

Henderson City-County
Planning Commission
February 4, 2020

The Henderson City-County Planning Commission held a meeting February 4, 2020 at 6:00 p.m., at the Henderson Municipal Center, 222 First Street, 3rd floor assembly room. Members present: Chairman Herb McKee, David Williams, Kevin Herron, David Dixon, Gary Gibson, Rodney Thomas, Doug Bell, Dickie Johnson, and Bobbie Jarrett. Mac Arnold, Gray Hodge, Kevin Richard, and Tommy Joe Fridy were absent. Staff present: Director Brian Bishop, Claudia Wayne, Theresa Curtis, Heather Lauderdale and Chris Raymer.

MEETING BEGAN AT 6 PM

Chairman McKee: Let's call this February 4, 2020 meeting of the Henderson City-County Planning Commission to order.

Madame Clerk, will you please call the roll?

Do we have a quorum?

Heather Lauderdale: We do.

Chairman McKee: We have a quorum.

The chair will entertain a motion to go into **Public Hearing.**

MOTION WAS MADE BY BOBBIE JARRETT AND SECONDED BY RODNEY THOMAS TO GO INTO PUBLIC HEARING.

Chairman McKee: We have a motion and a second. Any discussion? All in favor, signify by saying aye.

AYE: ALL

Chairman McKee: Are there any opposed?

OPPOSED: NONE

Chairman McKee: We are in public hearing.

The only item on the agenda for the public hearing is the approval of the minutes from the January 14, 2020 meeting.

MOTION WAS MADE BY DICKIE JOHNSON AND SECONDED BY GARY GIBSON TO APPROVE THE JANUARY 14, 2020 MINUTES AS SUBMITTED.

Chairman McKee: We have a motion and a second. Any discussion? All in favor, signify by saying aye.

ALL: AYE

Chairman McKee: Any opposed?

OPPOSED: NONE

Chairman McKee: The minutes are approved as presented.

The chair will entertain a motion to go out of Public Hearing.

MOTION WAS MADE BY BOBBIE JARRETT AND SECONDED BY DOUG BELL TO GO OUT OF PUBLIC HEARING.

Chairman McKee: We have a motion and a second. Any discussion? All in favor, signify by saying aye.

AYE: ALL

Chairman McKee: Opposed?

OPPOSED: NONE

Chairman McKee: We are out of public hearing.

Next item on the agenda is the January Finance Report. Questions for Mrs. Curtis? Mrs. Curtis do you have comments you would like to make?

Theresa Curtis: Yes sir.

We're at 59% of budget in this fiscal year.

MOTION WAS MADE BY DOUG BELL AND SECONDED BY BOBBIE JARRETT TO APPROVE THE JANUARY 2020 FINANCE REPORT AS PRESENTED.

Chairman McKee: We have a motion and a second. Any discussion?
All in favor, signify by saying aye.

AYE: ALL

Chairman McKee: Are there any Opposed?

OPPOSED: NONE

Chairman McKee: The January Finance Report is approved as presented.

Next on the agenda is the **Bond Report**. Mrs. Wayne do you have comments to make?

Claudia Wayne: Yes. It's Gray Stone Subdivision, we're reducing it to \$84,731.00. From last year to this year they've put down six (6) sidewalks.

Chairman McKee: Any questions for Mrs. Wayne?

The chair will entertain a motion.

MOTION WAS MADE BY BOBBIE JARRETT AND SECONDED BY RODNEY THOMAS TO APPROVE BOND REPORT AS DISTRIBUTED.

Chairman McKee: We have a motion and a second. Any discussion?
All those in favor signify by saying aye.

AYE: ALL

Chairman McKee: Any opposed?

OPPOSED: NONE

Chairman McKee: The Bond Report is approved as presented.

Next on the agenda under Administrative Business are the Planning Commission Committees and the Ad Hoc Committee for County Zoning Ordinance.

I received no communication from any commissioner about changing committees so, all those members will stand as they are please, Mrs. Curtis.

Is there any other business to come before the Planning Commission?

David Williams: Mr. Chairman, I want to bring something that you brought up to the Executive Committee meeting and I felt like it should really be presented to the whole commission for;

Before the Planning Director makes a commitment to assist another organization, including City and County government it must be approved by the Executive Committee. Such approval shall not be unreasonably withheld and also access to the Planning Commission's legal counsel shall not be withheld from the Planning Commission or Planning Commissioner without the approval of the Executive Committee. This includes applications to the Planning Commission for the approval or recommendation to City and County government.

I'm going to recommend that we go into Executive Session at this point, for the purpose of...

Doug Bell: What's the statute please?

David Williams: I'm sorry?

Doug Bell: What statute? What KRS?

David Williams: What do you mean?

