CITY OF ELIZABETH CITY
PLANNING COMMISSION
REGULAR MEETING
TUESDAY, APRIL 6, 2021
4:00 PM

MEMBERS PRESENT
Ernest Sutton - Chairman
Johnson Biggs - Vice Chairman
Gary White
Kevin Johnson

Also present were Deborah Malenfant, Interim Director of Community Development; Kellen Long, Planner; Brian Hall, Secretary to the Commission.

Chairman Sutton called the meeting to order at approximately 4:00 PM and stated a quorum.

Chairman Sutton called for a motion to approve the Tuesday, March 2, 2021 Planning Commission minutes. Commissioner White made a motion to **APPROVE** the Tuesday, March 2, 2021 Planning Commission minutes. Vice Chairman Biggs seconded the motion. **ALL IN FAVOR: BIGGS AND JOHNSON. NONE OPPOSED. MOTION CARRIED.**

Chairman Sutton called for a motion to approve the agenda as presented. Commissioner White made a motion to **APPROVE** the agenda as presented. Commissioner Biggs seconded the motion. **ALL IN FAVOR: BIGGS, JOHNSON, AND WHITE. NONE OPPOSED. MOTION CARRIED.**

Mr. Hall, secretary to the Commission read the **STATEMENT OF DISCLOSURE** as follows:

Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial, and responsible to the public; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for public record, as per City of Elizabeth City Code of Ordinances Section 32.04. Any official act or action before the Planning Commission shall be publicly disclose on the record of the Commission the nature and extent of such interest and the Commissioner shall withdraw from any consideration of the matter if excused by the Commission pursuant to G. S. 160A-75.

Chairman Sutton described the first new business item as follows:

- **CASE NO.: TA 02-20** filed by the Community Development Department to update and modify the City's Unified Development Ordinance to reflect the new Chapter 160D of the North Carolina General Statues (G.S.). The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county-enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter.

Planner Long greeted the Commission, stating that there are two items on the agenda listed as new business, but should be looked at as old business to clarify since it was previously visited before. There are two items listed under old business with the designation of "no action, discussion only" since there is still much research that needs to be done.

Planner Long Presented the following report on **TA 02-20**:

Planner Long referenced August 2020 in regard to when staff brought forth the first proposed text amendment to the City's Unified Development Ordinance to reflect the mandates from the North Carolina General Assembly for Chapter 160D.

The new North Carolina State Statue, Chapter 160D was developed by the N.C. Bar Association. The legislation was introduced as House Bill 548 in 2015 and as Senate bill 419 in 2017. The bill was introduced in the 2019 session of the General Assembly as Senate bill 422 and House bill 448. On May 6, 2019 the Senate passed the bill as introduced as Part II of Senate bill 355. The Governor signed the bill on July 11.

Planner Long Stated that it has been a long process through 2020, as the School of Government has been working with all municipalities and counties across the state. This was done in an effort to make sure that their city code of ordinances, laws, development standards, and state building code is up to said standards in chapter 160D.

Due to Covid-19 an extension was granted for all of these municipalities, small and large, while working with companies to consolidate their ordinances to reflect this.

Planer Long stated that our ordinance was manageable in-house, and we did that while also receiving an extension. In August this text amendment was first proposed to the Commission where there was little discussion on this topic. With there being a mandate by the state, staff must abide by said mandate on ordinances. However, there was some discretion in regard to some of the processes held within that mandate.

After the text amendment was recommended for approval from the commission and goes to City Council like all things do, City Council did have concerns with the proposal that staff was putting forth.

Planner Long explained that the city has what is known as a "permitted use table." The permitted use table is in the city's Unified Development Ordinance and it provides a guideline to staff and anyone looking at the ordinance on what type of uses are allowed in the zoning district. It also depicts that permit process these uses go through.

Planner Long directed the Commission to an example of a text amendment that the Community development staff did in order to provide a visual of her analysis. The Unified Development Ordinance goes through all the lists of uses that are allowed within the city, and it shows the zoning districts across the top of the form.

It also provides a legend at the bottom, which is very important because it describes whether a particular use is permitted by right, permitted with development standards, permitted with a special use permit, permitted with a conditional use permit, or not permitted at all, meaning there is no corresponding letter in that space for a particular use in a particular zoning district.

Planner Long stated that one of the discretions and requirements of 160D was that state was wanted the wording "conditional use permits" to be terminated.

The reasoning behind this is to address the similarity to other terms, such as conditional use zoning and conditional zoning, which have been a major source of confusion with each term depicting a different process.

Planner Long expressed that part of the requirements given by the state is to lessen the confusion. The issue with this action is that there lies a special use permit and a conditional use permit, which both do the same thing as they utilize quasi-judicial procedures.

Both uses have the same process except that a special use permit goes to the Board of Adjustments for approval, and conditional use goes before City Council while still being quasi-judicial.

Planner Long explained that during the text amendment proposal in August, staff presented the idea that all conditional use permits would now be considered special use permits, and all special use permits would go to the City's Board of Adjustment for review and consideration. The proposed text amendment was presented to Council during their August 24th regular session meeting.

