

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
July 24, 2012**

**ROLL CALL: Present:** Bruce Neil, Gerry Oliver, Jeff Wallin and Jill Johnson-Pfeiffer.  
**Absent:** Kristi Jensen, Greg Wasinger and Keith Fakkema  
**Staff Present:** Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak; Associate Planner, Melissa Sartorius; Project Engineer, Arnie Peterschmidt.

Chairman Neil called the meeting to order at 7:30 p.m.

Mr. Neil noted that the agenda item regarding OHMC Chapter 17.24 Sidewalks, Curbs and Gutters Installation would be move to another date.

**MINUTES: MS. JOHNSON-PFEIFFER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE MAY 22, 2012 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

No comments.

**FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S** – Public Hearing

Mr. Neil opened the public hearing on this item.

Ms. Sartorius reported that this item is a request to modify the Planned Residential Development (PRD) plans for Fairway Point Division 4 to add accessory dwelling units to homes. Accessory dwelling units are normally permitted in all single-family zoning districts with an administrative permit but since PRD's are tied to specific approved plans, a modification is needed and a public hearing is required.

A PRD is a planned unit development which offers flexibility in neighborhood design. The PRD overlay zone modifies the regulations of the existing zoning district. Because legal lots of record must be created through the subdivision process, the approval process for a PRD subdivision often creates several approval documents (ordinances/resolutions) distinguishing the plat from the PRD plans. The modification process must include a public input process for homeowners.

The Oak Harbor Municipal Code (OHMC) defines an accessory dwelling unit (ADU) as "a habitable living unit added to, created within or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation." ADU's are commonly known as mother-in-law apartments or cottage apartments and are essentially a second dwelling unit created on a lot.

The applicant proposes a maximum of six ADU's to Division 4. The applicant indicates in the narrative that the actual number of ADU's that are to be built will likely be lower than requested. As the modification process is somewhat lengthy, the applicant is seeking the maximum number of units to provide them with future flexibility. So the modification is to only consider a change to the density on the approved plan set.

City staff analyzed transportation concurrency, addressing, solid waste, water meter size, and utility billing aspects of the project but had no substantial comments on the modification. The

Development Services Department is tasked with reviewing the proposal for conformity with all applicable criteria.

A Notice of Public Hearing was advertised in the Whidbey News Times and combined Notice of Application and of Public Hearing was sent to all of the property owners within the subdivision and within 300 feet of the subdivision on June 8, 2012. One comment was received yesterday via e-mail regarding concern about the impact on property values (Attachment 1).

Ms. Sartorius concluded that staff has reviewed the PRD modification and has determined it to be in conformance with all applicable criteria and standards in the OHMC, the prior approved PRD development plans, and the approved resolutions and ordinances. The approval of a modification to the PRD plans for Fairway Point Division 4 will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

Since PRD's are tied specifically to the plans approved for the project and any modifications to these plans if approved must also become part of the official record of the subdivision, staff recommends that only Sheet 1 of 1 titled *ADU Modification to Fairway Point PRD* dated June 5, 2012 be approved with the draft ordinance so that the modification to the PRD is clearly shown.

Ms. Sartorius concluded by recommending that Planning Commission accept public comments on the proposed modification, close the public hearing and then recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

Mr. Neil asked the applicant if he had comments.

**Kendal Gentry** (14559 Jura Place, Anacortes) introduced himself as the applicant and explained that the motivation for requesting the PRD amendment was because of the slow real estate market and the need to understand the needs of the customer. Some of his customers have requested accessory dwelling units due to the need for a live-in caregiver. Landed Gentry would like to advertise the homes with the accessory dwelling unit option. Mr. Gentry noted that the ADU's would not be visible from the street.

#### Planning Commission Discussion

Planning Commission asked Mr. Gentry about how ADU's would affect parking and whether he had any comment about land value as a result of adding the ADU's. Mr. Gentry said that part of the permit process is to demonstrate that there is adequate off-street parking and that ADU's are very tightly governed by the city codes. Once an applicant applies for an ADU permit they sign a covenant which is placed on the property and says the owner of the house will live in one of the two units so it is not like creating a duplex.

