

**McKENZIE MUNICIPAL REGIONAL
PLANNING COMMISSION MEETING**

October 28, 2010

4:30 PM

I. Call to Order/Establishment of a Quorum

Members of the Planning Commission are: Chairperson Dean Robb, Commissioners Ed Dillon, Lisa Norris, Keith Priestley, Jeanene Jones, Jessie Townes and Mayor Walter Winchester

Meeting was called to order by Chairperson Robb and a quorum was established.

Commissioners present were Chairperson Robb, Commissioners Dillon, Norris, Jones, Townes, Mayor Winchester and State Planner Shelton Merrell.

II. Swearing in Ceremony for New Member Jessie Townes

Chairperson Robb had Mayor Winchester to perform the swearing in ceremony of Jessie Townes as the new member of the Planning Commission by having Jessie to affirm the oath of office.

III. Approval of Agenda

Motion was made by Commissioner Dillon, seconded by Commissioner Norris, to approve the agenda. Motion passed.

IV. Opening of Public Hearing on 2010 McKenzie Regional Subdivision Regulations

Chairperson Robb opened the public hearing for comments on the 2010 McKenzie Regional Subdivision Regulations. He asked State Planner Shelton Merrill to update the commission on the definition of subdivision regulations. There were no comments from any citizens.

V. Closing of Public Hearing on 2010 McKenzie Regional Subdivision Regulations

With no comments, Chairperson Robb declared the public hearing closed.

VI. Reading and Approval of the Minutes

Motion was made by Commissioner Dillon, seconded by Commissioner Norris to approve the minutes of the September 23, 2010 Planning Commission meeting. Motion passed.

VII. Old Business

A. Discussion and vote on the 2010 Draft McKenzie Regional Subdivision Regulations

Chairperson Robb asked for any discussion from the commissioners concerning the new subdivision regulations and there were none. He then asked for approval from the commission.

A motion was by Commissioner Dillon, seconded by Commissioner Norris to approve the 2010 McKenzie Regional Subdivision Regulations. The roll call vote was as follows: Commissioner Norris – yes; Commissioner Jones – yes; Commissioner Dillon – yes and Commissioner Townes yes; with Commissioner Priestley absent. The vote was 4 yes and 1 absent. The motion was approved.

B. Review and recommendation on the Appendix (Fee Schedule) to the McKenzie Board of Mayor and Council.

VIII. New Business

A. Bethel University Planning / Building Program Status Presentation

Mr. Steve Prosser from Bethel University updated the Commissioners on the future planning & building taking place on the campus of Bethel. A new student center will have a ground breaking ceremony on November 12th. It will house a new gym and a new cafeteria. Steve said enrollment was up on the McKenzie campus with an enrollment exceeding 1250 students. The entire facility will be a total of 126,000 square feet. Another future building will be a nursing building.

B. Codes Officer / Building Inspector Certification Status

Codes Officer Roger Christian told the Commissioners he will go in middle of November to take his test for building inspector certification.

C. Building Permits Procedure / Enforcement Discussion

Councilperson Holland told the Commissioners the Design Plan Group that has been meeting would like to form a Design Review Board. This group would like to see the building permits displayed and also the contractors to sit down with this group and go over their plans to make sure they are in compliance.

D. Sign Permits Procedure / Enforcement Discussion

Codes Officer Christian told the Commissioners there were signs that needed attention and as time would permit he would start enforcing the sign ordinances. Chairperson Robb stated that if anyone knew of signs that needed attention,

please contract Roger so he could act on the complaint.

Chairperson Robb made a presentation with a plaque to Mayor Walter Winchester for his dedicated service to the City of McKenzie as Mayor of McKenzie from November 2002 to November 2010. This plaque was presented to Mayor Winchester on behalf of the McKenzie Municipal Regional Planning Commission.