Doug Bell: There is a statute when you go into....there's different statutes, I'm just asking which one we're...

Brian Bishop: Which one you're citing.

David Williams: Yeah. I'm not sure which one I would cite in this case.

Chairman McKee: Just cite the words and see which statute it applies to.

David Williams: Ok, for personnel matter in which may include disciplinary action.

Brian Bishop: Can I ask a question? How do either one of those topics have to do with the discipline of someone?

David Williams: I'm sorry?

Brian Bishop: How do either one of those topics have to do with the discipline of someone?

David Williams: I'll have to ask the Chairman that.

Chairman McKee: That is the reason to go into Executive Session.

Brian Bishop: But that's not the reason Commissioner Williams just gave.

Chairman McKee: My understanding of the reason that Commissioner Williams just gave to go into Executive Session was to deal with personnel matters which may include disciplinary action, and that is the only reason to go into Executive Session.

Is that not what we did at the Executive Committee meeting?

Brian Bishop: Correct. But that is not what was just said.

Personnel can only be hiring, dismissing, or discipline...what Commissioner Williams just said, I don't have it in front of me but the Director helping other organizations and the restriction of the Commission using Mr. Fridy. Neither one of those is discipline.

Gary Gibson: Should we be doing this without our attorney here for legal advice?

Brian Bishop: I would say no. The reason why we don't have an attorney here is because we thought this was a routine meeting that would not require an attorney because Mr. Fridy is out of town and we didn't want the added expense of having a substitute attorney. Because the agenda was so light, theoretically it should have only taken a matter of minutes, we didn't expect this.

Doug Bell: I just want us to be careful. I have no problem with Executive Session, I just don't understand what it is, and to make sure we're following that statute. That's my only concern.

David Williams: If this is a problem, which I can see it is Brian, I'll withdraw the motion but I would like for us to discuss these issues now. The ones I just reported, ok? So that's not a motion, I'm just bringing that up.

Chairman McKee: So, you want the Planning Commission to discuss those two (2) issues?

David Williams: Yes.

Chairman McKee: So...

David Williams: I would like to hear from the Chairman exactly what the Chairman's feelings are about these issues because of your email.

David Dixon: Can you repeat the issues?

Doug Bell: Yes David, would you mind to speak up because I couldn't hear you.

David Williams: Before the Planning Director makes a commitment to assist another organization including City and County government, it must be approved by the Executive Committee. Such approval shall not be unreasonably withheld.

And the second issue was; Access to the Planning Commissions legal counsel shall not be withheld from the Planning Commission or

Planning Commissioner without the approval of the Executive Committee. This includes applications to the Planning Commission for an approval or recommendation to City and County government.

Chairman McKee: So, observation, when Mr. Bishop wanted to help the downtown folks with the Downtown Master Plan, he came to the Planning Commission and asked for approval to do that. Do you recall that?

David Dixon: Yes.

Chairman McKee: Ok, so there may be instances where it's more appropriate to take it to the Executive Committee than the full Planning Commission and that is what Mr. Williams read to you.

Rodney Thomas: Such as?

Chairman McKee: I don't know. It's just...in the event that it's something that's pretty straight forward, the Executive Committee could do it. If it's very complex, and very involved then it takes the full Planning Commission to do it.

Doug Bell: Is this addressed in our by-laws? Forgive me because I don't have the by-laws in front of me but is that in our by-laws that it goes to the Executive Committee or...?

Chairman McKee: The function of the Executive Committee is in the by-laws but not this particular item.

Doug Bell: So this item is not in our by-laws?

Chairman McKee: It is not.

David Dixon: The first issue about approving service to other community organizations, that's not addressed in our policies?

Chairman McKee: Not as far as I know. Do you all know? Does anybody know? I don't think it is.

Specifically the by-laws say that the Planning Commission delegates to the Executive Director, duties and responsibilities. I have to get the by-laws out to review...

Theresa Curtis: I have a copy of the by-laws if you need a copy.

Chairman McKee: The Executive Committee...

Brian Bishop: Would it help if they were displayed on the screen?

Theresa Curtis: Can you send it to this and do it?

Brian Bishop: We can get online and do it. Isn't it on our website?

Theresa Curtis: I don't think so.

Doug Bell: You're asking that instead of coming to the full Planning Commission it goes to the Executive Committee only?

David Williams: My purpose for wanting to bring this up now is because I thought these issues need the input of the full Planning Commission, I didn't think the Executive Committee should have full reign over this.

Rodney Thomas: I agree with that. That is a slippery slope. Because whoever's on there.... might get tangled up, you never know. How many people are on the Executive Committee?

Chairman McKee: Just three (3).

Rodney Thomas: That's a slippery slope right there.