After staff's presentation, Council showed concern that all the conditional use permits would now be considered special use permits and would be reviewed and considered by the City's Board of Adjustment instead of them. Council asked staff to revise the text

amendment to include Council in the review and consideration of these permits and tabled the text amendment proposal.

Based on these resources and research completed in the past nine months, staff has revised the proposed text amendment to reflect the proposed changes made by Council and to address all concerns.

Planner Long explained that the proposed text amendment does not change any processes with the current special and conditional use permits, only the name of the conditional use permits, as required in Chapter 160D. Conditional Use Permits will now be referred to as Council Use Permits.

Council use permits will continue to be reviewed and considered by Council, just as conditional use permits were, and special use permits will continue to be reviewed and considered by Board of Adjustment, just as they were previously. Property owners and/or applicants that hold a current conditional use permit will remain in effect until there is a change in use or approved conditions.

If the property owner or applicant has a change in the approved conditions or use, the property owner and/or applicant would be required to go through the permit approval process for a council use permit.

Planner Long stated that within the past nine months, staff has taken the time to consult with the UNC School of Government, other municipalities, and the consultation of a current intern in the department that is a Masters of Public Administration student at the University of North Carolina, Chapel Hill. His name is Michael Barclift and he has been tasked, by staff, with looking at how other municipalities are conducting this process.

The UNC School of Government has been used for guidance on this task, and this new iteration is the draft that will be sent back to City Council.

Chairman Sutton asked if the only roadblock held by City Council was the wording of the process.

Planner Long explained how the original process took City Council out of the equation for review by making everything special use, thus being sent to the Board of Adjustments instead. City Council wanted to still be a part of the process for review in regard to these types of permits. So for those types of permits, everything will be left the same, and the term "conditional use" will be terminated in regard to said permits.

This will still follow quasi-judicial procedure, thus having development standards that applicants will have to abide by in a similar manner to current development standards.

Planner Long explained that quasi-judicial procedure limits ones' decision-making process. It is either with the standards or not with the standards, which if it is with said standards then it must be approved.

Planner Long introduced Intern Barclift to the Commission, and inquired into whether he had any comments.

Intern Barclift graciously thanked the Commission for allowing him to attend the meeting.

Intern Barclift stated that staff was able to leverage the resources at the School of Government as part of the work that he is doing in the Community Development department. With this being a professional work experience, the school wants their students to see how government works prior to getting a degree.

Intern Barclift expressed how Interim Director Malenfant was in need of a "fresh set of eyes" when dealing with this type of task, as things can be missed when focusing on something of this nature through one person's viewpoint.

The summary document, written by Professor Owens and Professor Lovejoy of the School of Government was referenced in which their role is essentially to be the subject matter expert for state governments for how to handle their code change.

Intern Barclift explained how the "must and shall" language was pulled from the checklist, along with doing the "due diligence" to make sure that all was in compliance.

There is much confidence that the previous code met all requirements, based on the work that was done along with ironing out all the changes made by staff. After that, it changed in which micro sites with blogs were set up along with additional updates. Further work was done to make sure that the changes were still up to date.

Some questions needed the direct contact with Professor Adams for further guidance. Professor Adams told staff that there was nothing in the code that precludes a council or legislative body from approving permits, as that was not the intent.

Intern Barclift expressed how the recently retired Planner Eggar did an exponential amount of work and diving deep into the code itself. There are some more red lines in there, but that's more at a level below to make sure that it's cleaned up.

Intern Barclift reiterated Planner Long's statement by mentioning how they utilized other municipalities to make sure that the changes were in line with what our peers were doing.

Chairman Sutton thanked Intern Barclift for his fresh set of eyes as the pandemic has brought on a new challenge for trying to understand where the city fits.

Planner Long provided a document with the UNC School of Government logo on it, which displayed the "must do" list. This checklist was followed to make sure that we were up to date with everything that they were requiring of us and while changing whatever was not currently in the Unified Development Ordinance.

This list showed all that staff had to consider in which a majority of the items mentioned were already in the Unified Development Ordinance. There was one type of use permit that was completely discarded since it had never been used at all, and was never included our ordinance to begin with.

Planner long asked if there were any questions regarding the matter.

Chairman Sutton asked if the City Manager and City Council been shown this information.

Planner Long stated that they have not received a visual of this particular list, but that one will be provided for them in a memo.

Chairman Sutton stated that City Council will need to at least be marginally educated on this matter in order to fully understand the mandate.

Interim Director Malenfant stated the new City Manager is familiar with this process and how it came about. City Council, based on the original presentation that was made to them, got a brief amount of background information on it. When presented to them at the upcoming Council meeting, it will be informational in nature.

It will be a call for a public hearing in which staff will be able to give them more of an overview, more of the details, and then if they have any questions between them and the public hearing then staff can address those.

Chairman Sutton wanted to confirm that this matter was primarily informational.

Planner Long stated that a recommendation of approval is needed to that aspect of the proposed text amendment did change. Anything going before City Council with the Planning Commission acting as an advisory board, will need to be recommended approval or denial. This will allow the item to be put that in writing for them.

