffective. There has been an ineffective application. Can you explain to me what you mean by that? Is it ineffective in that it's available in some places or not available in others? Or is it ineffective in some other ways, in that it increases the complexity unnecessarily and that there are other options of preserving that tool within that particular geographic area that we might consider?

[05:35:19]

>> I think it's both of those. I think parent of the complexity of the neighborhood planning tool just as the example that's in the presentation is that the maps that actually show you where

-- which neighborhood planning areas that the tools apply to are not within the land development code so you have to go outside of the land development code to actually find the map. It's just one of those kind of complicated, sort of where do I find the information. I am not sure you have all of the information in front of you in terms of the regulations for a lot. I also do feel

-- in all of our processes in other cities where we have done this, the neighborhoods ultimately needs to be a part of the conversation and be given a decision in terms of how they want the regulations to happen in their neighborhood, but the way that sort of neighborhood planning tools have been so

sparingly applied, they are really not going to have any sort of benefit city wide to help you achieve the larger goals of accommodating housing choices in affordable housing, and so we need to think about a better way to achieve similar intent but doing it more effectively with a different

-- different approach.

>> Tovo: So I guess I heard two different things. For one, if you understand the maps, there are descriptions of where planning tools are applicable but there aren't maps to tell easily if you want to create a corner store in one particular place, whether you can do so, because the maps are in a different place, so that's an easily remedy. Another challenge is to balance on what you identified as your themes, which is neighborhood characteristics with your second point which seems to suggest if a tool is city wide, then it should potentially be considered in an area that had the opportunity to consider it and didn't don't it. So that's and didn't adopt it and so I assume that's the hard issues we will have to discuss and the neighborhood planning process I was familiar with, the planning tools were given as consideration and were either adopted or not adopted and so it wasn't a snap decision, and so if neighborhood

-- if we are going to, as we have, in our imagine austin plan say that the neighborhood plans

-- that imagine austin is not going to override our neighborhood plans, if we are suggesting there is an ineffective application of some of those planning tools because some of the plans didn't incorporate them, then that's a very

-- that

-- that will give many, many people, including possibly me, pretty serious pause.

[05:38:08]

>> Yes, I think in the assessment that we have done in the neighborhood planning tools is there needs to be, number one, even refinement within each one of the tools that need to be made to make them acceptable to a broader range of neighborhoods. And I think that's first

--

>> or even areas specifically within the neighborhood boundary, where a neighborhood plan might have opted in, but it still might

-- the tools still might not be sort of appropriately calibrated, even within that smaller boundary. So it's still a little bit of the one size fits all. If adopting this thing that is available city wide, applying it to a particular area, but contextually, the nuances of that context haven't been sort of distinguished, and so you get

-- you get

-- it's still a little rough. The landing is a little rough. And so that's why the community character of us, this deliberate process of analyzing it and getting a better read on what those variations are, would then give us a chance to calibrate what might actually be a broader range of zone districts, but more appropriate, to be able to map.

>> Tovo: Thank you. I think we had an opportunity to learn a little bit more about that. It's an interesting idea. It's also

-- I think one of the challenges in this process is that on the one hand there is a lot of complexity that you have identified and there is interest in moving toward a more simplified code. On the other hand,

we are talking about calibrating things into other areas and so there is some complexity
-- it is not immediately known where it will end up but it is an interesting process.
>> The thing is, cities are messy and they are complicated. So what we are really trying to do is find a simple system to organize complex environment. Right. Because right now you have a complicated system to a complicated environment and it makes it exponential in complexity.

[05:40:24]

>> Tovo: Okay. Thank you.

>> Council member morrison.