Planning Commissioner's asked staff about a scenario of a Navy family that purchases the home and transfers in a couple of years and then wants to rent the home out and have a tenant in the ADU. Ms. Sartorius repeated Mr. Gentry's comment about the requirement for a covenant and the requirement for the owner to live in one of the two units. Mr. Powers added that the person that purchases the home has to understand the restrictions and make decisions accordingly secondly; in the scenario described they would have to give up the right to have the ADU. There is no prohibition on an individual buying a home moving away and renting that home but under our Code there would be a prohibition on that individual renting out the main unit and renting out the accessory dwelling unit separately. The homeowner would lose the right to have the accessory dwelling unit and used it only as a single family dwelling.

Planning Commission asked if there were any concerns because this is a PRD that was planned and the people that bought into this residential community had an expectation of a certain lifestyle versus another neighborhood. Ms. Sartorius stated that this public process is meant to gather input from the residents in the neighborhood and they have received a number of public notices. The only comment to date is the written comment.

There was discussion about density levels in Fairway Point Divisions 1-3 as compared to Division 4 and the reason for that the request is only for Division 4. Ms. Sartorius explained that for Fairway Point Divisions 1-3 the proposed density using a maximum of 29 ADU's is less than the original approved density and therefore does not require an amendment to the PRD whereas Fairway Point Division 4 originally was approved for 4.76 dwelling units per acre and the proposed density using a maximum of 6 ADU's is 5.47 dwelling units per acre which is more than what was originally approved and therefore requires an amendment to the PRD.

Planning Commissioners asked the following:

- Do the zoning requirements run with the property to the new owner? (Yes).
- How much notice was given to the adjacent property owners? (3-4 notices were sent out, a notice of application, the hearing date changed so a revised notice was sent then the lack of a quorum require another notice of public hearing for this month).
- Will this allow for a detached ADU? (The applicant is not locked into the basement design but will have to go through the ADU administrative permit which staff would review to make sure that it meets the criteria in the Oak Harbor Municipal Code).

Mr. Neil opened the hearing for public comment.

**Bruce Freeman** (2746 SW Fairway Point Drive) stated that he purchased his home based on the density that was approved by the City of Oak Harbor. The proposal would increase density and could change the tranquil neighborhood considerably. Traffic is a big issue with adding an entire living unit. He said he was not against the caregiver unit but when kitchens, bathrooms and separate entrance are added it is more of a duplex. Mr. Freeman asked the following questions and Mr. Powers provided the answers:

- Will the residence be owner occupied? Answer: Yes, the Code requires that the owner of the property occupy one of the units at least six months out of the year.
- Can the units be rented out to anyone that is not a family member? We know the majority of the people are military and when they get sent out on deployment they rent the rooms out while they're gone. How is it going to be enforced? Answer: There are two ways, since this is a zoning code requirement, violations of the zoning code are a code enforcement action that the City can engage in and it is also possible to end up in a civil action as well.
- Could the unit be used as a commercial office? Answer: No, but you can have a small home business.
- Are there specific lots identified that the ADU's will be built on? Answer: Yes
- Do the ADU's have kitchens? Answer: General they do.
- How many on-site parking spaces will be provided? Answer: One additional space for the additional unit or additional spaces that may be determined by staff.

Mr. Freeman also suggested mailing the staff reports with the notices.

Commissioner's asked if it was possible to add to the covenant a limit on the amount of cars that the extra dwelling unit is allowed to have. Mr. Powers explained that a covenant is between private property owners and the City is not involved in the enforcement of those conditions of covenant or restrictions. If the City imposes a condition of approval it must be through the zoning process, the conditions associated with the plat. Mr. Powers added that parking can be an issue at any point in the community and not necessarily driven by accessory dwelling units. It can depend on the neighborhood, lot size, driveway, garage and whether it is a five person family or a two person family. The Code sets out the minimum amount of parking for each dwelling unit. For a single-family house it is two spaces. For a single-family house with an ADU it is at least two plus one.

Mr. Gentry was asked how he would address the parking issue. Mr. Gentry said that the seller provides the garage and parking space but how the buyer chooses to utilize it is outside of the seller's control. The homeowner's association would have the responsibility for enforcing the rules that were designed for the plat.

**Floyd Haney** (2777 SW Fairway Point Drive) said he was under the assumption that he was in a single-family residential area and expressed concern about the number of people that could live in a home with an ADU and was opposed to any change to the PRD.