Chairman Sutton asked what the pleasure of the board was.

Commissioner White expressed that he saw no other alternative and no other avenue but to comply with the general statutes as mandated by the legislature of the state.

Vice Chairman Biggs made a motion to **APPROVE,** as presented by staff, **CASE NO.: TA 02-20**. Commissioner Johnson properly seconded the motion. **ALL IN FAVOR: BIGGS, JOHNSON, AND WHITE. NONE OPPOSED. MOTION CARRIED.**

Chairman Sutton began to describe the second item on the agenda for new business as follows:

- **CASE NO.: 04-20,** filed by the Community Development Department to amend the Unified Development Ordinance, specifically, Article XI to amend the development standards for automotive repair services.

Commissioner White expressed that this case was one the he and Planner Long worked on diligently to complete.

Planner Long began her report on **CASE NO.: 04-20**.

Planner Long concurred and stated that this case originally was brought to the commission in October 2020 with the departments previous director. There were concerns on Commissioner White's part, with his background in highway motor vehicles and the requirements that go with them.

There was some communication on some amendments that needed to be made to the text. Planner Long met with Commissioner White at the beginning of March, and they went through said concerns of which are presented in the proposed text amendment held before the commission today.

Currently with automotive services and how this kind of originally came about, staff has noticed in the past few years a consistent amount of code enforcement type violations with this type of.

Planner Long stated that quite often there will be a joint use of automobile repair services and auto sales together, which staff does allow, you know, if they have applied for a zoning permit for each use. However, it's more so in the amount of vehicles on site, debris, and not properly screening wrecked vehicles made from adjacent properties.

The staff analysis depicts what the current development standards are. Automotive and automotive repair services are only allowed in the general business zoning district, and the light industrial zoning district. The only development standard that currently is in our ordinance is storage and screening, which states that wrecked vehicles shall be stored in a fenced in area for a period not to exceed 120 days.

The vehicle shall be screened from the street right away, and any residential dwelling or residential designed property. On the third page with the text that is in red, it shows what staff is proposing to take out and add.

Planner Long explained that her revision of the storage and screening completely crosses through it, even though some the same language is being kept as the focus was on the stance of some things and the organization of others.

Planner Long stated in her revision that all wrecked and inoperable vehicles shall be stored in a fenced in area that is screened from the public right away in any adjacent property. Any wrecked or inoperable vehicles that are just sitting on the yard must be screened from any adjacent properties not just residential properties.

For the standards, all automotive bays must be kept open, free and unobstructed, other than the vehicle that has been repaired inside the bay. Parking spaces shall be for vehicles being repaired only and not for junked, wrecked, or inoperable vehicles. Employee parking spaces must not be occupied by vehicles that are being repaired, junked, wrecked or inoperable vehicles.

This was originally in there as Planner Long crossed out the term "customer," due to the parking spaces that are mentioned on the second section are for their customers.

Planner Long expressed that the customers for automobile repair places are there to get their car worked on. They might be an inoperable vehicle or something of that sort, but it's more so to say keep there from wrecked vehicles all over the yard. All automotive repair parts, accessories, engines, hydraulic lifts or other items to repair vehicle shall be kept inside the building or behind the screened in area.

The facility and property shall be kept free of debris. Planner Long struck through "dumpsters are required to enclose" as this is true, and stated this somewhere in the ordinance. If this is going to be placed in this text, then it must be put it in all of the development standards for every type of use.

Planner Long stated that she struck through it because it's enforced in a different section of the ordinance. It can still be enforced as a requirement, but doesn't necessarily have anything to do with this particular use. The same can be said in regard to freight and shipping containers which are in another section of the ordinance.

They are allowed in the light industrial districts, but they're not allowed in general business for the use of storage. The sale of used cars shall be limited to a maximum of five per year for individuals without a dealer's license to the North Carolina Division of Motor Vehicles. This was something Commissioner White asked to be put in the development standards.

Commissioner White expressed that if one wants to be in the business of selling not in regards to mechanic's liens, that's required. If one wants to buy sell motor vehicles, then they have to be licensed if they sell or buy within a 12-month consecutive period.

Planner Long followed up Commissioner White by stating that if someone were to sell, then they have to have the dealers permit, but also they have to have the use of automobile sales on the property. They can't just sell under the zoning permit of automobile repair.

This does give them a little wiggle room as far as the title is concerned, but there still lies the issue with people dropping off vehicles to be worked on and then never coming to retrieve them.

Commissioner White stated that that is when the mechanics lien process is supposed to go forward. It is not to be considered as part of an outright sale, as it is a separate judicial standard.

Planner Long stated that all oil, toxic fluids, and other automobile fluids shall be disposed of according to the city's fats, oils and grease frog standards. This should already be adhered to in all facilities. One requirement when an individual comes forth with a zoning permit for them to open up this type of business is the requirement of an inspection from the city "FOG" program.

This program does the inspection to make sure that they are disposing of these oils properly. That goes into the next development standard as well which is "automotive related facilities that may contribute petroleum based oil to the city sanitary sewer system collection or collection system are required to install an EPA or DENR approved oil water separator.

