



PLANNING COMMISSION

Comprehensive Planning Task Force • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: January 8, 2003
Albert Elias
TO: Planning Commission
FROM: Albert F. Elias, Executive Secretary
SUBJECT: DRAFT LAND USE CODE (LUC) AMENDMENT – LARGE RETAIL ESTABLISHMENTS (BIG BOXES) – PUBLIC HEARING

Issue – This is a public hearing item regarding a draft amendment to the *Land Use Code (LUC)* Large Retail Establishment (Big Box) regulations as recommended by the Planning Commission Subcommittee. The purpose of the amendment is to clarify the Code applicable to Large Retail Establishments, to provide flexibility in the application of requirements for Large Retail Establishments located in different situations, and to assure adequate design of Large Retail Establishment applications to ensure protection of adjacent and nearby, primarily residential, development. Attached is an overview of the proposed amendment prepared by staff (see Attachment A).

Recommendation – The Comprehensive Planning Task Force recommends that the Planning Commission forward the proposed *LUC* amendment, revised to simplify the draft to establish two, rather than three, review processes, to the Mayor and Council for public hearing with a recommendation for approval. In addition, staff recommends that the Planning Commission provide a recommendation to the Mayor and Council that review of zoning regulations for all commercial development be done, as was done by Pima County.

Subcommittee Recommendation – The Planning Commission Big Box Review Subcommittee recommends the Planning Commission forward the draft ordinance to the Mayor and Council for adoption (see Attachment B).

Background – On September 27, 1999, the Mayor and Council adopted ordinance number 9293, amending the *LUC* to specify design criteria for Large Retail Establishments. On January 28, 2002, the Mayor and Council adopted a change to the big box ordinance to allow flexibility in parking requirements and remanded the ordinance to the Planning Commission for a complete review.

On March 6, 2002, the Planning Commission established a Subcommittee to review the entire ordinance. The Subcommittee consisted of five members, three from the Planning Commission (Rob Tomlinson, Chairman; Grace Evans; and Robert Morgan), one neighborhood representative (Joyce Joosten), and one representative from the development community (Thomas Sayler-Brown, architect). In addition to the Subcommittee and staff, various representatives from the public, including neighborhood residents, development consultants, and representatives of big box stores, attended the meetings. The meeting agendas, minutes,

and all proposed drafts were posted on the Comprehensive Planning Task Force web site, and copies were e-mailed to individuals who expressed an interest in receiving them.

The Subcommittee listened to several guest speakers to more fully understand the many issues addressed by a Large Retail Establishment ordinance. Among the guest speakers were Gary Oaks, City of Tucson Department of Transportation; Thomas Spendiarian, architect/acoustical consultant, Architectural Design Associates; Craig Gross, Development Services Department; Peter Gavin, City of Tucson Zoning Examiner; Rick Volk, Volk Company; Al Kackley, resident adjacent to K-Mart, Broadway/Kolb; Jay Haubert, United Food and Commercial Workers Local #99; John Doney, Morrill & Aronson, PLC; Dave Burns, Chairperson, City of Tucson Development Review Board (DRB); Larry Cummings, City of Tucson Economic Development Office; Chuck Bell and Amy Hill, Wal-Mart; and Mara Kelly, International Council of Shopping Centers.

The Subcommittee met weekly between April 4, 2002, and October 29, 2002, at which time it voted to forward a draft amendment to the Planning Commission for its consideration. Attached is the draft amendment (see Attachment C). The Planning Commission held a Study Session on this item on December 4, 2002.

Introduction to the Proposed Amendment – The development or redevelopment of a Large Retail Establishment comes with considerable impact to the immediately surrounding neighborhoods. Among these impacts are:

- The potential for increased vehicular traffic leading to and from the development, often with adverse consequences if nearby streets are not sufficiently improved to handle the traffic;
- The potential for noise pollution from a development with extended hours of operation, which permits loading and unloading operations, delivery truck service, operation of trash compaction equipment, and noise generated by vehicles visiting the site;
- The potential for light pollution, which results from lighting of the large parking areas required for the development spilling over into adjacent properties;
- The potential for visual pollution, which results from a massively scaled building and which can block existing vistas from adjacent properties; and
- The effects of the aesthetic quality of the development, in terms of external scale and appearance, with consideration to surrounding land uses and compatibility with adjacent residential development.

The following discussion reviews the elements of the proposed draft amendment and provides reasons for the proposed changes. A more detailed comparison chart is attached showing the differences between the existing *Code* and the proposed amendment (see Attachment D).

