



**PLANNING AND ZONING COMMISSION  
SPECIAL MEETING  
AUGUST 22, 2006**

The Planning and Zoning Commission met in special session at Stafford City Hall at 6 p.m. on August 22, 2006.

**Present:**

Alma Birdwell, Chairman  
Joseph Olickan, Vice Chairman  
Christine Rector  
Joe Rome, Secretary  
Virginia Rosas  
Felix A. Vega  
Fred Woolridge

Mayor Leonard Scarcella  
Gene Bane, Director of Bldg Permits  
& Nuisance Abatement/Zoning Administrator  
Jo Ann Holloway, P&Z Recording Secretary  
Cheryl Wilson, City Attorney – Olson & Olson

**Absent:** N/A

**1. Roll call.**

All commissioners were in attendance.

**2. Presentation by City Attorney on federal law known as “Protection of Religious Exercise in Land Use and by Institutionalized Persons Act” (RLUIPA).**

Cheryl Wilson gave an overview of the federal law known as RLUIPA, which prohibits government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution (a) is in furtherance of a compelling governmental interest; and (b) is the least restrictive means of furthering that compelling governmental interest. Ms. Wilson pointed out that the law specifically prohibits a government from imposing or implementing a land use regulation that totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

Ms. Wilson stated that this law was created by the U.S. Congress and stressed the importance of internalizing the contents in order to understand the framework within which the Planning and Zoning Commission must work if they follow the directive from City Council to review the law and the zoning ordinance to see what amendments could be made to “stem the tide” of religious facilities trying to move into Stafford.

The bottom line is that the City cannot outright prohibit religious facilities from locating in the City. Recognizing that there has been a focus on the fact that 51 such facilities are located within the City, she has been asked could they establish a certain number that would be allowed. Ms. Wilson said that any regulation that would arbitrarily establish a maximum number as enough, would necessarily be

treating a religious facility different than a nonreligious facility.

Ms. Wilson noted that if the regulations would impose a substantial burden on the free exercise of religion, there must be a compelling governmental interest; however, a substantial burden does not mean just an inconvenience. Ms. Wilson stated that she did not believe that the fact that a religious facility would have a financial impact on the City, would be a compelling governmental interest and a basis for the denial of an application. It was also noted that, where other cities had denied permits to religious facilities on the basis that the property would be taken off the tax rolls, the cities lost those cases on appeal.

Ms. Wilson gave a brief overview of the regulations currently in place and the history behind the City adopting those regulations.

**3. Discussion and consideration of amendments to certain provisions of the City's Zoning Ordinance to guide the development and improvement of remaining vacant land and areas in need of revitalization, including:**

- (a) Land use policies and goals;
- (b) Zoning districts;
- (c) Uses permitted by right and permitted by Specific Use Permit in each zoning district; and
- (d) Criteria, procedures and regulations applicable to different types of developments.

Joe Rome distinguished Stafford from other cities because Stafford does not have a property tax. He asked if Ms. Wilson knew if there were any other cities without a property tax. Ms. Wilson did not know of any, but stressed the fact that nothing prohibited Stafford from adopting a property tax. Ms. Wilson noted that the decision to deny a permit application to a religious facility cannot be based on economics.

Joe Rome noted that at one time the City limited the number of apartment units on population and on the ratio of single family homes to apartments and wanted to know why the City could not do something similar for religious facilities. Ms. Wilson stated that there are no federal laws protecting apartments like there are for religious facilities. Ms. Wilson also noted that the regulations in place are the most defensible and it allows the P&Z and City Council to view each application on an ad hoc basis; that is the beauty of the SUP process where each application is reviewed individually.

Mr. Rome gave a scenario of unequal protection of the law with the disapproval vs. approval for similar applicants and wanted an explanation of how that can happen; how that is okay. Ms. Wilson asked for a specific instance. Mr. Rome referred to the applications for a day care center and an auto repair shop; one was approved and the other was not. Ms. Wilson made it clear that she did not give recommendations on either of those applications; that she does not vote; those decisions are made by the P&Z and the City Council.

