

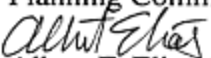


PLANNING COMMISSION

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

DATE: February 5, 2003

TO: Planning Commission

FROM: 
Albert F. Elias, Executive Secretary

SUBJECT: **DRAFT LAND USE CODE (LUC) AMENDMENT – LARGE RETAIL ESTABLISHMENTS (BIG BOXES) – CONTINUED PUBLIC HEARING**

Issue – This is a continued 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 and staff. The Planning Commission held a public hearing on January 8, 2003, and continued the item to tonight's agenda.

Recommendation – The Comprehensive Planning Task Force recommends that the Planning Commission forward the proposed *LUC* amendment 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.

Review of the Proposed Amendment – The Subcommittee approached the review of the existing ordinance from the basis that development or redevelopment of a Large Retail Establishment considerably impacts surrounding neighborhoods, with the potential for: increased vehicular traffic; light pollution; visual pollution; and the effects of the aesthetic quality of the 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. Therefore, the Subcommittee proposed three levels of review, based primarily on the location of the proposed development in relation to residential zoning or uses. Staff notes that criteria for two of these processes are nearly identical and has consolidated the draft language placing both processes in the same Section of the *LUC*, while retaining three separate processes. (See Attachment A, proposed amendment.)

Proposed Review Processes – Development which is not located near existing residential development or zoning, except across an arterial street, and which has access to an existing or proposed arterial street may be processed through a simpler review than development proposed near residential development or zoning. This type of development is permitted either as a Permitted Land Use ("by right") or as a Special Exception Land Use reviewed and approved by the Development Services Department (DSD). All other development proposals are reviewed and approved as Special Exception Land Uses by the Zoning Examiner.

Proposed Performance Standards – The Subcommittee concluded that performance standards specified in the ordinance should be strengthened and expanded to include the full site, to provide residents affected by big box development with clear direction regarding the maximum protections that would be available. At the same time, the Subcommittee also concluded that the procedure should be flexible, providing 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 justification as to why they cannot be met. Under the proposed amendment, there may be alternate approaches identified during the Zoning Examiner review process 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 through a number of different processes at the discretion of the Mayor and Council, who may modify any of the performance criteria found in the *LUC*. The Subcommittee proposes a similar, 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, or within a specified distance from, residential zoning or uses is expected to comply with more restrictive performance criteria. The more restrictive performance criteria are not required when big box development is adjacent to commercial or industrial zoning, providing an incentive to locate big box development in those locations.

All big box development must study and mitigate the impacts of traffic generated by the development. All big box development must meet minimum design criteria, which include 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.

Big box development adjacent to residential development or zoning must provide greater setbacks for the buildings on the site and also for delivery and loading areas, trash collection areas, outdoor display or sales areas, and buildings and uses which may have a greater impact on adjacent uses based on their nature.

Issues Raised by the Planning Commission – The Planning Commission held a Study Session on this item on December 4, 2002, and a Public Hearing on January 8, 2003. At the public hearing, several issues were raised by members of the public and the Commission. These issues included:

- applicability of the 10 percent limit on floor area;
- whether the review processes are administrative or legislative;
- staff proposal to compress three tiers of review processes into two;
- questions concerning specific language in the draft, such as for setbacks, outdoor sales vis-à-vis sidewalk sales, applicability of delivery and loading requirements, and applicability of criteria for warning beepers;
- application of aesthetic requirements for big box development and applicability of “case law” for design requirements for big box development;
- questions about the construction of infrastructure proposed within five years as a determinant for process applicability; and
- inclusion of a flow chart showing the processes.

Staff Response to Identified Issues –

- *Applicability of the 10 Percent Limit on Floor Area.* This limit restricts the amount of floor area of one of the two land use classes (Food and Beverage Sales or General Merchandise Sales) when both classes are located within the same structure. This provision in the existing *LUC* was added by the Mayor and Council at the time of ordinance adoption at the public hearing, based on a request from a representative of the United Food and Commercial Worker’s Union (UFCWU), and is typically thought to apply only to food sales within a general merchandise sales big box. During the Subcommittee’s review process of the ordinance, insufficient evidence was presented to substantiate a significant impact when a big box development had both uses combined in one store. The majority of the Subcommittee therefore held that the limit is unnecessary. Staff notes that retailers that would be constrained by the floor area limitation believe that, while it may be waived by the Mayor and Council, it is, in effect, a prohibition. Two studies were referenced by speakers at the public hearing, *The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Finances*, and *The Potential Economic and Fiscal Impact of Supercenters in San Diego* (which summarizes the first study) (see Attachment B). These studies deal with the potential economic impact of big box development (such as hourly wages and benefits, market share analyses, and tax revenues) rather than land use issues. Staff and the majority of the members of the Subcommittee felt that this issue was inappropriate in a code based on land use.