Planning Commission Subcommittee Discussion – The Planning Commission Subcommittee, in its discussions of effects of big box development, listened to many advocates for neighborhood protection, including both attendees from the public and members of the Subcommittee. It was the consensus of the Subcommittee that the existing regulations needed two fundamental changes. One was to create a simple method for administratively approving sites that would not adversely impact other properties, and the second was to ensure that the highest level of review maintained both high standards and adequate flexibility to address the variety of circumstances that arise with such development.

It was the consensus of the Subcommittee that the impacts of a big box development more severely affect adjacent or nearby residential uses or residentially zoned properties than properties developed for commercial or industrial uses. The existing *LUC* provisions require approval by the Mayor and Council through a public special exception process for all sites. This treats the impacts the same regardless of whether the surrounding development is residential, commercial, or industrial and does not provide any incentive for projects to be located in more appropriate commercial areas. To address this, the Subcommittee has proposed three levels of review, based primarily on the location of the proposed development in relation to residential zoning or uses.

Proposed Review Processes – Development with access to an existing or proposed arterial street, which is not located adjacent to residential development, may be processed through a simpler review than development proposed adjacent to residential development. These developments are permitted either “by right” or as a Special Exception Land Use reviewed and approved by the Development Services Department (DSD). The remainder of big box development proposals are reviewed and approved as a Special Exception Land Use by the Zoning Examiner.

Staff notes that the proposal essentially creates two categories for approval. The first category is a site that has access to an arterial street and that is surrounded by commercial and industrial development, where approval would be by right or through a simple administrative review. The second category is a site that is adjacent to any residential property, is held to a higher design standard than those located adjacent to nonresidential uses, and approval would be through the Zoning Examiner review process. Staff proposes simplifying the draft proposal, subject to Planning Commission recommendation, for Mayor and Council consideration.

Proposed Performance Standards – The Subcommittee, with the support of neighborhood representatives and big box representatives who regularly attended the meetings, concluded that to address the second issue the performance standards specified in the ordinance should be strengthened and expanded to include the full site. This provides residents who would be affected by a new big box development with clear direction regarding the maximum protections that would be available. At the same time, it was also clarified that the procedure was flexible and that there would be a variety of means to meet the intent of the criteria. By contrast, the existing *LUC* provisions establish discretionary performance criteria which must be met or for which there must be a justification as to why they cannot be met. Under the proposed

amendment, there may be alternate approaches that meet the intent of the performance criteria, as well as justifications as to why the performance criteria do not apply in specific circumstances.

In the existing *LUC*, all proposed big box developments must be reviewed and approved by the Mayor and Council through any of a number of different processes, which give the Mayor and Council discretion to modify any of the performance criteria found in the *LUC*, usually after a public meeting or hearing. The Subcommittee proposes a streamlined process, with a Special Exception Land Use review process conducted by the Zoning Examiner, who will hold a public hearing on any development proposed adjacent to or within a specified distance from residential zoning or uses. The Mayor and Council may still review and approve proposed big box development undergoing a rezoning, development as a Planned Area Development, or changes to applications originally approved by the Mayor and Council.

In the proposed draft, big box development adjacent to residential zoning or uses is expected to comply with more restrictive performance criteria. The more restrictive performance criteria are not required when adjacent to commercial and industrial zoning, which is an incentive to site big box development in those locations. All big box development must address the impacts of traffic generated by the development and meet minimum design criteria. These design criteria include as providing for pedestrian access, providing a minimum number of site amenities, addressing site circulation issues, having building design features for façades facing public streets, and providing screening of mechanical equipment. In addition, big box development adjacent to residential development must provide greater setbacks, not only for the buildings on the site, but also for delivery and loading areas, trash collection areas, outdoor display or sales areas, and other buildings and uses which may have a greater impact on adjacent uses based on their nature.

Subcommittee Discussion – Floor Area Limits (Mix of Food and Non-Food Sales) – In the existing *Code*, big box development having more than one principal use (either food and beverage sales or general merchandise sales) as a part of one business is subject to a 10 percent limit on floor area of the smaller-sized use. During the discussions, a consensus on this issue could not be reached. Four of the five Subcommittee members felt that having more than 10 percent floor area in either type of use did not substantially change the nature and impact of the development. One Subcommittee member felt there was evidence that the combination of uses substantially increased the impact of the big box on surrounding neighborhoods. Based upon the majority position, the draft does not include a floor area limitation.