This is something that the FOG program is also going to make sure that they are doing and have installed once they do their inspection. "All automotive repair facility shall be in compliance with all EPA and NCD acute air emission standards.

Planner Long stated that she did ad an item that she would like the Commission's feedback on. There have previously been situations where the City's Fire Marshal has been called on instances of spray painting inside of a facility. There are state fire codes that deal with this, but it's not so much the enforcement of this it's so much so, if there were an issue to come up of this issue that there is something in our ordinance stating that an individual must be up to EPA or NCD acute air emission so that they're aware.

Chairman Sutton asked if there was room, when in the aforementioned situation, for the fire department to go and inspect the facility to make sure they are compliant.

Planner Long explained that the Fire Marshal does an inspection for any type of business that opens, prior to the release of any type of business registration or permit they do an inspection of all businesses. So they would be making sure to notify them or provide a "heads up" if you are spray painting vehicles or painting vehicles inside that this is against a fire code or something of that sort.

If it starts happening after the fact, after they've been approved for that, they're kind of on an on call basis as far as goes for someone calling in a violation or if they notice a violation of any of that sort.

Planner Long reference section number 11, which was stricken through due to there being a visible way staff could enforce said standard that states "vehicle repairs and parking lots are limited to a minor repair that should not exceed a 12-hour period."

There's no way for the department to enforce that. It not known whether staff should want to encourage repairs in parking lots to begin with.

Planner Long believes that it would be better to encourage them in the bays and that's why staff wants to keep the bays clear.

Commissioner White stated that is depending on the size of the vehicle. Takeaway church bus, as it's practically impossible to get a church bus let alone a semi-tractor even into the bay. So you have no choice but to replace the tire outside on the lot. That's, that's the key.

Planner Long stated that it was stricken through more so to deal with the 12-hour period, because there was just no way for it to be enforced. The last development standards Planner Long held referred to "all existing facilities shall come into compliance with these development standards within 120 days of adoption of this ordinance."

Any existing facilities out there that are not compliant to the standard, giving them about a six-month period to comply with these standards. Basically at the end of the day they have the same standards that someone new coming forth would have to apply for. But, these standards these should be somewhat adhere to already.

A lot of it is junk and debris based, and making sure that the FOG program makes sure that they are not just having oil seeping through the ground, and other things of that nature. It's not so much infrastructure based where they have to build this or build that. The screening aspect was technically already there, as it was just more so the screening of residential properties. Hopefully it would not be a bigger deal and shouldn't put a significant burden on any existing business operating.

Planner Long express that the Commissions feedback would be warmly welcomed. Staff believes that they have a somewhat solid draft, but if any tweaks need to be made here or there that they welcome the Commissions feedback in that regard.

Vice Chairman Biggs expressed great appreciation for effort and the amount of work that's gone into this case. Vice Chairman Biggs felt that it all looked great.

Commissioner Johnson inquired upon section number 10, which stated that automotive repaired cars cannot spray paint inside

Planner Long explained that this statement was put in place to express that individuals must be an EPA or NCBUQ standards, whatever those might be. The depiction stated was in reference to conversations that were had with the local Fire Marshals regarding some complaints that they've received for such facilities, that they could possibly have some state requirements in the state fire code for indoor spraying or spray painting of

vehicles without the proper ventilation. With proper ventilation they would be allowed to do said action, but it some could fall on the state fire code standard.

Commissioner White stated that if they don't have proper ventilation then they're not going to do much of a paint job.

Planner Long stated that staff is more than willing to take it if the Commission is not comfortable with it. That blanket statement was just put in there to cover that basis in case it was to become an issue.

Vice Chairman Biggs explained that that's the state regulation this on another level, so they're just restating what's already enforceable by some someone else.

Commissioner Johnson stated that there may be a quarter size repair for something such as a fender.

Planner Long stated that if that were allowed through EPA and NDQU standards then that's perfectly fine. That's why staff did not go in much detail as I didn't believe that they needed to get truly "in the weeds" of it. These requirements could change all the time, thus just stating that hopefully would alleviate whatever requirements they have at that time.

Vice Chairman Biggs stated that if it's manner work that's being done that it's probably not going to rise to the and excruciating level, and that it would harder to enforce. Whereas, if you had someone that was eventually trying to spray paint a car or do something that would rise to the level where it was unsafe.

Vice Chairman Biggs expressed that he's not discerning that spray painting one smaller area on the inside is or isn't safe, but where it would probably rise to the level of getting a formal complaint to fire marshal or to this department, at least there's something in there that references back to state guidelines as well.

Chairman Sutton agreed with Vice Chairman Biggs, stating that the only way they would get any kinds of "weeds" would be if there were any eventual forms of complaints there about that calls attention to further digging into coming up with a solution for the reason why these might be happening.

Chairman Sutton asked the Commission if they were ready to entertain a motion. Commissioner White made a motion to **ADOPT CASE NO.: 04-20.** Commissioner Biggs properly seconded the motion. **ALL IN FAVOR: BIGGS, JOHNSON, AND WHITE. NONE OPPOSED. MOTION CARRIED.**

Old Business

Chairman Sutton moved on to the old business section on the agenda.