Christine Rector pointed out that Cheryl Wilson can only advise the Commissioners of what can or cannot be done under the law, which are the guidelines that the Commission legally works under and noted that the Commissioners would have to go back to the minutes on that particular item to see why it was not approved.

Virginia Rosas asked for the definition of a religious facility and if there is a particular number of members required to constitute a religious facility. Ms. Wilson directed her attention to the definition in the zoning ordinance and stated that she believed the definition was similar to or the same as the definition of a religious facility in the Texas Tax Code. A facility must meet the Tax Code definition in order to gain tax-exempt status.

Felix Vega posed the question, "if a day care is allowed within a religious facility, is the day care considered a religious facility?" Ms. Wilson stated that if the primary business is a day care, then the answer is no.

Joe Rome asked if retail is run on-site, isn't that all considered under the same umbrella; e.g., if a religious facility sells a meal? Gene Bane noted that if it's for profit, then the answer is yes.

Questions were raised about the collection of sales tax from facilities that engaged in retail. Ms. Wilson stated that there may be some sales tax issues involved, but tonight's discussion is on land use.

Joe Rome asked if something could be written into an ordinance regarding the working of cafeterias and sales tax; involving something the facilities are doing which would work them into a different class, such as no retail.

Ms. Wilson said that if an SUP is presented that has more than just a church, chapel, or worship area, such as a gymnasium, day care, etc. then it may be possible to prohibit those additional facilities.

Christine Rector mentioned an article which stated that anything affiliated with a church cannot be denied. Gene Bane noted that if a church is denied a retail store and there is a retail store in that same area, it may be a violation of RLUIPA.

Cheryl Wilson stated that when additional uses are added that, for example, create traffic in that particular area over and beyond what would be created just by the use of the facility for religious exercise, under the process currently in place, more can be done under the SUP approval process, possibly by imposing additional conditions or limiting those other uses.

Mayor Scarcella asked if the City is looking at another SUP for another type of entity, would the criteria for consideration be the same. The Mayor noted that appropriate criteria to consider for an SUP would be compatibility in the area and the impact it would have on neighboring property values.

Cheryl Wilson stated that consideration of whether a particular use would generate sales tax, in her opinion, is inappropriate and noted that the issues that are considered for any SUP should be the same for religious facilities; not sales tax, but consideration of land values is okay. Ms. Wilson continued by saying that the City should make sure the proposed use will do no harm to the adjacent areas and adjacent property values.

Mayor Scarcella stated that what he was understanding Ms. Wilson to say is that, if the City's economy would be impacted, it's been concluded that the City would be on "thin ice," to deny an application, but if it's going to impact the financial strength of a resident that would be okay and wanted to know the distinction.

Ms. Wilson stated that if there is a way to mitigate those circumstances that would have a negative affect on the surrounding properties and reasonable conditions could be imposed and complied with, then there would not be a rational basis for denying the application. It would help the process if irrelevant issues are not entertained. The applicant should be required to give reasons why concerns of negative impacts would not happen or how they could be mitigated. The parameters should be set for the type of information that would be heard.

Christine Rector noted another article that she had read that gave instructions on making an application and that recommended a complete integration of religion into the SUP application so that God would be denied the SUP, so to speak.

Joe Rome asked how neighboring cities are denying religious facilities.

Ms. Wilson said it was her understanding that the recent application in Missouri City for a religious facility along 90A at the Beltway was denied because, once the zoning ordinance was reviewed, it was decided the area was for commercial use and the religious facility did not fit the criteria for that district. The other application that she was aware of in Missouri City was withdrawn because of drainage issues.

Joe Rome noted that the City's zoning map could be reworked to allow religious facilities in only one particular area. Ms. Wilson stated that if the City did so, then all of the uses described in the A-3 Assembly Group zoning would be burdened; not just religious facilities. None of them would be allowed in any other area. Also, if such rezoning would have the affect that there would be no place within the City for a religious facility to locate, that may be found to be a "substantial burden" on the free exercise.

Discussion ensued on zoning options.

Joe Rome noted that there are some cities that have listened to presentations, but when it came down to the vote, it didn't necessarily get approved. He wanted to know if it would be okay to vote against an application because he did not have enough information in front of him to approve it. Ms. Wilson stated that denial on that basis could be challenged on a due process argument because the applicant should be told what information is missing and have an opportunity to submit that information before a decision is made.