>> Morrison: I want to play off what council member tove is saying and the whole issue of making sure we are respectful of the neighborhood plans and don't come in and sort of overwrite what has been adopted, and I get the issue you are looking at, we are looking at refinement and if the refined tools look at the neighborhoods that haven't opted in. And to point out, the item from council that is being withdrawn was going to do exactly that. It was going to

-- it would

-- my understanding is, it would have said secondary apartment tool goes in every neighborhood independent of what the neighborhood plan had said, which is exactly what we don't want to be doing. We want to be doing it with a little more delicacy to find the right place. We want to point out in terms of secondary apartments, one experience that I heard

-- and I don't know if this came up in your summaries

-- one of the neighborhood explicitly adopted it because they thought with that they would get more affordable

-- some new affordable units and they got a lot of secondary apartments and none of them were affordable, and so, you know, that's an experience that doesn't help other neighborhoods that follow along. If they

-- if they say it's not a tool, so learning about those kinds of things, like is there a way that we could make a tool that is an affordable secondary apartment tool, and I don't know legally and all of that kind of stuff, but I think those are the kinds of things that we need to have a discussion about in the context of code next, because it is just one little thing and the whole big

-- in the whole big picture and that's why I don't think today or this year we should be taking action to say, well, we know that this is the right answer in this regard and go forward with that. Thank you.

>> Cole: Any other comments, questions? The item has been discussed. Without objection, the austin

-- council member riley

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[05:42:34]

>> Riley: There is another one. [Multiple voices]

>> Cole: Okay. I have one more. And we have down to the parks situation and now we are down to five members and I know several of us need to go.

>> Tovo: Soon to be four.

>> Riley: We all need to go. And so our

-- our

-- greg is passing out the materials. I wonder about the

-- I hate do this to everybody who has been waiting so long but I wonder about the

-- moving this to the next work session, in two weeks, due to the fact we are losing our quorum

-- greg, do you see

--

>> Guernsey: It's up to you. I am prepared right now. I can go through it within five minutes very quickly.

>> Cole: I think that five minutes is probably not enough time and I know a number of us have other commitments including myself. But do you have any problem putting this item number 77 to the work session?

>> Guernsey: No.

>> Riley: To be clear, this is something I asked to have on the work session agenda. The staff has made a decision on this, that they are speaking with

-- the question has been raised as to whether council ought to intervene and take some action in light of all of the circumstances in this case. We have gotten some additional materials today, including a letter just today from the applicant as well as these materials from staff. I wonder about continuing to work on this over the next two weeks and then make sure we have time at the work session, two weeks from today.

>> Guernsey: And council all I passed out was the letter from the letter from the attorney representing properties interest in this matter, my response, and then a copy of 1982 barton creek watershed ordinance that defines

-- well, I have certain definitions that address one single family renaissance housing structure, two family residential housing structure and commercial so you will have that as a reference, because this is referencing throughout my response and also the letter that was directed to me.

[05:44:43]

>> Cole: So council member riley, are you asking that we go ahead and proceed with this for another five minutes or so?

>> Riley: I don't think we will get the problem solved in five minutes, but I do think we ought to deal with it and it seems like the first opportunity after today is really going to be two weeks from today. I believe we have a work session two weeks from today. Does that seem right?

>> Cole: Yes, I believe we do as well. Actually three weeks, the 10th. That might be too late because I understand the contract

-- there is a contract that expired on the 6th. Is that right?

>> That is correct.

>> Riley: Well, greg, can

-- can you tell us what our options are for getting to a resolution on this? And one question is, does

-- does any potential outcome on the vested rights ordinance offer any new avenue for addressing this?

>> Guernsey: Well, yes, the proposed vested rights ordinance has page 717 of the 7th draft under section 25-1544, project consent agreements which may offer this property an excellent opportunity to

take advantage of, and what I mean by that, is that I certainly agree that there are certain projects that would be grandfathered on this tract. But this might not be the one that -- that was set by the court in my interpretation. That would be a continuing project. That could take advantage of that project consent agreement and move forward. It would require council action. It would not be administrative but I could recommend that to you based on the information that I have at this point in time.

>> Riley: We do have representatives of the applicant here. Maybe the most sufficient thing would be to simply ask the applicant about the potential solutions on the table.

[05:46:54]

>> Tovo: I need to understand what mr. Guernsey just said, your chapter 245 committee met and denied the grandfathering request and are you suggesting that the staff could bring forward a resolution asking that the council override your decision?

>> Guernsey: No. Under the proposed vesting ordinance, there is a provision that doesn't exist today that deals with project consent agreements. Under project consent agreement, it would allow someone to approach me or to approach two council members with a proposal that are saying, I understand this project is grandfathered. I could go build, you know, x, it would be under old regulations. I want to build something else, y. But I would like to change my project to be something else. But I will agree to do all of these other wonderful things that will come closer to that.