Planner Long stated that these items are for discussion only. Staff is still working on some research on both of these.

Planner Long began her presentation of **CASE NO: TA 03-20.**

- **CASE NO: TA 03-20** is a proposal by the Community Development Planning Staff to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions and Article XI Development Standards adding language to define and regulate food trucks. (No Action-Discussion Only)

Planner Long expressed that a draft was sent the Commission already in the previous meetings, and that staff has stated that they weren't quite comfortable with the original draft and wanted to get back and do some research.

Planner Long depicted how Vice Chairman Biggs sent both her and Interim Director Malenfant a link for another municipality to look at some of their food truck regulations.

Planner Long expressed that Interim Director Malenfant would be describing in more detail a situation that staff is working with and why staff has taken an allotted amount of time to do so. This was done in order to make sure that a solid proposal is secured for the Commission.

Interim Director Malenfant explained that food trucks, according to the permitted use table, are not allowed in the central business district. It gets very confusing because a food truck can actually operate in a central business district by a business registration permit approved specifically by the city manager.

When someone comes to the planning department and they say they want to get a permit for food truck, if this is adopted, then it still says the trucks are not are not allowed to be in the central business district. However, if an individual were to ride through the central business district, sometimes on the weekend a food truck can be seen down at the Waterfront Park and at Mariners Wharf.

Interim Director Malenfant stated that the City Manager can at his or her discretion, allow for a food truck in the downtown central business district.

Vice Chairman Biggs asked where in the Unified Development Ordinance does it state that authority granted.

Interim Director Malenfant stated that it is not in the Unified Development Ordinance, but that it is in the City Ordinance.

Commissioner White expressed that he spoke with Chairman Sutton previously about gaining access to the book of the City ordinance to have on hand for the Commission.

Interim Director Malenfant expressed that it can get very confusing because if one looks at the table of permitted uses and looks under mobile food truck vendor, then goes to the central business section and notice that it's blank. That insinuates that it is not something that's allowed in the central business district

Chairman Sutton inquired upon what would the City Manager be guided back in making that independent decision.

Planner Long expressed how gets very confusing in regard to this matter, which is why staff is having a difficult time figuring out a solid proposed amendment for the Commission. This is due to staff not wanting to just recommend something to the Commission that's only in the Unified Development Ordinance, while having a whole City ordinance that says something for another area.

Planner Long explained that Interim Director Malenfant was referring to the fact that there lies nothing in the Unified Development Ordinance for a food truck. When food trucks came about and when they became a "thing", there was an application created through the Community Development Department of the process for food truck, how to apply to have a food truck in a parking lot, out at a place like Food Lion and such.

This application went through all the processes for anything other than central business, meaning anything other than downtown. Even though an application was created, nothing was put in the Unified Development Ordinance. Thus, staff technically doesn't have any "teeth" in it at all, which why a proposal was brought to the Commission.

Chairman Sutton asked if it was possible to check any other municipalities and see what they're doing.

Planner Long explained that staff has indeed looked through several municipalities. Certain language was taken from various ones for things that would work for our particular municipality. Staff also plans to look further into the information sent by Vice Chairman Biggs.

Planner Long stated that there we do possess the simple basic standards that was created in that application, even though we technically "don't have any teeth" because it was never put in a text amendment in the Unified Development Ordinance for staff to gravitate towards.

Staff does some basic standards that can be worked that will surely be used, but the confusion comes in place from the following:

- The standards include everything other than downtown.
- An application is created even though a text amendment needs to be done.
- Downtown there lies the process with the peddlers permit with the food trucks with food carts, and things like that where there is a much greater application fee, and that application goes straight to the city manager to approve.

Chairman Sutton asked if there was any specific thing that speaks to food trucks for festivals and fairs.

Planner Long confirmed that it does in the City Code of Ordinances in which it lists what those requirements are. But again, all of that is reviewed by the City Manager and not our department. So, what staff wants to do to make this a very thoughtful process is to at least in some way combine them or reference those documents to each other so that it's not completely throwing an applicant off when they come through our front door.

For example, saying well "one day I want to be in central business and one day I want to be on Food Lion on Ehringhaus." It is two completely different processes and requirements. Thus, staff plans to take what's already in the City Code of Ordinances for downtown that the City Manager has authority over, along with working with administration in order to get some sort of consolidated process.

Planner Long stated that the development standards in the City Code of Ordinances for downtown and food trucks holds aspects that specific to downtown. It speaks of public parking and public parks, things of that nature. Staff will work through that and see what can be found.

Interim Director Malenfant stated that they are only allowed in very specific places in the downtown central business district by special permit and a higher fee. Staff is proposing to continue discussing this and marrying those things into the proposed text amendment for when it brought back to the Commission.

This will be done so that is comprehensive, thoughtful, and includes any discussion of food truck, whether in the downtown central business district with maybe higher development standards or different development standards versus what has already been reviewed but not yet approved to move forward in the Unified Development Ordinance.

Interim Director Malenfant stated that it will merge together so there's not so much miscommunication.