- *Whether the Review Processes are Administrative (Staff) or Legislative (Mayor and Council).* The current *LUC* requires that all big box development be reviewed by a legislative process. The proposed draft provides for administrative review processes by staff, the Director of Development Services, or the Zoning Examiner. Speakers expressed concern that their elected officials would not be a part of these processes. The Mayor and Council, however, are responsible for adopting any ordinance setting forth criteria for development of big box stores. Furthermore, an appeal of a decision by the Zoning Examiner is made to the Mayor and Council.
- *Staff Proposal to Compress Three Tiers of Review Processes into Two.* The draft as presented to the Planning Commission on January 8, 2003, consists of a three tier review process, which allows development by right, through a Special Exception Land Use review by the Director of Development Services, and through a Special Exception Land Use review by the Zoning Examiner. Staff has amended the draft to combine the by right and the Development Services reviews into the same Section of the *LUC*. While there may be merit in reducing the actual number of processes to two by eliminating the “by right” option, the three tiers of review remain unchanged in the draft.
- *Questions Concerning Specific Language in the Draft.* Speakers at the public hearing raised questions about specific wording and phrases in the draft ordinance and how those were to be applied. These questions were submitted separately and have been attached, along with staff responses (see Attachments C and D). In general, they relate to clarifications. In some cases, the draft has been modified to address these concerns.
- *Application of Aesthetic Requirements for Big Box Development.* The City Attorney’s Office states that the Mayor and Council have legislative authority to impose design criteria on development, whether commercial, industrial, or residential. The design criteria which are applicable to big box development currently in the *LUC* are also found in the draft ordinance. These criteria are derived primarily from the City of Tucson’s *Design Guidelines Manual*. The *Manual* provides general guidelines for land use and site design and community character and design, and it also provides more specific criteria for residential development, office/commercial/park industrial development, large retail/wholesale development, and special design options, such as infill, urban villages, and master-planned communities. The design criteria for large retail/wholesale development place an emphasis on reducing the impact of such development to address neighborhood concerns, providing public amenities, adequately addressing pedestrian access by providing pedestrian scale amenities and pedestrian systems, mitigating the impact of the scale of such development, requiring entryway design elements, and making big box development compatible with surrounding neighborhoods. Although other communities have chosen different size limits, the Mayor and Council have chosen to apply these criteria to big box development for buildings over one hundred thousand square feet in size.

- *Questions About Assuring the Construction of Infrastructure Proposed Within Five Years as a Determinant for Process Applicability.* The concern centers on whether or not individual projects in the approved Capital Improvement Program (CIP) are guaranteed to be constructed if they are within the five-year CIP. The CIP is presented to the Mayor and Council on a yearly basis for review and readoption. The inclusion of a project in the CIP is a clear indication of the City's intent to pursue the roadway project. Given that there is a significant backlog of unmet transportation needs, careful consideration is given to CIP project listings. Whether a proposed big box development applies this determinant or not, a *Traffic Analysis Report* identifying the potential negative impacts from the development, along with mitigation measures, must still be submitted for review and approval. This assures that adequate roadways are in place to serve the big box development.
- *Applicability of Criteria for Warning Beepers.* The applicability of the *LUC* is to warning beepers outdoors.
- *Inclusion of a Flow Chart Showing the Processes.* Staff has prepared flow charts to indicate how the processes will be reviewed. These flow charts will be included as graphics in the *LUC*.

Conclusion – Throughout the past several months, the Subcommittee, members of the public, and staff have all worked to propose a draft amendment for changes to the existing big box ordinance. Staff recommends that the proposed amendment be forwarded to Mayor and Council for consideration.

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Attachments:

- Attachment A: Draft *LUC* Amendment
- Attachment B: “The Potential Economic and Fiscal Impact of Supercenters”
- Attachment C: Letter and Enclosures from Lewis and Roca
- Attachment D: Table of Questions Concerning Specific Language in the Draft