David Dixon: So, when the Executive Director brought his service to the Downtown Master Plan Committee to our attention, according to our policies it did not say specifically he had to do that. Am I understanding it?

Chairman McKee: I believe that's correct.

David Dixon: As a courtesy, he did so.

Chairman McKee: I believe that's correct.

David Dixon: I've got no problem accepting his courtesy; the whole commission accepting it. But, that's just me.

Doug Bell: I agree with Commissioner Dixon.

Bobbie Jarrett: I think when we hired Brian we encouraged him to be involved in other committees, and I don't have a problem with that.

Doug Bell: So, he did it out of courtesy rather than a requirement.

Brian Bishop: For example, another thing that came up is the City of Robards is looking to get into the NFIP which is the National Flood Insurance Program.

Doug Bell: Uh huh.

Brian Bishop: They asked me to be their flood administrator because they don't have anyone to do it. The first thing I said was I don't think it's an issue but I'll need to bring it before the Planning Commission. I'm not required to do that but I think it's wise for me to let you guys know what's going on.

Gary Gibson: Now is the correct time to have the legal person here, and hear his opinion.

Brian Bishop: Commissioner Gibson, I didn't realize this was going to be...

Gary Gibson: I realize he's not here but that would be the ideal time because I don't feel right without knowing his thought in this. I don't know where this is going. This could go further and we've got to talk about it.

Chairman McKee: Do I understand you correctly in that you don't see the need for this provision?

David Dixon: Correct.

Doug Bell: I do not, personally.

Rodney Thomas: I don't either.

Chairman McKee: Would you put that in the form of a motion Mr. Commissioner? On that one, particular issue.

David Dixon: I'm going to make a motion against something that does not even exist? If somebody wants to take a positive action or change something, they need to make the motion. Otherwise, things stay as they are which is what I'm advocating for.

Chairman McKee: Does that satisfy you, Commissioner Williams?

David Williams: Yes.

Chairman McKee: Does that satisfy you? (Speaking to Bobbie Jarrett)

Bobbie Jarrett: Uh huh.

Chairman McKee: The second point is legal counsel.

David Williams: Ok, I would like to hear from Brian his outlook on that.

Brian Bishop: Can you read that again please?

David Williams: Yes.

Access to the Planning Commissions legal counsel shall not be withheld from the Planning Commission or Planning Commissioner without the approval of the Executive Committee. This includes applications to the Planning Commission for approval or recommendations for City or County government.

Brian Bishop: The first part is I believe we had this discussion when we entered into a new contract with Mr. Fridy. I don't think it's fair to staff for us to be responsible for a budget, and the Planning Commission can have unrestricted access to the person who provides that service at \$200 (two-hundred dollars) per hour. That could easily run up a legal bill that

we would have no knowledge of. Then all of a sudden we get a bill that negatively effects the budget; which we're held responsible for, not the Planning Commission.

So, I have an issue with that because if all of a sudden that line item gets blown in the budget, I'm the one responsible for it, not the individual Planning Commission member. I don't think that's fair, and I think if the Planning Commission members have questions, they should come to Claudia or I and if we can answer those we will without the assistance of Mr. Fridy.

But, if that assistance is needed then by all means we should get it.

The second part of that with the application, I'm not sure what that means. Applications to recommendations to the City and County. Are you referring to rezoning's?

David Williams: I would assume he's referring to applications to the Planning Commission that may need legal advice.

Chairman McKee: So let me ask you a question Mr. Bishop. What if your opinion of a legal matter is inaccurate?

For example, if we are discussing matters that are related to the County Zoning Ordinance, and the topic comes up about a conflict of interest, and it's your opinion that Planning Commissioners that own property in the county have a conflict of interest when dealing with a County Zoning Ordinance when that, in fact, is not the case.

Brian Bishop: Are you referring to the Solar Ordinance?

Chairman McKee: Yes sir.

Brian Bishop: I believe we did discuss that internally, and then you, yourself unilaterally made that decision not me.

Chairman McKee: No, that is not correct.

What is correct is I asked you for a legal opinion, and you said you're not getting one.

Brian Bishop: That's not true at all. Why would I put in the email, which I can pull up, that if the Executive Committee thought it was necessary staff would fully comply? But, my suggestion was not to use Mr. Fridy.

Chairman McKee: And why not?

Brian Bishop: Because of the friendship that you two share.

Chairman McKee: Do you think he would give a bad opinion to me?

Brian Bishop: I think I would rather avoid any controversy whatsoever. Avoid the appearance of impropriety.

Chairman McKee: But it appears to me that you had available to you information in the Code of Ethics that would tell you it's not a conflict of interest.

Brian Bishop: But that's in direct conflict with the bylaws.

Chairman McKee: With our bylaws?

Brian Bishop: Correct.

Chairman McKee: What area do you find that in the bylaws?