Planner Long expressed that currently with this proposal, which placed in front of the Commission at a previous meeting, it states that they are not allowed in central business at all which is not true. So staff doesn't want to confuse clients.

Chairman Sutton referenced back to his original statement in regard to the City Managers guidance. The process cannot stay, even if it has to go to the City Manager and became arbitrary and capricious. That guidance is very much needed, even if it goes to the city manager's discretion. It doesn't solely need to be discretion, but there more so needs to be some type of basis, that he can plant that discretion into.

Commissioner White stated that they would have an obstacle with the health department.

Interim Director Malenfant confirmed Commissioner Whites inquiry, stating that they do have to get approval from the health department in order to operate.

Commissioner White followed up by stating that these individuals would need to make sure that their trailer or whatever the vehicle is in compliance with whatever health codes or regulations put forth.

Interim Director Malenfant agreed and stated that it is exactly the same thing as it is for a restaurant. They have to meet the department of environmental services criteria.

Commissioner White inquired upon a previous situation in which there was a hot dog vendor that wanted to set up, but there was some civil litigation between him and city. back is being allowed to use that was there.

Interim Director Malenfant recalled the situation, but was unsure if litigation was involved.

Commissioner White recalled that the hot dog vendor wanted to set up somewhere around waterfront park in which someone with the city fought him on it. It was supposed to result in a civil complaint and was supposed to litigated.

Interim Director Malenfant stated that part of the issue revolved around the person showing up if there was a festival or event and parking on the edge, while not being invited to be a part of that. The person would just show up in the vicinity.

Vice Chairman Biggs asked if the City Code of Ordinances held a peddler's section that encompasses a variety of things.

Planner Long stated that there is a peddler's section that is separate. There's a section that refers to food trucks, food carts, and of sort in the central business district. That's the title of the chapter. It is going to take some work, but we can consolidate, even if both ordinances are changed to at least reflect each other.

Vice Chairman Biggs expressed that conflicting ordinances are not needed, depending on where you're referencing.

Vice Chairman Biggs recalled there being a gentleman that had a barbecue truck, and he parked close to the waterfront park area. This individual did get a permit from city administration in order to do that. The gentleman may have also gone through the community development department and been told he couldn't, then went to city administration where he was told he could.

That is the exact situation that needs to be avoided in order to keep the Community Development staff from looking like the "bad guys," as the staff is just enforcing what they have the authority to enforce versus what our city administration has. Both sides are doing their job and are on the same team. Both sides should be consistent.

Planner Long stated that staff understands how the city administration proposed in the city ordinances because if one were to think about it, a lot of the open space downtown is owned by the city. The public parks, public parking, sidewalks, and street parking spaces. Most of the streets are city maintained, except maybe water and main street. It is understood why that was done the way, as it gives a lot of discretion to the City Manager. But, both sides need to be on the same page.

Vice Chairman Biggs expressed that when that ordinance was probably written, food trucks as we're seeing them now were not that big of a thing. People were probably assuming that a vendor or food truck would be in the central business district, not scattered throughout the city, like they are here and in other municipalities.

Chairman Sutton asked if Intern Barclift had any "weigh-in" on the discussion.

Intern Barclift said that he would only add that much has changed, as a lot of restaurants rent food trucks. That may weigh into the "calculus" of how the city council wants to adjust the fees and such if they're located in an area that they might directly compete with the restaurant as opposed to somewhere else.

It gets quite complicated pretty fast. In Norfolk, where Intern Barclift lives, it took them a couple years to sort it out. It is not clear exactly what's happened. They had designated parking spots in downtown that they had to park in for instance. So, it does change and it gets complicated, but if I have food truck I would want to go to one place

to see what I needed to do ahead of time. That's the goal, whether it's one agency does it or they both have the same.

Commissioner White asked if certain restaurant with a desire to cater would be exempt.

Interim Director Malenfant stated that there is a difference a food truck and a catering truck. A catering truck is when one drives up to an event and providing food as a part of said event, not selling it to individual customers. The food truck, in the definition of this, is when one is selling individual meals to individual people that walk up to the food truck. Catering trucks are still having to be approved through the health department, but we don't have specific restrictions against those as part of events and activities and things like of that sort.

Planner Long expressed that they do have to have a special event permit, such as the potato festival or other events downtown in the same code of ordinances. That person has to apply for the special event permit that would allow whoever they have as far as vendors.

Interim Director Malenfant emphasized that whoever's hosting the event can apply for the special permit and then they will have to indicate that they will have food trucks on site, and the food truck doesn't have to go through the individual permit process to be at that event.

Commissioner White expressed that that wording needs to be well defined in whatever is adopted.

Vice Chairman Biggs that everyone seeing now, especially through the Covid pandemic, not so much here but, in other areas where a restaurant may have had a food catering trailer that they use for true catering purposes. However, due to seating capacity restrictions they have now taken that food truck and they've gone and set up, either in their parking lot of their restaurant or somewhere else in a more populated area in order to sell and generate revenue.

It is being seen more and more, and a lot of times its seen in that customers parking lot. It's keeping people from coming inside their building and is generally quick service. They pull up, get it, and go.