**Richard Porritt** (2130 Fairway Lane) asked what the difference was between a phase and a division and what the density is of the administratively approved Division 3 area.

Mr. Powers gave an example, of 30 lots in division 1 of a particular project and the developer chooses not to develop all 30 lots at one time they might build 10 in the first phase, 10 in the second phase and 10 in the third and final phase inside of that division.

**Richard Porritt** (2130 Fairway Lane) asked if he understood that we were talking about 6 lots or more in Division 3 that are being administratively approved. Mr. Powers explained that the density that was approved at the time Divisions 1, 2 and 3 were approved, were approved at a higher level than what the actual development plans were utilizing. So, should Mr. Gentry request ADU's on all available lots they would still be beneath the approved density already. The reason this is before the Planning Commission is because the density for Division 4 and the development in Division 4 are very close to each other and in order to pursue ADU's on one or more of the remaining 6 lots he needs to request that the density be increased. Landed Gentry is obligated to follow the density which was originally approved.

Since Division 3 is below the density cap it does not require a modification to the PRD. Mr. Gentry has the opportunity to request ADU permits on those lots through the City's pre-existing ADU provisions in the Code which is the administrative process. It is important to point out that there are no requests to date and no information available that says Mr. Gentry will be requesting an ADU on each and every lot within Division 3.

Commissioners asked if there would be a public hearing if Mr. Gentry requested an ADU for Division 3 through the administrative process. Mr. Powers said that there would be no public hearing and that the ADU Code applies city-wide and is no different for any other neighborhood in the community. Mr. Powers explained that the reason for the ADU code provisions is because the Growth Management Act requires that, as we plan for our communities, we need to

plan for a range of housing types and acknowledge the fact that there are certain members of our community that may need an ADU for the reasons that we have already talked about.

Commissioner's asked if any of the ADU's would be pre-built with the hopes of finding a buyer or would the developer only build it at the request of the buyer. Mr. Gentry said that the basement will not be finished until the buyer tells us whether they want bedrooms or an ADU and if they want an ADU we will apply for the ADU permit.

Commissioner's asked if Mr. Gentry could build the six bedroom house without going through this process. Mr. Gentry said that is what they are doing now, because we don't have this issue resolved the only way to be permitted by the City is with bedrooms.

Commissioners asked if the 6 lots could be for 55 and older area and if that was a determination that could be made by the builder or by City Code. Mr. Powers said that age restricted communities are typically proposed by the developer and is enforced by the CC&R's. The City does not get in the business of age restricting developments. Mr. Gentry added that Landed Gentry has built several age restricted communities that are governed by the Federal Fair Housing law and there are certain criteria that have to be met to be able to discriminate against families with children.

**Richard Porritt** (2130 Fairway Lane) asked if the 4 additional lots available for development in Division 1 and the administrative action are not the issue tonight. Mr. Powers said there has been no administrative action on any ADU permits in the Fairway Project. What we are saying is that Landed Gentry has the ability to ask for that permit without first coming through a public hearing because the density is not an issue in Division 1 - 3.

**Richard Porritt** (2130 Fairway Lane) asked if there could be an unlimited number of ADU's in Division 3 because of the density standpoint. Ms. Sartorius responded that the density for 1, 1a, 2 and 3 is 4.9 dwelling units per acre. If accessory units were built on all available lots within Division 3 it would still be within the originally approved density.

**Bruce Freeman** (2746 SW Fairway Point Drive) was concerned about allowing ADU's to be a separate structure without zoning approval. Mr. Powers said that the permit process for ADU's is an approval process in which the application is reviewed against the zoning code but it does not require a public hearing and this applies across the City of Oak Harbor.

Mr. Powers outlined how the Planning Commission could address the concerns about the character of the PRD and believed that those concerns can be addressed through land, zoning or standard based conditions of approval. If Planning Commission feels the way to handle the parking issue is to recommend to the Council that they require two parking spaces for the ADU in addition to the two that are required for the primary structure, that is something Planning Commission could recommend to the Council as a way of dealing with the land use impact to the proposed change. Planning Commission can't get into the issue of whether it is rented by someone or someone's elderly mother that lives there or children that come home to live with their parents.