Felix Vega stated that in many areas there are many churches within 200'-300' of each other, doesn't that give the City some leverage. If the City presented Sunday traffic data concerns, would that give the City some argument?

Ms. Wilson stated that traffic concerns are rational and reasonable to take into consideration, but that the argument would probably fail if there was a reasonable way to mitigate the negative affects.

Virginia Rosas stated, "So, the City cannot in any way burden religious facilities, but the religious facilities can burden us"? Cheryl Wilson said, "yes".

Christine Rector asked, "what about an unhealthy balance; would not that be a valid argument" for denying an application? Cheryl Wilson indicated that it may be a rational basis, but because of the City's recent focus on economics and sales tax issues, an applicant would probably argue that the denial on the basis of a disproportionate amount of land devoted to such use is a ruse.

Joseph Olickan noted that of the current religious occupants, none have devalued property. Mr. Olickan asked if there was any way to rezone legally.

Cheryl Wilson stated that additional districts could be created. Also, overlay districts could be created to limit the type of uses for only a portion of a district. For example, along the commercial corridors of the City, impose an overlay district that would be in place from say the right-of-way to 300 yards back. In those areas limit the uses to retail.

Joe Rome noted that perhaps there should be meetings scheduled to remap or rezone; create a committee to review and reassess the different districts. He also noted that the owners of rezoned property would have a big problem.

Mayor Scarcella referenced 1984 when there were 11 zoning districts proposed and every property owner showed up and everyone was against the City.

Cheryl Wilson indicated that the desired effect would be that religious facilities would have less area to move into and the property owners would be protected. To preserve those areas that are commercial, narrowly tailor the language.

Fred Woolridge noted that the City already has the SUP in place, but the Commissioners just aren't looking at it the right way.

Joseph Olickan stated that it's time for the Commissioners to take a hard look at the SUP definition and noted that a committee should be created to remap or rezone.

Christine Rector noted that the City did not just wake up and think "we have enough churches"; it's been evolving. The Commission is now trying to do something to circumvent imminent concerns. The Commission would like an example of how this should be worded. Does 3A-Occupancy need to be eliminated completely?

Cheryl Wilson stated the Commission should think about what is desirable to move into these areas.

Discussion ensued regarding A3-Occupancy, RCT, MU and MU-1 options.

Cheryl Wilson noted that, if the Commission and City Council can identify those areas that can be developed as commercial or retail, it will limit the number of areas where A-3 Occupancies can locate.

Christine Rector noted that if an area is rezoned and a use that was permitted is no longer permitted, current occupants would be grandfathered until they leave the area and would not be allowed to expand.

Fred Woolridge stated, "that would give us the leverage we need".

Cheryl Wilson noted that there would be a lot of other uses that would be eliminated and some of the development that is currently there may not be on that list.

Gene Bane stated that it would make it more restrictive to property owners.

Mayor Scarcella stated that by firmly establishing criteria by which an SUP application should be reviewed and having that criteria clearly enunciated on a check list, Mr. Bane can go over this information with the applicant and the City will be able to better hone-in on areas of importance. A much more definitive picture would be seen by the applicant and the City. There needs to be as much consideration of procedure as there is of substance. What is in place needs to be applied as effectively and as clearly as possible. The City can say this is what will be considered, no matter what entity is the applicant. The Mayor suggested doing some of these procedural things and see how that works.

Christine Rector asked if the Commissioners could look to neighboring cities to see how they are regulating such facilities.

Cheryl Wilson noted that a survey was done three years ago and the survey showed that surrounding cities require an SUP in most districts just as Stafford does. Ms. Wilson noted that because Stafford does not have property taxes, land values are lower, making property cheaper, so people are running to Stafford. Because Missouri City had zoning in place for years and has developed the way it has, until recently, primarily residential, it is easier for them to make an argument against the location of such facilities. Stafford, on the other hand, is a hodge-podge of uses. But because of the adoption of zoning the undesirable uses will be, over time, eliminated.

