Naples Planning and Land Use
Regular Meeting and
Public Hearing Minutes
August 10, 2010

Due to the lack of a full quorum, Chairman Dale Harrison, Lane Webb, Kerry Kinney and Mark Partridge discussed the Form Based Codes for the Master Downtown Plan. The members went over the booklet provided by McNeil Group making suggestions and presenting ideas. Walter Gale arrived at the meeting to create a full quorum.

Commission Present: Chairman Dale Harrison, Walter Gale, Lane Webb, Kerry Kinney and Mark Partridge

Commission Absent: Vice Chairman Jim Richards, Stanley Johnson, and Cresta Slaugh

Council Rep. Present: Kenneth Reynolds

Others Present: Chris Hoem

Verification of Quorum: Chairman Dale Harrison appointed Lane Webb as a voting member for the meeting and verified a full quorum.

<u>Approval of Agenda</u>
August 10, 2010

Chairman Dale Harrison moved to approve the agenda for August 10, 2010. Chairman Lane Webb seconded the motion.

Roll Call Taken:

Chairman Dale Harrison	**Aye**
Walter Gale	**Aye**
Lane Webb	**Aye**
Kerry Kinney	**Aye**
Mark Partridge	**Aye**

The motion passed with all voting Aye

Disclosures None

<u>Approval of Minutes</u>
July 13, 2010

Walter Gale moved to approve the minutes for July 13, 2010. Lane Webb seconded the motion.

Roll Call Taken:

Chairman Dale Harrison	**Aye**
Walter Gale	**Aye**
Lane Webb	**Aye**
Kerry Kinney	**Aye**
Mark Partridge	**Aye**

The motion passed with all voting Aye

Form Based Codes – Downtown

Review and Update

Chairman Dale Harrison encouraged the Commission to read the booklet for Form Based Codes before the next meeting. The Form Based Codes will be discussed on August 24, 2010.

General Business

Review on Nonconforming Uses (Grandfathering)

Chris Hoem read Utah League of Cities and Towns Dealing with Non-Conforming Uses and Noncomplying Structures: Nonconforming use. A use of land that: a) legally existed before its current land use designation; b) has been maintained continuously since the time the land use ordinance regulation governing the land changes; and c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land. Noncomplying Structure, a structure that: a) legally existed before its current land use designation; and b) because of one or more subsequent land use ordinance changes, does not conform to setback, height restrictions, or other regulations, excluding those regulations that govern the use of land. The right to continue a nonconforming use runs with the land and is not confined to the particular person or entity that owned or operated the property or structure. Gibbons and Reed v. North Salt Lake City, UT (Utah 1967) "…use, not ownership is the concern of zoning authorities. Lawful existing nonconforming uses are not eradicated by a mere change in ownership". The terminology "to grandfather" refers to the right of the use or structure to continue to exist as long as it meets the following criteria: 1)the use must be in existence prior to the enactment of the restricting ordinance; 2) the use must have been lawful when begun; 3)the use must be of substantial nature so as to warrant constitutional protection of a property right. Expansion of Nonconforming Uses: The General Rule: As a general rule, a nonconforming use or structure cannot be expanded or enlarged beyond that which was in existence at the time when it was legally allowed. It is assumed that the public good is served when nonconforming uses cease to exist, therefore it is illogical to encourage their continued existence by allowing them to be expanded. State law, however, does allow for some municipal flexibility. Section 10-9-408(2)(a) and 17-27-407(2)(a) allows the local legislative body to provide, by ordinance for the "establishment, restoration, reconstruction, extensions, alteration, expansion or substitution of nonconforming uses." Most municipal ordinances, however, simply prohibit any enlargement of nonconforming uses. A Planning Commission should refer to their zoning ordinance before allowing for any expansion. The Doctrine of Diminishing Assets: Utah law recognized the doctrine of diminishing assets. This doctrine recognized that some nonconforming uses, such as mining or gravel extraction must be expanded in order for the use to continue at all. This means that such businesses must be allowed to expand regardless of the current zoning onto the rest the property acquired for such a use. Again, Gibbons and Reed: The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A gravel operation has value only in the place where the resources are found. The rock generally regarded as within the exemption of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning ordinance. This does not allow for the purchase of additional property with which to expand but does allow that all property held at the time the more restrictive ordinance was passed can be used for the

intended purpose. The law does allow for the expansion of a use within a structure as long as the structure is not altered to accommodate the expanded use. Abandonment and Amortization of Nonconforming Uses: The right to continue a nonconforming use may be lost if the use is abandoned for a period of time. State law does not define the period of time so it must be done by municipal ordinance. Most municipal zoning ordinances allow six months to one year of non- use, after which the property cannot be used except in conformity with the current zoning ordinance. (If a billboard is not in use for a period of 12 months, it loses its nonconforming status. See Utah Code 10-9-408(2)). Utah law also provides that a municipality may enact by ordinance an amortization schedule for the termination of nonconforming uses over a reasonable period of time. Billboards are excluded from this possibility." Chris Hoem will bring the Nonconforming Use Ordinance before the Commission.

Administrative Updates

Update Land Use Ordinance Binders

Chris Hoem gave the Commission the newly adopted ordinances to put in the Land Use Ordinance binders.

Items for Future Discussion

Potential Bid for Residential R-3 zone

Form Based Codes Chris Hoem: The Form Based Codes are for the Residential 3 zone. Chairman Dale Harrison recommended to get two more bids and send them to the City Council for approval.

Adjourn Chairman Dale Harrison moved to adjourn. Lane Webb seconded the motion.

Roll Call Taken:

Chairman Dale Harrison	**Aye**
Walter Gale	**Aye**
Lane Webb	**Aye**
Kerry Kinney	**Aye**
Mark Partridge	**Aye**

The motion passed with all voting Aye

Next Planning and Land Use Meeting will be held on August 24, 2010 at 7:00 p.m.