Mr. Oliver asked if Mr. Gentry if there has been discussion within Landed Gentry about detached ADU's. Mr. Gentry said he didn't think that the lots were large enough to accommodate detached units and anything that they would propose would be built into the home. Mr. Powers noted that Planning Commission could add a condition that the ADU only be attached. Mr. Gentry said that he would be willing to agree to that condition.

**Floyd Haney** (2777 SW Fairway Point Drive) asked what the administrative process was. Mr. Powers explained that staff would review the submitted plans against the standards and the zoning code and verify that the plans meet requirements for lot coverage, parking, entryway and review the covenants. Only if it meets all those criteria can it be approved by staff.

Ms. Johnson-Pieffer asked staff to explain the difference between a PRD and a general residential development. Mr. Powers explained that the normal platting process (regular subdivision) has certain requirements that are prescribed within the code. The PRD also has a subdivision with an extra layer of approval but still operates inside of the density allowed by the zoning code but provides the developer flexibility in prescribing how big the lots might be. They may wish to have smaller lots with smaller setbacks and devote more of their project space to open space or to a club house or to trails or those types of community features. The PRD is an approval process that requires a public hearing before the Planning Commission and a decision by the Council that effectively customizes the development regulations for that particular piece of property. So if a developer wants that flexibility they have to ask for the PRD and go through that process and they also have to have the subdivision plan approved. The size of the project is immaterial to the type of development option that is utilized.

Ms. Johnston-Pieffer asked if the PRD is designed to offer flexibility to the developer or certainty to the future homebuyers. Mr. Powers said he believe that it is the former and that it is intended to allow flexibility to create varying lot sizes to develop the type of community that they wish to market to that end user. In our community PRD's are focused around natural features or golf courses because that is the market that that particular developer is interested in attracting. So there is flexibility on one hand but in exchange for that flexibility they have to provide a certain amount of open space, amenities for the residence of that community. They also lock themselves down to that plan and they have to build to that plan. If they chose to ask to do something different we look at the code to determine if it is a minor change that can be approved administratively or a major change which has to go to the Planning Commission and the City Council.

Mr. Wallin noted that the density is the issue and asked if building 6 bedroom homes affect the density. Mr. Powers said that density is a function of the number of dwelling units per acre. The number of bedrooms doesn't matter and it is still a single dwelling unit.

Commissioners asked Mr. Powers to explained density, the difference between a PRD and a regular development.

#### Planning Commission Discussion

Mr. Oliver didn't think that only the four Planning Commissioner's present should make this decision.

Mr. Johnson-Pieffer said that she didn't believe in fear based decision-making and the fear is that there may be a lot of young folks living in this area and the golf course land is going to turn into a bunch of duplexes and that is not what anyone had envisioned. On the other hand the developer entered into this planned relationship with the City. The developer said this is what I want to do with that property and set out the setbacks and density because they wanted certainty in what they were able to do. The developer was given that certainty by the City and now the developer wants some additional flexibility and she didn't know that they could have it both ways. There is also some responsibility to the homeowners that bought into that certainty. There is also the responsibility to provide a viable housing option to some people that don't

have that option out there and we have a responsibility as a community to think through these types of needs as well.

Mr. Wallin said that the Planning Commission should continue the public hearing to next month's regular Planning Commission meeting to allow the public an opportunity to review the staff report.

Mr. Powers said that continuing the hearing was possible and staff would mail the staff report to those wishing to receive a copy.

**ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S AGENDA ITEM TO NEXT MONTH'S PLANNING COMMISSION MEETING. MOTION CARRIED.**

Planning Commission took a 5 minute break.

#### **NIGHTCLUB ORDINANCE – Public Meeting**

Mr. Kamak reported that this is a continuation of the discussion to regulate the size of night clubs. Mr. Kamak highlighted several items discussed at the previous meeting and noted that the result of the public input at the last meeting was that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. Mr. Kamak presented the following methodologies for addressing the issue as well as some pros and cons for each:

1. **Regulate nightclubs as a land use:** Several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.
  - Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
  - Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses &

Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.

- Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
- Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.

3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.

- Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
- Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

Mr. Kamak pointed out the occupancy limits of existing nightclub license holders as follows:

El Cazador - 291  
Oak Harbor Tavern - 108  
Mi Pueblo - 280  
7 West – 165  
Off the Hook – 201  
Elements – 580 +219 (covered area)

Mr. Kamak concluded that it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that Option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

Mr. Kamak asked the Planning Commission for their recommendation on the methodology that should be use.