Discussion ensued on available acreage locations and how to revitalize these areas.

Christine Rector recommended making the City's building standards more strict. Gene Bane noted that the City adopted building standards that are fairly strict.

#### 4. Discussion and possible action to adopt a preliminary report on proposed amendments to the Zoning Ordinance.

Alma Birdwell asked how to outline a check list for Gene Bane.

Cheryl Wilson stated that the Commission could, procedurally, adopt tonight's discussion as the preliminary report and whatever is done should be put in the form of a motion.

Discussion ensued regarding a check list, role play and assistance with question and answer techniques.

Joseph Olickan stated that the Commission currently reviews SUPs and plats with in-depth perusal and wants to know what more can be done to improve that process.

Alma Birdwell stated that the check list should include what the Commission wants to hear and what does not want to be heard.

Cheryl Wilson stated that when the applicant gets off-track, it puts pressure on the Commission and to keep things focused, the Chairman should take charge more affectively and it is critical to tell the applicant exactly what is required. Ms. Wilson also noted that the focus had gotten away from "land use". Everyone has lost site of what is important in the decision-making process.

Joseph Olickan asked why a check list is necessary. Cheryl Wilson stated that a check list would help the Commission when, for example, a denial is recommended,

there is going to be a more clear record for the basis of the denial should it be challenged. Also, for land-use planning, a better job could be done if permit applications are examined as they are submitted. If the Commission states ten reasons why an application should be denied, it would not mean each Commissioner agreed with all ten reasons.

The Mayor went on to say that when the public hearing is opened, something written by the City Attorney should be apparent to get to the facts. A check list in front of each Commissioner and Councilman would help to stay focused; therefore, it would be extremely helpful.

Discussion ensued regarding the SUP submitted in May.

Virginia Rosas asked what would happen to a check list at the end of each meeting; would it be a public record? Cheryl Wilson noted that a check list would be used as a tool only, like taking notes on a tablet. She did not believe it would be considered a public record; nor would it be a score sheet. Ms. Wilson went on to commend the Commissioners on the last two SUP submittals; noting that a good job was done on stating reasons as part of the motion, the more reasons stated, the better it is; the burden is then on the applicant.

Fred Woolridge stated that if the ordinance is going to be perused in-depth, that a standardized check list should be created that would apply to all applications and anything specific to a particular application could be added.

Alma Birdwell pointed out that the report prepared by the City Engineer, Pam Madrigal, on the last SUP was excellent. Ms. Birdwell also noted that driving out to the site was helpful.

Christine Rector asked if it was appropriate to ask the applicant why the SUP should be granted. Cheryl Wilson stated that a better way of phrasing the question would be, "why do you think it is compatible" with adjacent properties, which should be addressed at all public hearings.

Mayor Scarcella noted that when a negative impact is anticipated, the applicant can be questioned as to what impact the applicant expects. The City should have the flexibility to see how the applicant perceives the situation; so that the City completely understands.

Christine Rector noted that generic answers from the applicant should be anticipated.

Felix Vega stated that if the check list is good enough, pertinent questions can be asked.

**Fred Woolridge made a motion to have Gene Bane and the City Attorney create a check list using the current SUP considerations as a template and have our City Attorney draft an introductory statement for public hearings to be reviewed as a preliminary report when this Special Meeting shall reconvene September 12, 2006 at 6 p.m. Felix Vega seconded the motion with all present voting in favor.**

Mayor Scarcella noted that this Special Meeting was the most constructive and productive meeting the Planning & Zoning Commission has ever had and commended Cheryl Wilson and Gene Bane.

**5. Discussion and possible action to set a date and time for a public hearing on the proposed amendments identified in the preliminary report.**

Item tabled until the Special Meeting reconvenes September 12, 2006 at 6 p.m.

**6. Executive Session.**

The Planning & Zoning Commission deemed it unnecessary to go into Executive Session.

**7. Adjournment.**

Joseph Olickan made a motion to adjourn the meeting at 9:45 p.m. Fred Woolridge seconded the motion and it was unanimously approved to adjourn.

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Alma Birdwell, Chairman

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Jo Ann Holloway, Recording Secretary