

**A Rezoning Dispute in Downtown Bryan, Texas:  
Exclusionary Planning or Economic Revitalization?**

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**Conflict Resolution Analysis:  
Rezoning Dispute in Downtown Bryan**

**I. Identification of the problem generating the dispute**

After much anticipation, the long-awaited noise of construction fills the air of Downtown Bryan. The once dilapidated segment of South Main is now the site of a luxury hotel, multiple restaurants, loft-apartment living, and the home of an international technology corporation, specializing in fiber optics. Just blocks away, the North end of Main Street is eerily quiet. No new construction or investment has occurred. Windows in the buildings are broken, and buildings remain vacant. People sit on the sides of the street and in door stoops. The visitors which frequent the South end do not dare venture to the north. Visitors to the north are comprised mostly of migrant workers and those looking for a helping hand. The City of Bryan finds themselves in a precarious situation in terms of future economics for the city. They chose to act, with nearly a year-long property dispute to follow.

**a. Background**

Like most historic downtowns, Bryan has been impacted in past decades by changing market demands. Bryan City Council determined that Downtown Bryan is unique, thereby making it critical that extraordinary measures be focused towards its revitalization. In 1999, when the City of Bryan adopted a major update to its Comprehensive Plan, Downtown was identified as an underutilized asset,

“Historic Downtown Bryan should be a major activity center and focal point of the community. It should be the heart within the heart of the community. It is ready to be rediscovered.”

In the past, a number of development plans for Downtown Bryan have been prepared by various civic organizations, focusing on specific aspects such as aesthetics or promotional issues. The Downtown Bryan Master Plan was a response to the need for a new unified vision for Downtown Bryan. In October of 2002, the Downtown Bryan Master Plan won the Project Planning Award from the Texas chapter of the American Planning Association. Though just over three years old, the Plan has already begun to be implemented through a number of public/private partnerships including downtown merchants, property owners, the City of Bryan, and other stakeholders. Earlier this year, Phase One of the Streetscape Plan began construction at an

estimated cost of \$3,000,000, financed entirely from the City's general fund. The completed construction improvements have provided new underground utilities, streets, sidewalks, historic-style lighting, and landscaping for a four-block stretch of Main Street.

**b. The problem**

The Downtown Bryan Master Plan makes the following recommendations: to extend the current boundaries of the Downtown Zoning District to the East and North, to encourage the development of office uses in the Washington Avenue area, and to substantially reduce the amount of land zoned for commercial and industrial use around the Downtown Area (LRK, 2001). In an effort to implement the plan, Bryan Planning Staff proposed five new zoning districts. For the purposes of this paper, we shall focus on the dispute over the proposed Downtown North district.

The properties located within this proposed district include a mixture of vacant land, vacant and occupied commercial uses flanked by single family residences on the east and west, and a mix of commercial and residential properties to the north. Prior to the rezoning, the area encompassed by the Downtown North district was zoned for commercial use, and deemed "incompatible with many existing and desired residential and traditional downtown uses". Staff's proposal to rezone the commercial properties to Downtown North would encourage high-density residential use, while permitting neighborhood commercial and retail use as traditionally found in downtown areas. The Downtown Bryan Master Plan recommends infill residential development on the vacant lots in this part of town (LRK, 2001).

Many charitable non-profit organizations have located in the Downtown North district due to their proximity to the population they serve and the low cost of land. One of these organizations, the Twin City Mission, is the largest property owner in the Downtown North district and provides the only homeless shelter in the Bryan/ College Station area. Because non-profit or charitable organizations are not listed as a permitted or conditional use in the proposed zoning text amendment for the Downtown North district (*see Planning Department Staff Report, Appendix C*), the Twin City Mission is considered an "existing non-conforming use." Legally non-conforming uses which have been in regular and continuous use may continue until removed. Non-conforming uses may not be enlarged upon, expanded, or extended. Once a non-conforming use is discontinued or abandoned, any future use must come into compliance with the existing zoning ordinance or change to another non-conforming use, provided the new use is

deemed a less intense use and that its adverse impacts to surrounding properties are not increased. And, in the event of some disaster, should 60 percent or more of the non-conforming use's total appraised value be destroyed, the non-conforming use would be required to come into compliance with the existing zoning ordinance. Twin City Mission opposes the rezoning proposal and pleads for charitable organizations to be listed as a permitted use in the Downtown North zoning district.