Vice Chairman Biggs explained that you can't write an ordinance to everything, you can't write an ordinance for what the next Covid pandemic may be, they're not going away by any means.

Interim Director Malenfant expressed that her concern from a downtown perspective, is that food trucks are concerning in the downtown central business district without some parameters. What can happen is that there are businesses who are investing in the brick and mortar places that are spending 10s of 1000s of dollars to build their market and to create that atmosphere and then up comes a food truck 100 feet from the front door and cannibalizes that market.

That is one of the reasons that there's an additional fee to operate a food truck in the downtown central business district, because that scenario needs to be balanced in a fair way that provides food truck and creative entrepreneurs to survive in business. This is done while not cannibalizing the businesses who are investing in the brick and mortar and are a part of the neighborhood and not make it too easy for someone to just roll up and cannibalize that business.

Commissioner White emphasized that this must be well defined in its wording on the requirements, while also being careful.

Chairman Sutton expressed that this perhaps will be a work in progress as we realize what COVID may or may not grow in terms of dealing with this issue.

Interim Director Malenfant stated that that is one of the reasons, from a staff perspective, why we're very thankful for the Commission for allowing us the opportunity to a step back from some of these items that were already in the queue and that were already being discussed. It allowed staff to have a little time to go back and do more research while not just pushing something through without being thoughtful and having those dialogues and having that discussion.

The things that keep showing up on the agenda is all business are not just because staff is saying "we don't want to deal with that," but it is because we're really trying to understand the intricacies from different perspectives.

Commissioner White expressed that staff was trying to move as fast as humanly possible.

Interim Director Malenfant expressed that that's not sometimes easy to do in a 30-day period.

Vice Chairman Biggs stated that in the central business district, this will become more and more attractive to the food trucks, peddler's and vendor. With the amount of development that Elizabeth City downtown is experiencing we're seeing record investment in downtown.

We already have a parking issue in downtown. We don't need to further congest downtown with allowing food trucks to park on some of these smaller one-way streets and have people taking up parking spots to go and visit a food truck that can be done outside of the central business district and achieving very close to the same thing.

Vice Chairman Biggs expressed that we may also want to look at the City of Greenville's as well. They've had some increased development in some of their areas of downtown it's been significant investment of turning blighted areas into new restaurants and new breweries. There's a whole new section of town that's been actually opened up.

Some of those areas are allowing food trucks in there within 100 feet of existing restaurants that are adjoining along with the brewery. Customers can walk across the street to get whatever and take it back in the brewery, which is great. However, it may be beneficial to reference and see how they're doing it because that is something that's occurring there as well.

Chairman Sutton expressed that in the forefront of the Commission's thinking needs to be being customer/vendor friendly, but also customer/vendor fundamentally fair. Sometimes that's a tightrope to walk, but that must be kept at the forefront as we think through this process and figure out the best way to fundamentally fair to the community.

Planner Long stated that there is not any action required for this item. It is strictly just discussion only. Staff will propose at the next meeting a draft.

Chairman Sutton moved on to the second item on the agenda under old business. The description goes as follows:

- **CASE NO: TA 06-20** is a proposal by the Community Development Planning Staff to amend the Unified Development Ordinance, specifically Article XI Development Standard, Section 11 to modify the sign standards. (No Action-Discussion Only)

Planner Long began her presentation for **CASE NO: TA 06-20.**

Planner Long stated that this is for the sign ordinance that been proposed to the Commission several times now. Like staff stated at that the last meeting and the meeting previous to that, there were concerns with this proposed ordinance that staff is looking at as well, just like the food trucks.

A lot of this that staff is looking at has a little bit of concern and needs more research on is some of the legality issues with the temporary signage standards that were

proposed as far as for political signs and that such, just to make sure that we are in compliance with anything that is going to be required of that.

Vice Chairman Biggs express that he noticed in some areas, especially in higher traffic areas, that there seems to be a high volume of yard signs advertising for businesses.

Vice Chairman Biggs inquired upon whether there was anything that regulates where, how many, and how often those will be out there.

Planner Long explained that another reason for needing to do the text amendment is currently in the Unified Development Ordinance, the only thing that mentions temporary signs is what size it can be and it refers to an event. It would have to be the likes of either an election or events, not just blatant advertisement. It says that it can be posted 30 days before an event and has to be picked up seven days after. That's just for city maintained streets. It doesn't include the DOT maintained streets, which is a lot of our major corridors. That is all says.

It doesn't say that there can't be in city right away. It does not get into much specifics on that. That will be one of staff's proposals, to really break that down temporary signage as it is seen a lot. It gets frustrating on a staff perspective when someone comes in and says "well what can I do," and we really don't want them in our right away, but there is nothing that says that they can't be in our right away.

Planner Long expressed that it's only a matter of trying to check to make sure that they are pulling them up seven days after 30 days before an event. Sometimes is not enough manpower to do that.

Planner Long stated that her proposal would be no temporary signage allowed in city right-aways. Staff is going to have to work on that, especially when it comes to political science, and the legalities with that because they might have to be allowed.

Commissioner White believes that there are not any alternatives on that topic.