Brian Bishop: Article IX, Section 1 & 2; any member of a Planning Commission that has any financial interest in any question called to vote shall notify the Chair of such interest and thus disqualify himself from voting on the matter.

Any member of a Planning Commission who fails to notify the Commission of his/her financial interest in a question called to vote shall have his/her voting qualifications judged by the Commission as to his/her amount of interest in the questions and his/her right to vote.

David Dixon: Brian, could you repeat that please?

Brian Bishop: Section 2 that I just read?

Doug Bell: Were we able to pull that up, Theresa?

Theresa Curtis: It's not on our website because it's our bylaws.

David Dixon: Go ahead and repeat what you just said please.

Brian Bishop: Any member of a Planning Commission who fails to notify the Commission of his/her financial interest in a question called to vote shall have his/her voting qualifications judged by the Commission as to his/her amount of interest in the questions and his/her right to vote.

David Dixon: And before that there was another...

Brian Bishop: Any member of a Planning Commission that has any financial interest in any question called to vote shall notify the Chair of such interest and thus disqualify himself from voting on the matter.

Chairman McKee: But there's been legal opinions that say that when you're dealing with a broad brush, that rule does not apply.

David Dixon: Why is it in our bylaws then?

Chairman McKee: Because it's dealing with specific issues.

If a rezoning or some matter comes up on a piece of property or pieces of property in which one of us has a financial, direct or indirect interest, we have to abstain from voting and say why. But with the broad brush, and in the Code of Ethics, what is it, Section 9(B), I forget now what exactly the section is, it deals with that very issue.

The County Attorney also agrees that if when you're dealing with a broad brush, everybody who has property in the county could not vote on it? There's a potential you wouldn't be able to get anybody to sit on the commission.

If you're dealing with a broad brush inside the City of Henderson, if the people that live inside the City of Henderson that own property in the

City of Henderson couldn't vote on it that would just not serve the public well.

David Dixon: Well...

Chairman McKee: On a broad brush. On a specific piece of property or properties, I agree.

David Williams: Let's see, who...there was an example under the City Commission that owns the brewery?

Brian Bishop: In this particular case, two magistrates that had even been approached by the solar farms recused themselves.

So, they felt that it was at least dicey enough to avoid that situation, that they recused themselves.

David Williams: Uh huh, yeah.

Chairman McKee: They both indicated to me that was a political matter more than it was a technical, legal matter.

Doug Bell: Can I ask you a question please, Mr. Chairman?

Chairman McKee: Yes sir.

Doug Bell: Is the second part of what Commissioner Williams is talking about, are we talking about a specific issue here or are we talking about multiple issues where we feel like there has not been access to an attorney? Let me ask that question first, then I may have a follow-up.

Chairman McKee: My question for you is, how many times have you heard legal counsel say, when asked a question about an issue before the Planning Commission that he has not been asked about that particular application?

Doug Bell: Let me go back to my original question. Is this about one (1) item or several items?

Chairman McKee: Several items, in my judgement.

And I don't know whether the issue of the County Zoning Ordinance review is in the same boat from a legal opinion perspective; I don't know if they're in the same boat. But I think... it bothers me that we are taking action that the legal counsel has not had the opportunity to review.

Brian Bishop: In which case?

Chairman McKee: In any of them.

Brian Bishop: Because in the Solar Ordinance, the County Attorney was the attorney of record because it's the County's ordinance.

Chairman McKee: County's ordinance; I understand that.

David Dixon: So what we're trying to do is clarify how any of us on the commission can properly when and how to seek legal opinion or advice from the Planning Commission attorney?

Chairman McKee: That's "A".

David Dixon: That's only the second thing that was brought up.

Chairman McKee: It's legal advice for applications that come to the Planning Commission as well.

Doug Bell: That's why we have counsel at our meetings though also, correct?

David Dixon: So, an applicant...

Chairman McKee: He can't get a question at the meeting and express an opinion on it.

Rodney Thomas: Why not?

Doug Bell: He has before.

Chairman McKee: He hadn't had time to study it, read it.

Brian Bishop: How does he know what questions will be there?

Kevin Herron: Exactly.

Bobbie Jarrett: I'm going to ask a question. The agenda's and all the items that you give us that we are to review before our meeting, Tommy Joe gets the same thing and he reviews it, and he offers his opinions on these things? Or is he just getting it and he's not...

Brian Bishop: He gets it before.

Bobbie Jarrett: Ok. So then he can write his notes and offer his opinions and things like that?

Brian Bishop: Correct.

Bobbie Jarrett: Ok.

David Williams: And he can offer whatever legal advice he thinks is needed.

Brian Bishop: Sure.

David Williams: Have you ever told anyone on the commission they could not talk to legal counsel?

