

LOWELL PLAN COMMISSION MEETING

July 11th, 2019

Vice President Will Farrellbegg called the meeting to order at 7:50pm. The Pledge of Allegiance was recited and a moment of silence was held. Recording Secretary Dianna Cade called the roll. Members answering the roll call were, Will Farrellbegg, Greg White, Jim Konradi and LeAnn Angerman. Chris Salatas, Eric Newell and Ryan Thiele were absent. Also, present was Town Legal Counsel, Nicole Bennett.

APPROVAL OF MINUTES:

Mrs Angerman made a motion to approve the minutes from May 9th, 2019, seconded by Mr. Konradi and carried with a voice vote of all ayes.

NEW BUSINESS: NONE

OLD BUSINESS:

Tabled from 3/14/19, 4/11/19 - PC 19-004 – ZONING ORDINANCE UPDATES

Amendments to Chapter 155: Land use and development code; subdivision code: To update, but not limited to, basic provisions, zoning districts, land use matrix, development standards, sign standards, site design standards, nonconforming structures, lots, and uses, subdivision control code, and site plan review – Attorney Bennett stated whether or not you want to table this is up to you, but these have several legal concerns. She stated she did not believe they were at a point that they could move on the updates and advised that they could continue to table it if they believed a planner would be in place soon, or they could remove it from the agenda until further notice. Mrs. Angerman made a motion to remove PC 19-004 from the agenda, seconded by Mr. White and carried by voice vote with four ayes.

DISCUSSION: - PB (Planned Business) district– Alcohol non permitted use – Recording Secretary Dianna Cade asked if counsel could explain the difference between legal non-conforming and illegal non-conforming in the sense of grandfathering. Attorney Bennett stated the non-conforming comes in when a use of a property does not currently conform to your Code permitted uses. The difference comes in when it is legal or illegal. A property is legally conforming when it follows the current Zoning Ordinance. When the town changes the Zoning Ordinance where a property owner’s use was once conforming, it now makes the property illegal but you cannot force a property owner to comply. Mrs. Cade asked how uses can be checked. Attorney Bennett stated if it was a special use, that runs with the owner. Legal non-conforming is the use of the property that was once legal, but now isn’t. Illegal was never compliant and never followed the Ordinance. Attorney Bennett gave the example of Mommy’s Haven which was given a special use, but that special use goes away with the owner. However, if they leave and someone comes in and wants to make it “LeAnn’s House” that special use can be grandfathered because it follows what it was before and it’s the fair thing to do. If the current code says it cannot be done, but it is being done then we need to find out why. Why was it there before, when did the law change, when did it close, etc. If the Ordinance changes and a certain business cannot be in a certain zone, in most communities, if ownership changes a use that was previously legal that is now illegal must be compliant and the new owner must bring it in to compliance, but Lowell does not follow that. Mrs. Angerman asked if this portion could be discussed separately and we stick to the agenda. Mrs. Cade stated it goes hand in hand and gave an example of a

business that came in previously that the use was not checked because of what the business was before.

Attorney Bennett stated in the case of alcohol sales, there are some areas where we do not know if they did it legally or illegally. Mr. Farrellbegg stated when Stracks was put up, it was not zoned the way it is now. Attorney Bennett stated the code from 2012 was essentially the same code from 1978. In 2012, Stracks plaza was Planned Business which was retail and shopping centers. Attorney Bennett listed what was allowed at that time in Planned Business, which did not match or was not cohesive. Attorney Bennett stated in 2013, Ball State came in to revise the code and during that revision Planned business was also labeled as Professional Business and the title was changed. She then listed what was allowed in 2013 after the Ball State revisions, which were two options, personal and professional services. Mr. Farrellbegg stated if he was looking at it, that area should be zoned B-1. Attorney Bennett agreed and stated in 2012 what was listed in Planned Business and B-1 virtually mirror each other. The zoning code was just changed and the properties and how they operate were never really considered. Mr. Farrellbegg asked if it would be an easy process to change the area to B-1. Attorney Bennett stated there would be a lot of notices, but you would really need to look at your definitions of zonings and the areas that are currently zoned a certain way to make sure they make sense and are what you want. Changing the Zoning Code is not going to change the businesses. Discussion followed regarding previous changes and changes that still need to be made and what needs to be taken in to consideration before those changes are made.

Mr. Konradi asked if other municipalities have the same issues with zoning. Attorney Bennett stated zoning is always a challenge, but we are behind due mainly to poor record keeping. Discussion followed regarding programs that should be invested in to in order to make things easier and to keep better records of property and uses.

Mr. White stated the question on the agenda is that there is a non-permitted alcohol use in the PB district. Attorney Bennett stated she has not cross referenced this particular property back in the code, but recommended that the property is illegal. As a barber shop, there is nothing in your code that provides for a barber shop and liquor to be involved. If it had previously been an establishment where liquor was permitted and the code has since changed or if it was that same use of the property, it is now a different use as a barber shop and if alcohol is being distributed, it is illegal. As to the list of properties, there may be some properties that are illegal today, but are legally non-conforming which would take some research. Changing this across the board will make it easier going forward, but they would still need a liquor license through the State regardless. Discussion followed regarding State laws regarding serving alcohol.

Mr. White asked if the owner could apply for a special use with the Town for alcohol. Attorney Bennett stated it may be special use or variance of use. Mr. White stated if alcohol is not allowed in the zoning, what can we recommend for him now. Attorney Bennett stated it would be a variance of use and you can give the condition of him receiving his State liquor license, which would be enough for him to apply for his liquor license. Discussion followed. Attorney Bennett stated if a new business wants to open and is legally non conforming they do not need a variance for use to operate as is as long as the business has not been lapsed more than a year. She stated Stracks Plaza was built in 1978 and the Deanna Dr portion in 1996 it fell under the old zoning. In the 2000 zone map this was zoned Planned Business with an extensive list of approved uses. The uses were all approved. If the use is the same as the prior use and according to the 2012 code they can roll over as legal non conforming as long as it has not been closed longer than a year.

However, in the Lowell code it says if one legal non conforming use wants to change to another legal non conforming use they would have to come to the BZA to petition their use, it is a permission from the BZA. The signage is current day compliant. Attorney Bennett asked if we are on hold with any updates at this point. Vice President Farrellbegg stated yes.

ANNOUNCEMENTS:

Mr. Farrellbegg stated that the next regularly scheduled meeting will be on August 8th, 2019 at 7pm.

PUBLIC COMMENTS: NONE

ADJOURNMENT:

With no further comments or questions, Mr. Konradi made a motion to adjourn the meeting at 8:40pm, seconded by Mr. White and carried by a voice vote.

Will Farrellbegg, President

LeAnn Angerman, Secretary