**d. Brief history of events**

The public hearing process began in the Planning and Zoning Commission meeting on November 21, 2002, though TCM did not come out in opposition until the meeting of December 5, 2002, citing an error in the notification (*See Timetable of Events, Appendix A*). The Planning and Zoning Commission then postponed any decision until the meeting of January 9, 2003. After a number of complaints engendered extensive media coverage, the Commission denied the rezoning and related text amendments to the zoning ordinance.

Nearly six months later, following City Council directive, the City brought the rezoning back to the Planning and Zoning Commission for consideration during their July 17, 2003 meeting. At that time, the Planning & Zoning Commission made the motion to recommend approval of the rezoning and related text amendments to the Bryan City Council. City Council made the motion to approve the rezoning and related text amendments at the meeting of August 12, 2003, and made the motion to approve the rezoning and related text amendments with a second and final reading of the ordinance on September 9, 2003. (*See Organizational Chart, Appendix B*).

**II. Identification of the primary and secondary stakeholders and their interests/ positions.**

The first task when analyzing a dispute is to identify key stakeholders and understand their concerns and interests. “With this knowledge, a practitioner can determine how best to promote negotiations and collaborative problem solving, as well as identify strategies for helping stakeholders.” (Susskind, 1999). The following table identifies the key stakeholders classifying them as decision makers, primary and secondary stakeholders.

Stakeholders

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Decision Makers

Planning and Zoning Commission  
City Council

Primary

Twin City Mission  
City of Bryan

Secondary

Other charitable organizations: Health for All and Habitat for Humanity  
DBEDA  
Surrounding business  
Surrounding property owners  
Public

**a. City Council and Planning and Zoning (P&Z) Meetings**

The main communication channel for stakeholders was the public hearing process that began November 21, 2002. The following section includes an analysis of the meetings to identify the interests and concerns of the primary stakeholders of this conflict. The stakeholder Matrix (*Appendix C*) provides a summary of the analysis.

- **P&Z Meeting: December 5, 2002**

**City of Bryan Department of Planning and Development Services**

City staff presented the staff report for the consideration of a text amendment to the Comprehensive Zoning Ordinance #756 Section 15, to remove ‘DT’ Downtown Zoning District to create the ‘DT-N’ Downtown North, ‘DT-S’ Downtown South, and ‘DT-C’ Downtown Civic zoning designations with associated permitted and conditional uses and to provide a definition for “Loft apartments” (*See Planning Department Staff Report, Appendix D*). City staff informed the Commission that the Downtown Bryan Master Plan recommends that the city have greater control over land use and architectural features on new construction in the proposed districts. The proposal would divide the Downtown area into three distinct districts, each allowing for the unique character of the district to be promoted while retaining architectural control over the area as a whole. Charitable organizations will be considered a non-conforming use after the rezoning.

**Twin City Mission**

The Mission is one of the primary stakeholders in this conflict as they were perhaps most directly affected by the rezoning decision. The main concern of Twin City Mission (TCM) in the early stages of the rezoning process was the new status of charitable organizations as a non-conforming use in Downtown. TCM disagreed with the City’s rationale to exclude charitable organizations as a permitted use in the Downtown North district, noting that missions are usually

located in downtown areas. They were also concerned about the “Not In My Backyard” (NIMBY) attitude of the population that does not want the Mission in their neighborhood. This NIMBY attitude usually reflects the negative perception generated among those who live near a controversial site

A TCM staff member pointed out an error in the public hearing notice which listed charitable organizations as a permitted use in the Downtown North district. TCM staff considered the notice to be misleading preventing many other charitable organizations from participating in this meeting and indicated this perception about the public notice could lead to a lack of confidence in the procedure and in the City. If the intention of the City is to promote high density residential development in Downtown, it would be hard to find a greater density than the Mission which sometimes houses as many as 100 people. Business owners, the public and other parties did not express their concerns related to the TCM case in this meeting.