Brian Bishop: What we talked about in the contract specifically says, any legal request has to go through myself or Claudia in my absence that was because we talked about the budget. I don't think it's fair for the staff to be held accountable for the budget but then that budget is being hit with expenses that we know nothing about.

Chairman McKee: Do you, do you... where did you get the impression that you're responsible for the budget?

David Williams: He's responsible for the spending of the budget. I mean, we set the budget but he has to watch over it.

Brian Bishop: Mr. Chairman, I guess the easiest way to sum this up is if the budget goes haywire, I'm the one that gets fired.

Gary Gibson: I can see your point. I don't see that we have the right to go above you directly to the attorney to get advice when we've got you sitting up there as the director of the board.

Chairman McKee: But that's not...

Gary Gibson: We should have to go through you first. We should not have the right to go to our attorney and ask him to do stuff for us without going to the board.

Chairman McKee: Commissioner, that's not what it says. It's not going around him, it's going to him and saying that it cannot be withheld, legal counsel cannot be withheld without the approval of the Executive Committee.

Gary Gibson: Tommy Joe represents the whole board.

Bobbie Jarrett: Yes.

Gary Gibson: And he represents them, he represents all of us to make sure we don't get ourselves in trouble. He's sitting there to give legal advice to keep us out of trouble.

Brian Bishop: Can I read the sentence or paragraph verbatim the email I sent to Chairman McKee?

"Staff has not consulted with an attorney on this matter due to the very clear language in the bylaws. If the Executive Committee feels that an interpretation is needed, staff will fully comply but staff feels the opinion should come from an outside attorney."

As I said before, due to Chairman McKee and Mr. Fridy's long-standing friendship the appearance of impropriety should be addressed.

David Dixon: Ok, after you offered that opinion to the Chairman or any other one of us could appeal your opinion by bringing it to this commission and we could vote on whether the attorney can offer an opinion or not.

Brian Bishop: Correct, and Chairman McKee did not reply to that email he went directly to this route.

David Dixon: I'm talking about the future. I'm trying to come up with some type of constructive solution here.

Gary Gibson: This is catching us all off guard. I didn't even know what you're talking about until tonight.

Chairman McKee: So, did you talk to the County Attorney about this issue?

Brian Bishop: We all talked about it in our County Zoning review is my understanding.

Chairman McKee: And what did he say?

Brian Bishop: I was not there. I'm sorry, let me rephrase that, you guys spoke about it is my understanding. That you consulted with the County Attorney.

Chairman McKee: He did not talk to you about it?

Brian Bishop: If he did it was in passing and not anything official.

Gary Gibson: How legal are we to talk about it right now?

Brian Bishop: Huh?

Gary Gibson: How legal are we right now to be talking about this, out in the open.

David Dixon: I think it's entirely legal, I have no issue with that.

Are we talking about... can we stay on the issue of how we can get legal advice from the commission's attorney?

Kevin Herron: When we need it.

David Dixon: Yes.

Brian Bishop: Commissioner Dixon, I think that's completely appropriate in the meeting... any kind of meeting is completely appropriate for you guys to ask questions because that's part of the meeting, that's just how it works.

But, I think it's inappropriate for any commissioner to email or call Tommy Joe and then start running up a bill, for the lack of a better word, without us knowing it and it could have been easily a question that we could have answered.

David Dixon: I understand. So, if I would bring my question to you, I don't like the answer, I say I think the commission's attorney should address this, this entire commission can vote to make that happen, correct?

Brian Bishop: Correct. You can do that at any meeting right now.

Chairman McKee: But Commissioner, let me ask you this as a matter of scheduling. If an application comes in to the Planning Commission, gets on the agenda, the Planning Commission's legal counsel does not review it, and it comes into the Planning Commission for action; if at that point you say we want legal advice, it puts the client in a position of being another month getting the request of action.

David Dixon: You're talking about a member of the public who has business before us?

Chairman McKee: Yes.

David Dixon: So, they can seek the advice of our attorney?

Chairman McKee: No. It's our...

David Dixon: So we're not talking about their... they've got their own right to counsel and we've met many of them here.

Chairman McKee: Let me put it a different way. Let's say that some applicant comes in, gets on the agenda, and you Commissioner during

the Planning Commission meeting at which that's presented say I need a legal opinion; I need to know what legal counsel has to say about that. And if legal counsel hasn't had the opportunity to review it, they won't be able to opine. So, you're going to say let's table this and wait till' next month?

David Dixon: I see your point but we need to set a procedure where our counsel is reviewing every application.

Brian Bishop: Can I address that?