Planner Long stated that this was something that staff will have to look at. Working with DOT, while they are technically not our property, they are still inside city limits along with there being many DOT maintained streets. Staff is working with them to make sure that there consistent in the language as much there is not much to go by.

Vice Chairman Biggs expressed that it gets bad during an election cycle. Every business in town seems to have a yard sign of some sort all over. It has become quite excessive.

Planner Long confirmed that temporary signage will definitely be addressed, as it could be an item that is voted on for the Unified Development Ordinance.

Chairman Sutton expressed that the political signs will be better to manage, as the other types of signs will be more variances of difficulties.

Commissioner White referenced that it is illegal to attach anything to a utility post.

Planner Long confirmed the reference made by the Commissioner.

There was no further discussion.

Chairman Sutton moved on to the staff report with there being no further old business.

Staff Report

Chairman Sutton began his description of **CASE NO.: TA 02-21**. It goes as follows:

- **CASE NO.: TA 02-21**, filed by the Community Development Department to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions and Article XI Development Standards, to definition and amend the development standards for bed and breakfasts. (No Action-Discussion Only)

Interim Director Malenfant stated that staff is not recommending that any amendments, take place. At the previous meeting staff discussed the changing of roles through the Covid pandemic, along with the creativity being shown by bed and breakfasts and Airbnb's in order to try and stay in business.

Interim Director Malenfant provided examples these business started, such as weddings and serving meals on site. Much research was done in regard to with other standards across the state. It's happening everywhere and there are not any standards that specifically says "hey a bed and breakfast can also have a wedding." Staff went to that state statute and saw that they specifically defined bed and breakfast for the purpose of oversight and management from the department of environmental services, essentially the health department as far as what they're allowed to do on site with regard to service of meals.

Staff considered the possibly of changing the Unified Development Ordinance to define a bed and breakfast home and a bed and breakfast in to match those state statutes, but staff realized that would "more limit" the bed or breakfasts here locally, than what has been done already.

Interim Director Malenfant explained that after thoroughly evaluating the area, the central business versus the residential business district, the number of bed and breakfasts in the city and what they're doing, it was found that what they are doing and how they're regulated falls under the umbrella of the health department and the ABC commission.

Thus, it would be redundant to try to write development standards with what those two agencies are already regulating. Staff is recommending is that the development standards are left as is and to not make any text amendments. For those bed and breakfasts who want to do events in the allowed zoning districts, staff asks for them to get an accessory use permit for as a banquet facility.

This would allow them, if they're in the correct zoning district, to host events and activities on their site and that would fall under the banquet facility development standards. They would have to adhere to the fire code standards, building code standards, and those standards that make sure that they're maintaining the safety aspects.

Interim Director Malenfant expressed that staff will reach out to said businesses who are doing events and activities and encourage them to apply for that accessory permit. rather than trying to redefine our existing definition of bed breakfast as staff wants to be business friendly.

Planner Long expressed that instead of making things even more strict than are, it would not be advisable to change the text at this time, until either a state statute changes, or further clarity is provided from a state level.

Vice Chairman Biggs inquired about what could be done with a bed and breakfast that is acting as a banquet hall, but does not apply and is not granted the accessory use permit. Is there some type of enforcement that we can make them get that permit?

Planner Long explained that there is a way to enforce it as it would be a zoning violation for them not to comply.

Commissioner White asked about the fees associated with the process.

Planner Long explained that a zoning permit is $100 and a business registration is $20, which would cost $120 altogether. If a bed and breakfast already has that use, which is in residential areas, then that's a special use permit. There are two bed and breakfasts in the central business district, which is a different zoning. That would just be a zoning permit for them.

For the ones that have a special use permit on their property for a bed and breakfast, that is a $500 permit fee. That is because it's a special use permit and they get all the way to board of adjustment. If they are granted a special use permit, it is recorded at the register deeds on the property. If they were to get an accessory to that, wherever that accessory is allowed, that's just the zoning permit.

The business should already have a business registration, so they wouldn't go back for that.

Commissioner White asked if that was the standard fee throughout the state.

Planner Long expressed that there is not a standard fee in regard to application fees.

Interim Director Malenfant stated that permit fees do provide some protection for bed and breakfasts that are in residential areas because it can be extremely constraining. Bed and breakfasts are typically located and required to be in a single family home. The whole design of a bed and breakfast is home use where the manager or the owner is on site.

The staff report concluded.

Chairman's Report

Chairman Sutton began his report.

Chairman Sutton thanked both staff and the Commission for issues in dealing with these issues.

Chairman Sutton stated that he decided to revisit the mission of the Planning Commission, as the City has recently received a windfall of money. He disagreed with the thought of using that money for infrastructure, as there may reside other methods of receiving grants and such for said matters.

The Covid funds will not keep coming, and Chairman Sutton will request to speak with the City Manager and Mayor in regard to this matter, as well as for there to be a public hearing to gauge the communities input.

Chairman Sutton expressed that it would be proper for the community to have a level of say so in how the funds are utilized, which would the decision making to be communicated.

That was the end of the Chairman's Report.

The meeting concluded at approximately 5:21 PM.