### **Planning and Zoning Commission**

The Commission made a unanimous decision to postpone action on the text amendment to the comprehensive zoning ordinance until the meeting of January 9, 2003.

- **P&Z Meeting: January 9, 2003**

### **City of Bryan Planning and Development Services**

The city’s planning staff again presented their report, informing the Commission that this is the third public hearing regarding these items which stem from the adoption of the Downtown Master Plan in 2001. Again, city staff reiterated that the proposed rezonings would provide a tool for the Master Plan’s implementation as well as the protection of the character of Downtown and its surrounding areas.

Staff clarified the boundaries of the proposed ‘DT-N’ Downtown-North District which would extend from West 24<sup>th</sup> Street to Martin Luther King Street, along North Bryan Street and North Main Street. Staff read the lists of permitted and conditional uses for each of the proposed districts and explained that the existing ‘DT’ Downtown zoning classification would be struck from the ordinance. The terms of legally non-conforming or “grandfathered” uses were clarified for the public along with their implications for future development plans.

### **Twin City Mission**

An increased number of people spoke on behalf of the Mission in the January meeting, as TCM became more organized and the dispute was publicized in the media. During this meeting,

TCM repeated its concerns about the negative implications that the rezoning decision would bring specifically to the Mission. A new concern raised was the inability of the Mission to improve or expand their present facility, or rebuild if they should sustain damage. At this meeting, the grandfathered status was considered unacceptable because of their need to expand and the fact that they had already raised money to build a new shelter.

A resident of TCM talked about the services she receives from the Mission, which includes childcare. She and other residents benefit directly from the services of the Mission.

Some TCM Board members shared the concerns of the Mission's staff about the impact of the rezoning to the Mission and other charitable organizations like Habitat for Humanity with whom they work closely. One member emphasized the good job the Mission is doing and the fact that the homeless do not have a voice in the process. Another member referred to the meetings with the Master Plan's consultants in which the Mission's location was acknowledged without opposition. She felt that the consultants in which the Mission's location was acknowledged without opposition. There was a general consensus among the TCM Board members that the consultants agreed with the current location of the Mission and did not see the Mission as an impediment to the revitalization of Downtown. TCM staff cited the market surveys prepared for the Master Plan, indicating that only one of the respondents listed Twin City Mission as a possible "deterrent to revitalization."

One TCM Board member expressed that the Mission does not feel they are being "run out" of Downtown. This comment contradicts previous statements of other representatives showing that even if the concerns are the same, some perceptions vary among TCM staff and board members.

### **Other charitable organizations**

Health for All is a charitable organization located in Downtown that would be affected by the rezoning, but, due to the type of services they provide, they are not as directly affected as TCM. During the meeting they appealed for more support for all non-profit businesses in Downtown.

### **Business owners**

A nearby business owner stated that the homeless will congregate in the area where the Mission is even if the Mission relocates. He expressed concern that the city may not be successful in attracting new business to the area with the Mission in its current location.

Problems associated with the congregation of homeless in the area (i.e. panhandlers, people sleeping on the street, etc.) make the Mission a deterrent to revitalization.

### **Property owners**

A nearby property owner stated that problems associated with the Mission include the homeless are sleeping on the streets and at property edges, often defecating on other property. He stated that situation will worsen if the Mission moves because the Mission is a congregation point for them. He does not feel that the Mission is a deterrent to business in the area, but it could deter residential investment.

### **The public**

Various religious representatives presented strong support for TCM's interests. A pastor of a local church talked about the right of the Mission to use their property and called the rezoning proposal to be "partial, discriminatory and unfair". Though he understood the intention to make the area more attractive for investors, he stated the proposal is not in keeping with the spirit of the community as a whole. He perceived the revitalization process to be exclusionary of the Mission. Another church leader stated that he does not share the same expectations about the revitalization process that the City of Bryan does. He was concerned about other realities such as human condition which he felt was being forgotten. He brought attention to the importance of addressing the problem of homelessness in the area and stated that the present location of the Mission is the best because it has easy access to Health for All.