We get rezoning ever so often, it all depends on the level of rezoning. For example, if it's something small and a no-brainer, a lot of times we'll just have T.J. take a quick look at it and say hey, don't spend too much time on this because we don't want to run up a big bill. But if it's something big, T.J. practically writes those recommendations, I'm not lawyering those up that well myself, T.J.'s doing that, not me. When we have four (4) page letters of recommendations, the Planning Commission's attorney is looking at that. So, I'm not sure what the issue is here.

Chairman McKee: What triggered it was me asking for a legal opinion about conflict of interest, and you telling me in front of witnesses that I wasn't getting it. You're not getting a legal opinion.

Brian Bishop: In that email that I quoted I said that staff would fully comply, staff feels that...

Chairman McKee: Are you saying that what you said to me in that meeting with Claudia and T.J., and you and I that I'm not getting legal counsel didn't happen?

Brian Bishop: I don't remember saying it that way. What I said was I don't think T.J. should do it.

As I put in this email, in writing; staff would fully comply. Which was dated January 16 at 1:30.

Chairman McKee: And you're also... are you also saying that you haven't changed your position that I have a conflict of interest with the zoning review of county zones, zoning review; anything we do for agricultural property or any kind of property that I own or have a financial interest in.

Brian Bishop: I'm not understanding the question. Could you be more precise?

Chairman McKee: I didn't want to get this out here but we got it out here so let's deal with it.

So, the agricultural section of the County Zoning Ordinance, we've gone through several gyrations, the County Judge came up to me and said, "Don't vote on those because you have a conflict of interest."

I asked you where that came from and you said it came from you.

Brian Bishop: No, I said it came from everyone at that table.

Chairman McKee: Well, we have a different recollection.

Brian Bishop: Point being, other people on that committee, quite bluntly feel there is a conflict of interest, I'm not the only one who did that. I'm the one that had to address it.

The sheer specifics of it is we're re-writing the County Zoning Ordinance that specifically deals with wineries and bed and breakfasts' which is a use that Chairman McKee has proposed and has participated in with his property which I feel is a conflict of interest.

Chairman McKee: So, let's discuss Commissioner Austin Vowels and Sunday alcohol sales.

Doug Bell: I don't think that's...

Gary Gibson: That's getting way off base that is not our responsibility. If you all have a problem, that's ya'lls problem. It is not our problem to solve your problem. Now, if you all have a conflict of interest among

yourselves, that's ok just do not bring it to this board, period. We are not into that. That's kind of like a Democrat and Republican, now come on and knock it off! It's not our responsibility to correct what you all don't like among yourselves.

Now, you've got the County Judge involved, you have other names... we're calling names here, and you're on record! You're calling names off; he said, he said, we said... come on! It is not our place to solve your problems! If you have a problem, work it out that's what we have an attorney for! Tommy Joe, you've got him involved, work it out! Then come back to us. But we aren't worrying about property here in the county, this doesn't have anything to do with us this is between you two! Here we have the County Judge involved, we've got different committees involved... that is not our responsibility boys!

Our responsibility is for the City and County.

Chairman McKee: Is that the feeling of the Planning Commission? You don't want to deal with it?

David Dixon: I think we need to take some steps since we have entered this territory. We need to determine if a conflict of interest exists.

Chairman McKee: For a specific matter?

Kevin Herron: For the broad matter.

David Dixon: I think we need to start by asking if our bylaws supersede the County Ethics code. This seems very specific to me. Or does the County Ethics code change our bylaws?

Chairman McKee: How do we determine that Commissioner?

David Dixon: Well, I think that's why we need a legal opinion.

Gary Gibson: He's not here, we need Tommy here.

David Dixon: I think that would be a good use of our resources to solve this.

Chairman McKee: So, how do we get that done?

Gary Gibson: We are not behind closed doors, we're live.

Chairman McKee: I understand.

Gary Gibson: And the name calling is coming out, and it should not be coming out.

Chairman McKee: How do we get that done, Commissioner? If that's what you recommend.

David Dixon: In order to come to any kind of constructive understanding that we can use in the future, I think we need to determine that these bylaws....just what they mean.

Doug Bell: When is the last time we addressed the bylaws?

Brian Bishop: 2015.

David Dixon: I think we should start with the Planning Commissions own attorney. That's the logical starting point.

Doug Bell: I concur.

David Dixon: That might not be the ending point but that should be the starting point.

There are examples that we started to discuss of other local government bodies that voted on things that might appear that they should have recused themselves. You know, the sun still came up the next morning but they don't operate under these specific bylaws.

Chairman McKee: The Planning Commission is subject-to the Code of Ethics and it has been for several years.

David Dixon: This goes beyond the Code of Ethics, is what I'm saying. We are held to a higher standard according to this, I was unaware of this. That's my thinking.

Doug Bell: Could staff circulate the bylaws tomorrow or whenever?

Brian Bishop: We can email it out.

Doug Bell: Please.