IX. Other Business

A. Review of the 2010 McKenzie Municipal Zoning Ordinance Pertaining to Non-Conforming Uses, Structures and Land

The McKenzie Board of Mayor and Council tabled the adoption of the 2010 McKenzie Municipal Zoning Ordinance during the October 14, 2010 meeting. Apparently the ordinance failed to get a motion due to the discussion which was held during the meeting pertaining to the verbiage found within Section 11-402 relative to non-conforming uses, structures and land. This section basically amortizes the continuation certain non-conforming uses, structures and land.

The crux behind the defacto tabling, was the fact residential uses would not be allowed to be rebuilt if they were destroyed. This caused many property owners along Highway 79 that would be affected by the decision to voice their concerns. The proposed Section 11-402 states the following:

11-402. Non-Conformities

1. Within the districts established by this Ordinance or amendments that may later be adopted there exist:
 - (a) Non-conforming structures
 - (b) Non-conforming uses of land
 - (c) Non-conforming uses of structures which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to recognize that the elimination, as expeditiously as is reasonable, of the existing structures or uses of land or structures that are not in conformity with the provisions of this Ordinance is as much a subject of health, safety and welfare as is the prevention of the establishment of new uses that would violate the provisions of this Ordinance. It is also the intent of this Ordinance to so administer the elimination of non-conformities as to avoid any unreasonable invasion of established private property rights.
2. Any non-conforming structure may not be:
 - (a) Extended except in conformity with this Ordinance except as

- permitted by Section 13-7-208, Tennessee Code Annotated.
- (b) Rebuilt or repaired after damage exceeding seventy-five (75) percent of replacement value except in conformity with the provision of this Ordinance or as permitted by Section 13-7-208, Tennessee Code Annotated.
3. Any non-conforming use of land may not be:
- (a) Changed to another non-conforming use which would be more detrimental to the district in which it is located as determined by the Board of Zoning Appeals.
- (b) Extended, except in conformity with this Ordinance or as permitted by Section 13-7-208 Tennessee Code Annotated.
4. Any non-conforming use of structure may not be:
- (a) Changed to another non-conforming use which would be more detrimental to the district in which it is located as determined by the Board of Zoning Appeals.
- (b) Re-established after discontinuance of one year except as permitted by Section 13-7-208, Tennessee Code Annotated.
5. Any structure used for a non-conforming use shall not be rebuilt or repaired after damage exceeding seventy-five (75) percent of replacement cost unless the use and structure conform to the provisions of this Ordinance or as permitted by Section 13-7-208, Tennessee Code Annotated.

Staff does not recommend a change in the definition of non-conforming uses, land, or structures due to non-conforming statuses being ways to amortize unwanted or desirable uses. This is permitted within the State of Tennessee. However, staff has not found anything that will prohibit the City of McKenzie to amend the way non-conforming residential structures are proposed to be regulated. Staff states that with of course one caveat being in mind which is Dillon's Rule. Under Dillon's Rule, a municipal government has authority to act only when:

- 1) the power is granted in the express words of the statute, private act, or charter creating the municipal corporation;
- 2) the power is necessarily or fairly implied in, or incident to the powers expressly granted; or
- 3) the power is one that is neither expressly granted nor fairly implied from the express grants of power, but is otherwise implied as essential to the declared objects and purposes of the corporation.

It must be stated that the legislation found within Title 13 Chapter 7 of Tennessee

Code Annotated is strictly enabling. It does not require the exercise of the authority for municipalities and counties to zone, but it does require that if the delegation is accepted, the zoning function will be exercised in full compliance with the statutes. Having stated this, it should be known that the staff planner is not an attorney of law licensed to practice within the State of Tennessee. Staff will defer the legal analysis or interpretation of the aforementioned to the City of McKenzie's Attorney. The simple solution to the existing issue relative to the verbiage found within Section 11-402 of the proposed McKenzie Zoning Ordinance is to alter it to protect non-conforming residential structures from the 75% damage clause. The ordinance can also be altered to exempt residential structures from the discontinuance clause (one-year) as well. Although the later is not desirable, it will be the City of McKenzie's choice. However, legal analysis of this matter should be directed to the City Attorney of the City of McKenzie to ensure absolute compliance with Tennessee Code Annotated. Staff has prepared an alternate Section 11-402 for your review and consideration for recommendation:

11-402. Non-Conformities

1. Within the districts established by this Ordinance or amendments that may later be adopted there exist:
 - (a) Non-conforming structures
 - (b) Non-conforming uses of land
 - (c) Non-conforming uses of structures which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to recognize that the elimination, as expeditiously as is reasonable, of the existing structures or uses of land or structures that are not in conformity with the provisions of this Ordinance is as much a subject of health, safety and welfare as is the prevention of the establishment of new uses that would violate the provisions of this Ordinance. It is also the intent of this Ordinance to so administer the elimination of non-conformities as to avoid any unreasonable invasion of established private property rights.
2. Any non-conforming structure with **the exception of non-conforming residential** structures may not be:
 - (a) Extended except in conformity with this Ordinance except as permitted by Section 13-7-208, Tennessee Code Annotated.
 - (b) Rebuilt or repaired after damage exceeding seventy-five (75) percent of replacement value except in conformity with the provision of this Ordinance or as permitted by Section 13-7-208, Tennessee Code Annotated.
3. Any non-conforming use of land may not be:

- (a) Changed to another non-conforming use which would be more detrimental to the district in which it is located as determined by the Board of Zoning Appeals.
 - (b) Extended, except in conformity with this Ordinance or as permitted by Section 13-7-208 Tennessee Code Annotated.
4. Any non-conforming use of structure may not be:
- (a) Changed to another non-conforming use which would be more detrimental to the district in which it is located as determined by the Board of Zoning Appeals.
 - (b) Re-established after discontinuance of one year except as permitted by Section 13-7-208, Tennessee Code Annotated.
5. Any structure used for a non-conforming use **except for non-conforming residential structures** shall not be rebuilt or repaired after damage exceeding seventy-five (75) percent of replacement cost unless the use and structure conform to the provisions of this Ordinance or as permitted by Section 13-7-208, Tennessee Code Annotated.

The other options for the Planning Commission to consider are as follows:

- 1.) A different Zoning Map could be prepared to reflect the subject properties to have residential classifications. However, whenever a property owner desires to have their property rezoned to commercial, it becomes granted based upon the 2029 McKenzie Municipal-Regional Land Use and Transportation Plan. Spot zoning would not be an issue, if this were to occur because the rezoning would be in conformance with said plan.
- 2.) The Planning Commission and Board of Mayor of Council could amend the 2029 McKenzie Municipal-Regional Land Use and Transportation Plan (Future Land Use Map) to illustrate properties that are currently residential shown as future commercial along Highway 79 to reflect residential. This would also call for the amendment of the 2010 McKenzie Municipal Zoning Map to reflect the aforementioned change.
- 3.) The final option would be to permit single-family dwellings as permitted uses within the B-2 (General Business) District.

A motion was made by Commissioner Norris, seconded by Commissioner Dillon to send this document to the City Attorney for a legal opinion. Motion passed.

B. Any other properly presented other business

Chairperson Robb opened the floor for comments. Several concerned citizens expressed their concerns concerning the changing of the zoning ordinance. All comments and concerns were appreciated by the commission.

C. Discussion and Regular Meeting Schedules Dates

Schedule for October Agenda and Planning Commission Meeting dates:

Agenda/Workshop: 2:30 PM, Thursday, November 11, 2010

Monthly: 4:30 PM, Tuesday, November 23, 2010

4:30 PM, Thursday, December 9, 2010

X. Adjournment

A motion was made by Commissioner Norris, seconded by Commissioner Dillon to adjourn. The motion passed.

Meeting was adjourned at 5:59 p.m.