Mr. Oliver pointed out that he was representing Mr. Kumberfelt in a couple of real estate transactions as well as a couple of people in the Bayshore Condominium Association. He asked the public if they cared to hear what he had to say.

Mr. Powers noted that this was not a quasi-judicial proceeding so if this is a code amendment it is legislative so this is not focused on a particular piece of property.

A member of the public asked if it was appropriate for Mr. Oliver to recuse himself from voting on the issue and that he would like to hear what Mr. Oliver has to say but was a little reluctant to have him voting on the issue.

Mr. Wallin asked if whatever is decided would have no effect on what Element has currently. Mr. Powers said that was correct. Mr. Neil said this would affect new nightclubs.

Mr. Wallin asked if the City be creating two different occupancy licenses if occupancy load was used as the criteria. Mr. Kamak said yes, we could regulate by zoning districts. You could have a limitation in occupancy depending on the zoning district.

Ms. Johnson-Pieffer asked if Option 3 would mean that a business would have to choose whether it was applying for a restaurant license or a nightclub license. Mr. Kamak said that when a business comes in for a building permit they are applying for a particular use such as a restaurant perhaps, the building official will review the plans against the building code and establish what the occupancy load for that restaurant is which sets the limit. If later the restaurant determines that they want live music and extend the use they would come in a get a license on top of what they already have. So the established occupancy load for the primary use would apply. Ms. Johnson-Pieffer asked if a 400 capacity restaurant was applying for a nightclub license restricted to capacity of 300 would they be denied a nightclub license. Mr. Kamak said they would have to be qualified to even apply. If they wanted the nightclub license they would have to redesign the interior space to meet the building code. They would have to make substantial changes to their capacity in order to accommodate the nightclub. Mr. Powers noted that there is no language crafted yet and that so far we are only discussing the methodology.

Mr. Oliver asked if an established nightclub were to sell and we have set the occupancy load at a lower level how will the new business owner be affected. Mr. Kamak said that the new owner would have to apply for a new license and in that case we can either write a code that would allow the continued use of existing businesses or we can do it by location. These are details that would need to be worked out if this methodology is chosen.

Ms. Johnson-Pieffer said she did not support the conditional use permit methodology (Option 1) because she felt it was too volatile and was not a predictable enough process for a business model to operate in.

Mr. Neil asked for public comment.

**Richard Everett** (651 SE Bayshore Drive) asked how the occupancy limits would be developed. Mr. Powers said that the occupancy load was a function of the building code and the fire code. It is prescribed based upon uses, exits, construction materials, hallways and a variety of life safety issues. Mr. Everett said that he felt an occupancy load of 800 was too high regardless of what the code says especially when patrons are drinking. He also pointed out the tragedy in

New Jersey in which many people were burned to death. Mr. Powers noted that the fire code was changed as a result of that tragedy. Mr. Powers also pointed out that the numbers are calculations and there is a difference between what the capacity is and what normally happens and the practical limitations. Mr. Powers said that we are not in a position to change what the occupancy loads are and this is not a subject of discussion this evening.

Mr. Everett said that in 2007 the condominium residents recommended that the City Council not authorize formation of the Element in that area and Captain Wallace made a statement for the record that he advised against it because it exposed the City to continuing problems from the mass of people that were going to be coming out of the club and the proximity of residents. Captain Wallace's arguments were brushed aside and here we are four years later with this dilemma still before us. He implored the City to use whatever power it has to do something constructive about it. The Element is impacting the residents and others in terms of health, welfare and economic loss. It should never have been and has got to cease as soon as possible.

**Billie Cook** (651 SE Bayshore Drive) said that a small business district was never meant to bear the use or the impact of a mega-nightclub in like this. She asked if this was the image that we want to project in our mixed use business district of large nightclubs that have violence, drunkenness and lewd behavior that goes on there all the time. In other parts of the county these mega nightclubs are referred to as "roadhouses" where the venue is very loud and excessive drinking and finding a date or "hooking up" is the goal. She stated that she didn't feel that people who frequent the "roadhouse" or mega-nightclub are criminals or wrong in any way but that she didn't want them in her front yard. She asked if we wanted more of them in an area that we present to tourists, many whom are family-oriented or older visitors that don't feel comfortable with that venue. Is this the image that we want to present to attract businesses and jobs? Ms. Cook believed that there should be a limit on the size of nightclubs in the Central Business District (CBD) because it is too small for the impact of the mega-nightclub. Along with a limitation on the size the CBD she hoped there would be some action taken to designate an area where the mega-club can operate.