Theresa Curtis: There should be a copy in everybody's black book from when you first started on the board. It has copies of all the bylaws but I'll send it out tomorrow.

Doug Bell: Ok, I have that.

So, are you also wanting to establish process Commissioner Dixon? As far as how to handle seeking legal advice as well? Are you looking to address the process now?

David Dixon: I think the process is already in place. We take it to staff, they give their best, good faith effort to give us a good answer. If we don't like the answer, this entire commission can vote to get the answer. If it's that big of a deal, and we have such a strong feeling about it we can come back in here and make a motion to ask the commission's attorney to render an opinion. Right? Without changing anything.

I do think we had an understanding that if we had legal questions outside of a meeting setting, that we should start with staff.

Bobbie Jarrett: Uh huh.

Doug Bell: Uh huh.

David Dixon: I'm comfortable with that. It doesn't mean I'm going to agree with what they tell me, so I need to have a recourse for that and that's us.

Rodney Thomas: I agree with that.

Kevin Herron: I do too.

Dickie Johnson: In defense, I'm sitting here and I'm blindsided by all this. But if you don't agree with what staff's opinion is, do you have the

authority to go to legal counsel and have him to render an opinion; I don't believe that.

I think the Executive Committee should have some step in the process of working out between staff and legal counsel. You know, we've elected them to be the Executive Committee to handle issues in-between meetings; specific items. I think this would be a very specific item if you go to the staff and you don't agree with them and you bring it to the Executive Committee and the Executive Committee takes it up. Instead of waiting the whole month, and I agree like Herb said, you know, that's my opinion of how it ought to be handled.

David Dixon: I can see that. Go to the Executive Committee and they can authorize consultation with counsel. If I don't like the answer I get from the Executive Committee position, I can still make a motion in front of this entire body...

Dickie Johnson: Oh sure.

David Dixon: ...to take that up.

Dickie Johnson: A motion is always in order.

David Dixon: Process one, two, and open it up at three...

Doug Bell: I think that's a little more nimble.

Dickie Johnson: Yeah.

David Dixon: It would be more responsive...

Chairman McKee: But here is the question that doesn't get answered as far as I can tell at this point. What is the true legal analysis? What's the analysis? Just because I don't like the answer doesn't mean I'm right. If I don't like the answer, how do I resolve it?

Suppose I like the answer and it's wrong.

Dickie Johnson: That's a decision we have to confront if it comes up. I mean, I've seen attorney's make opinions that are totally wrong. You know, that's the reason he has malpractice insurance just like a doctor.

Chairman McKee: So, in that case if you have taken it to the Executive Committee and you've got people to shoulder the responsibility besides staff.

Dickie Johnson: Yeah, I look at it that way.

David Dixon: I think that's a workable solution myself. I'm hoping this is the rarest of occasions but if it should rise to that...

Chairman McKee: But we still haven't addressed the budget concern.

Kevin Herron: What budget concern?

Chairman McKee: Mr. Bishop said if I'm responsible for the budget, I need to hold the cost of legal services down.

Doug Bell: I don't think it's one line item, I think it's an every line item.

Gary Gibson: I don't see anything wrong with that, it's a requirement of what we've got him for, to hold the budget down.

Chairman McKee: But the question is if you need legal advice, do you get it or do you not get it because you want to hold expenses down?

Kevin Herron: Have you received a bill that you weren't expecting to get in the past? Are the bills higher than what you had thought? I mean, has this been a problem in the past?

Brian Bishop: Yes.

Kevin Herron: So, you think that we're going to be paying \$100-\$200 on this like we typically, customarily do and all of a sudden a \$1,000 bill comes in?

Brian Bishop: Yes.

Kevin Herron: Or you get charged for something that you didn't anticipate getting charged for? Has this been an issue pre Tommy Joe's new contract and post new contract?

Brian Bishop: Let me address this very delicately. There are times that we have been billed for unsolicited legal advice.

Dickie Johnson: So he's went over and beyond what we as a commission have...

Brian Bishop: In his defense I would imagine if Mr. Fridy felt that something was needed and maybe that he did something that we were unaware of; I'm not saying anything wrong but again, that's still a bill that we received that we were not anticipating.

David Dixon: Can we get back to the issue of how we go about getting... how individual members of the commission get the advice of the commission's attorney. It seems to me the feeling of consensus that we approach that...

Gary Gibson: I think we should have approached that at the meeting when he's here and the whole board is here and get his opinion here at the meeting while we're all here, not during the week when you catch him downtown. Do it here at the meeting where everyone can see what's going on.

I mean, I would not go directly by myself and talk to Mr. Fridy about something going on unless I did it right here at the board.