Staff Concerns – Other Uses on Big Box Sites – Staff has been particularly concerned with the application of restrictive standards to buildings and uses on the site other than the big box itself. Matters that are integral to the entire site, such as pedestrian and vehicular circulation, common parking, and architectural design, are clearly related to the approval of the big box. Typically, the operation, the location, and the use of other individual buildings on the site are not clearly related to the big box. The Subcommittee concluded that it was essential to maintain the restrictive criteria for the entire site to ensure the proper balance between the restrictive criteria and the flexibility of the procedures for approval. The Subcommittee recognizes that Large

Retail Establishments, which do not have big box stores, have similar impacts but decided to deal with just those involving big box stores in this amendment. The Subcommittee requests the Planning Commission provide a recommendation to the Mayor and Council that there be further review of zoning regulations for all commercial development, such as shopping centers, as part of the urban design guidelines project to address these impacts, as was done by Pima County.

Food and Beverage Sales in I-2 – The Subcommittee also discussed the existing regulations for the I-2 zone, which permit a Large Retail Establishment selling general merchandise but allow food and beverage sales only as a secondary use. The Subcommittee requested that the Planning Commission also provide a recommendation to the Mayor and Council to include food and beverage sales as a permitted use in the I-2 zone. Since the discussion of this issue with the Subcommittee, the Zoning Administrator has reviewed this matter and has determined that food and beverage sales, in conjunction with a big box, would be permitted in I-2 if it were less than 50 percent of the gross floor area. Therefore, amending I-2 is not necessary to achieve the objectives of the Subcommittee.

Issues Raised at the Study Session – At the study session on December 4, 2002, members of the Planning Commission requested that several issues be discussed at greater length at the public hearing.

During the study session, a map was presented that showed approximately forty sites throughout the city that appear to allow big box development through either the “by right” or DSD review process. The sites were selected based on their location relative to residential zoning. It should be clarified that these are not the only sites on which big box development may occur. Any site in the city that is zoned (or rezoned to) C-2, C-3, OCR-1, OCR-2, I-1, or I-2 has the potential for big box development, subject to review and approval by the Zoning Examiner.

Staff notes that the 500-foot setback distance of a big box development site to a residentially zoned site or use only establishes those sites that may be processed “by right” or through the DSD review process. A request was made to justify the large setbacks for buildings on a big box development site closer than 500 feet to residential zoning or use. The Subcommittee chose setback distances that provide the maximum protection to existing and future residential development. The Subcommittee also recognized that these setbacks are subject to modification during the Zoning Examiner review process and, therefore, clarified in the draft that alternative methods of achieving the purpose of the setbacks, i.e., protection of adjacent residential development, are sufficient cause to modify the setbacks.

The issue of traffic generation was briefly discussed, and clarification was requested concerning the impact of a big box compared to a shopping center of the same overall size. Gary Oaks, Transportation Administrator, stated during the Subcommittee discussions that the traffic generated by a big box is comparably less than the same size shopping center (see Attachment E, Subcommittee Minutes of April 4, 2002).

Clarification was requested as to what could occur in the building setback area. In this area, landscaping and parking are permitted. Parking is not permitted in the landscape buffer. It is proposed that other outdoor uses, such as loading or delivery, trash collection, and temporary or seasonal sales, will not be permitted in this area.

Questions were raised concerning noise abatement. According to Thomas Spendiarian, noise from warning devices is designed to be heard due to the level (approximately 85 Ldn), the range for optimal human hearing (approximately 1,000 Hertz), and the intermittent pulsing of the pure tone. Warning device noises should be audible even in a closed vehicle with the air conditioning running and the music system in operation. A typical cross-section of a sound-attenuating wall, based on Pima County's design, has been added to the draft. Last, the term "acoustical consultant" has replaced "acoustical engineer" in the draft.

Conclusion – The Subcommittee has performed a thorough review of the requirements and has proposed a careful balance between permitting big box development either "by right" or through a streamlined review process. It is appropriate at this time to forward this amendment to the Mayor and Council for its consideration.

AE:JM/s/Coderev/Big Box Review Subcommittee/PCPHcommunication.doc

Attachments:

- Attachment A: Overview of the Proposed Amendment
- Attachment B: Letter of Recommendation from the Subcommittee
- Attachment C: Draft *LUC* Amendment
- Attachment D: Comparison Chart of Existing/Proposed Amendment
- Attachment E: Subcommittee Minutes of April 4, 2002