Mr. Oliver asked what Ms. Cook thought the best occupancy limit would be for the CBD. Ms. Cook thought the limit should be 100 but maybe 200.

#### Planning Commission Discussion

Mr. Oliver said that the problem with anything that people do in the business world is what they offer and he wasn't sure how to address this issue. Mr. Kamak said that the nexus is large groups of people create impacts and that is what we are trying to address. Mr. Oliver asked if there was a count that can be gauged. Mr. Kamak said that if the Planning Commission chooses occupancy load as a methodology the mission would be to see how we can write a code that would address the impacts to prevent large users from obtaining nightclub licenses. The occupant loads are based on their current uses and not based on nightclubs. They are based their underlying use and that is a limitation established by the building code, so that will determine whether they can apply for a nightclub license or not. We are not limiting the number of people in a particular building by the nightclub license we are saying who can apply for it so larger users may not be able to apply for it. Or if the community wants to choose a special process that will accommodate the larger uses we would have to write that into the code as well.

Mr. Wallin noted that Mi Pueblo has a particular room that is designated as the nightclub area and asked if each of their rooms has a separate occupancy load. Mr. Powers said yes and that it is a combined occupancy. Mr. Powers restated that the mission tonight is to get a consensus

on which of the three options that the Planning Commission would like staff to pursue and then staff will start trying to answer these questions.

Ms. Johnson-Pieffer said that she liked the combination of zoning and occupancy but that she believed that it doesn't matter what zone you put the nightclub in you are going to have the same problem but we can't just say that we don't want them. There are members of the community that do use these establishments and we have a responsibility to allow these types of businesses to exist. Mr. Kamak said that he didn't think limiting the occupancy load is denying a certain type of business but just the size.

Mr. Neil said he would like staff to pursue Option 3 - Licensing uses by occupant limit method.

Mr. Wallin said he would like a combination of occupancy limit tied to the specific zones.

Mr. Oliver said he prefers the occupancy limit but not tied to the specific zone. Mr. Kamak said it was possible to have different occupancy limits in the different zoning districts and it will be a business license requirement. By saying in the license requirement that any business with an occupancy load of greater than 200 in the CBD is prohibited from applying for a license, that will limit the number in the CBD. You can say no business greater than 400 in the C-3 zone is permitted to apply for the nightclub license. You can have that staggering in varying zoning districts if you choose. So therefore you are not limiting or you can say in no zoning district shall be greater than 200, it is a community choice.

Ms. Johnson-Pieffer liked that approach and asked if you put a 100 person limit in the CBD and you had a business that broke their building into three separate rooms in which they had a hip-hop nightclub, a county/western club and a ballroom dancing each in a separate space that had the same 100 person occupancy limitation in each room and the same hours and they all left that facility at the same time we won't have accomplished anything. Mr. Kamak said that was correct and that is the risk. The entire downtown could have nightclubs but those businesses would have to be separate from a building code standpoint.

Mr. Oliver asked how the occupancy load is calculated. Mr. Kamak said it was calculated by each business. Each business has to be separate. We are not limiting by area within the building we are calculating by the entire business's occupancy load.

Mr. Neil confirmed with the Planning Commission that they were directing staff to pursue option 3 – Licensing uses by Occupancy Limit with some consideration to zoning.

Mr. Kamak said that since the Planning Commission wishes to consider zoning categories it will still be in the Planning Commission's realm to make a recommendation. If the Planning Commission had said just occupancy load and not zoning it would no longer have been a Planning Commission issue and only a City Council issue.

Mr. Oliver suggested thinking about barriers to mitigate sound also. Mr. Kamak said that could be considered as part of the licensing requirement.

Staff and Planning Commission discussed how to handle the remaining items on the agenda and decided to hold a special meeting on Monday, August 13, 2012 at 5:00 p.m. to discuss the Shoreline Master Program Update and the 2012 Comprehensive Plan Amendments.

**ADJOURN: 10:30 p.m.**