>> Tovo: Thank you for the clarification. I asked that question because I thought we received a -- I thought that was what the le was asking us to do, was asking the council to come up with a grandfathering decision. That would be different from the chapter 245, and I would say that that would -- I would want to receive some real good information about whether that's ever happened in the history of the council.

>> Guernsey: Council member, I am not purview to a letter you may have received recently. I think --

>> Tovo: I understand

-- [multiple voices]

>> Guernsey: I hadn't seen it yet.

>> Tovo: I understand the option you were describing. Thank you.

>> Cole: Council member riley.

>> Riley: I was going to ask the applicant, since time is an issue here and it turns out council won't have another work session until the 10th. I want to ask about the potential avenues for solving this. It doesn't look like ever will have an opportunity to get this fixed today. It leaves us limited options. You heard mr. Guernsey say one which is a project consent agreement or project consent ordinance was mentioned. Does that strike you as a way to work?

[05:49:05]

>> My name is ion detricks with david weekly homes. It is possible, it is hypothetical. It hasn't been voted on by council. I don't think we foe what the caveats

-- know what the caveats of that would be but we met with staff yesterday and they presented it adds an option. I would hope

-- they presented it as an option. I would hope the council would make a motion to take action on it but I understand that could be another theoretical possibility.

>> Riley: You understand timing is an issue here, and that's what we have to figure out right now. We are not going to be

-- we are not in position to override council's decision at this moment and we don't expect to have another meeting before the 10th except for this meeting thursday, which is

-- and this is not on the agenda, so I

-- I appreciate your patience in helping us work through these issues. I just want to see if you would be willing to continue working with us in the coming weeks to see if we can explore those possibilities. If it appears that might present a solution, that it could work in spite of the deadline that you have on the 6th.

>> Council member riley, I don't know how to answer the question, because our contract is up on the 6th, so I guess it would be up to the sellers to renegotiate with us and then we would have to work with staff to work through that

-- that theoretical mechanism and then we would have to w with council aga t that done. So I think that's

-- that's a possibility.

>> Riley: Okay. Well, that appears to be really the only set of options we have at this point so all I can say is I will be glad to continue working with you and staff towards some outcome that will work in the coming weeks.

>> Cole: Okay.

>> Tovo: Can I say something.

>> Cole: Council member tovo.

>> Tovo: I know we are trying to abbreviate the discussion and that's part of what is causing the confusion. You said something about we are not in a position to override council's decision. Did you mean

--

[05:51:09]

>> Riley: Sorry, I misspoken. I meant staff, staff decision.

>> Tovo: As I understand it, there may be options available to them through the vested rights ordinance if it passes and includes certain provisions. Are you suggesting there is another alternative to having council action to override the staff decision?

>> Riley: I am recognizing that that is something that the applicant has suggested. And that is

-- I would be willing to talk about that. I don't know if it's a viable option or not at this point but I am certainly willing to visit with the applicant and explore as well as staff and explore all potential solutions.

>> Tovo: Okay. I will follow up with legal staff about that, because that would seem to be a real departure for the council.

>> Cole: Okay.

>> Tovo: Thank you. Thanks for clarifying.

>> Cole: Okay. Any other comments?

>> Spelman: Just observation.

>> Cole: Council member spelman.

>> Spelman: Of all of the sections of vested rights ordinance we have been talking about, the project concept agreement has been one of the least controversial and it seems to me if there were a substantial change in those provisions in the vested rights ordinance it would be a marked change from our previous behavior. Everybody seems to be okay with that and I haven't heard anybody say about that so I think you can probably rely on that being in whatever ordinance we passed, although we probably will not pass it on thursday.

>> Could I make the request if that is the mechanism of choice, that you urge staff to help expedite the site plan review process, if that is the event that comes about?

>> Spelman: We are not in a position to take a vote. However, sir, I will happily help however I can.

>> Knew.

>> We already met with the applicant and we've already agreed to expedite so there is no question about that.

>> Spelman: I already hoped. Who knew. [Laughter]

>> tnk you. Thank you council member riley. I think we have one other item, 77?

>> We did that one.

>> Cole: The density bonus, we talked about that enough. Without objection, this meeting of the austin city is now adjourned.