David Dixon: That's what I mean. Instead of going directly to him, we would go to staff, they would do their best to answer the question. If we disagree somehow with their interpretation, we would take it to the Executive Committee. They could make the decision to go ahead and have our attorney clarify this. Then, if any one of us also has the option at some extreme, to take it in front of the whole commission if we disagree with everybody before us.

Like I said, I hope this never happens.

Gary Gibson: Then if it's personal, we need to go into a closed meeting. We don't need it in front of the meeting, out in the open. Period. Any time you're talking about someone on the board, you need to be in a closed meeting. That just shows respect.

David Dixon: Do I need to put something in the form of a motion here? Or do we have an understanding about how we're going to proceed when we need to speak with the legal advisor; outside of the meeting setting.

David Williams: I don't know if I would try to come up with that motion cold, maybe just write it and bring it up is what I would recommend at this point.

Doug Bell: You recommend what?

David Williams: That we write this motion, or let David write his motion out and then we vote on it next time we're together.

David Dixon: I'll do that. Can I get some kind of idea that's the consensus of the group?

Dickie Johnson: I agree 100%, that's what I said. There has to be a procedure that we have an option to use.

David Dixon: That would clarify things for everybody, and get the answer we need and be constructive for the future.

Bobbie Jarrett: Uh huh.

Doug Bell: Yes.

David Dixon: Ok. I'll make a run at it... next month.

Chairman McKee: Did we come to any kind of understanding on the first issue about... did you say out of courtesy the Executive Director

would come and ask the Planning Commission to do work for other organizations? Is that what I understood or was it different?

David Dixon: My understanding was the commission decided to take no action on that, nobody wanted to make a motion.

Chairman McKee: Is everyone on the same page? Does anyone object?

Is there anything else to come before the Planning Commission?

David Dixon: I think we settled that if we do want to seek the commission's attorney's opinion on how our bylaws address the conflict of interest issue. Do we want to let that one ride until we're forced to deal with it on a specific case?

Dickie Johnson: I think it needs to be addressed. I don't think it has to be addressed tonight. I mean, we're in...I'm part of the committee that's reviewing our zoning reg's and there may be some issues that come up in the near future. I'm not going to say when we're going to finish that, do you have any idea Brian? I'm saying maybe April.

Brian Bishop: I think today was a perfect point of how long and difficult it can be because there are so many intricate things to talk about.

Dickie Johnson: Yes. I mean, it's not going to happen next month. So, in between now and we as a commission decides to review the committee's recommendation and ya'll pick it apart, it may be six (6) months before we finalize it. But I think in between now and then we need to get an opinion on what is a direct conflict of interest because I was addressed myself, and I think it was resolved but then again it may not be.

Doug Bell: True.

David Dixon: It could be that if we decided to change the bylaws because we feel like they're unfair or too restrictive and don't reflect the

County Ethics Code for example, or don't reflect the kind of constraints that other public agencies operate under. Maybe they're too strict.

Doug Bell: Well it has been five (5) years so it probably doesn't hurt to dust them off and take a look at them.

David Dixon: Yes, amended March 2015. I would recommend everybody get a look at page 6 at least, of our bylaws.

Dickie Johnson: I think staff said that ya'll would email...

Theresa Curtis: I'll email them out.

Dickie Johnson: I think that would be beneficial to everybody.

Chairman McKee: That March of 2015, there was an amendment to the bylaws and I cannot remember now exactly what it was, can anybody else remember?

That's not a new set of bylaws, that's an amended... something got amended and brought up to date.

Doug Bell: Ok.

David Dixon: I think it was originally passed in 1981?

Chairman McKee: I'm not sure what that's all about, but.

David Dixon: It's probably been amended a half dozen times.

Theresa Curtis: On the front page, there is a cover sheet that shows how many times the bylaws have been amended. At the very beginning...

David Dixon: Adopted November of 1981?

Theresa Curtis: Uh huh.

David Dixon: Amended '89, '93, '99, 2000, 2007, 2014, and 2015.

Theresa Curtis: There ya go.

David Dixon: Only a year apart on that last one.

Theresa Curtis: That's the latest copy. There should be two (2) pages of signatures on it.

Chairman McKee: Is there any other discussion on that matter or any other matter for that matter?

The chair will entertain a motion to adjourn.

MOTION WAS MADE BY DOUG BELL AND SECONDED BY DICKIE JOHNSON TO ADJOURN.

Chairman McKee: All in favor, signify by saying aye.

AYE: ALL

Chairman McKee: Any opposed?

OPPOSED: NONE

MEETING ADJOURNED AT 6:50 P.M.

I, HEATHER LAUDERDALE, hereby certify that the foregoing is a true and accurate transcription of the Henderson City-County Planning Commission Meeting of, February 4, 2020 to the best of my ability.

Heather Lauderdale, HCCPC Clerk

X