Many citizens spoke on behalf of the Mission, recognizing the good job that the Mission is doing, the need for the Mission, and the probability that those services will not be affordable from any other location. "Who will serve the needy population in the community if the Mission cannot?" expressed a citizen. A common perception was that the City of Bryan should take pride in the Mission.

One citizen supported the revitalization of Downtown, but considered the goals of the Mission and those of the City as not being mutually exclusive. Another citizen said that all people should be able to participate in the luxury of this city, showing his perception of the Mission as being excluded. Downtown Bryan was compared to Downtown Houston where a homeless shelter does not make the downtown less appealing. It was stated that the Mission deserves the right to expand as any other retail business, and one woman appealed to the sensibility of the Commission.

## **Planning and Zoning Commission**

During these meetings, the Commission discussed several issues. They clarified that no one at the City is against the Mission. One Commissioner was frustrated that this issue has become a referendum on whether people like TCM or not. The Commission does not believe the Mission is doing a bad job. It was commented that the Mission is a regional facility and that Bryan could become a service center for the needy of the entire region. In this sense, Bryan is being burdened by the citizens of other communities. According to another Commissioner, the importance of Downtown's revitalization should not be degraded by focusing only on this issue. The Commission has to look out for what's best for the community as a whole. They do believe "that part of town" has a stigma, and "if we try to clean it up, development might be more ready to come." They are not sure whether the best location for the Mission is Downtown. "It may be an asset, may be a detriment." They asked city staff to work on their proposal in order for the Commission to re-examine it. The motion to deny the text amendment passed. The Commission informed the public that the hearing and notification process will start again after Staff submits a revised proposal.

- **P&Z Meeting: July 17, 2003**

## **City of Bryan Planning and Development Services**

The city's planning staff presented the staff report, restating their case from the meeting of January 9, 2003.

## **Twin City Mission**

TCM staff identified the same concerns discussed in previous meetings, including their need to expand, their limited funds, and their need to be located in Downtown. They referred to an editorial published in The Eagle stating that the City of Bryan is "heavy handed" in its proposed rezoning, and that the Planning and Zoning Commission should reject it. Staff submitted a survey of 19 Texas cities, 14 of which had homeless shelters located in their downtowns.

During this meeting, the issue of relocation was brought up. Efforts have been made to find a mutually agreeable place for TCM to relocate. An advocate claimed that the sites identified thus far have been unacceptable and unable to pass the environmental study. The City's initiative was referred to as a means to push away "the little people." They believe that the public has a misperception of the homeless. Rather, TCM's inhabitants have a curfew and

are not permitted on the streets at night. It was stated that the City should penalize or remove loiterers.

### **Other Charitable organizations**

Mental Health and Mental Retardation (MHMR), another charitable organization, expressed its concerns during this meeting. They have three locations in Downtown and are afraid of the implications of the rezoning. City staff informed them that their properties are not located in the areas subject to the rezoning. A representative of Habitat for Humanity expressed his concerns about the rezoning and how it will affect the use of their properties and the services they provide.

### **DBEDA**

A representative of Downtown Bryan Economic Development Association informed the Commission that they believe that the Downtown Bryan Master Plan's rezoning recommendations will promote the future redevelopment of the area. The Downtown North district is a stark contrast to the Downtown South District which is experiencing the benefits of a historic central business district. He understands there is difficulty and inconvenience in change, but DBEDA feels these changes will be of benefit to Downtown and the city as a whole.

### **The Public**

One resident informed the Commission about his support of TCM. He is against the atmosphere that is emerging of "us versus you" and he believes that charitable organizations are located in downtown areas because of their proximity to other important services.

A neighboring resident commended city staff for their proposal and said that his visitors are scared of the TCM's inhabitants. He thinks there is a perception problem surrounding the Mission and TCM should work on that perception. TCM's current fenced area does not keep inhabitants off the streets. He felt that NIMBY attitudes were reflected in the market survey in that most people will respond that they want the Mission to remain in Downtown because they don't want it located near their neighborhood. TCM is located on prime real estate traditionally used for commercial, retail, and multi-family units. Many people would like to live Downtown but none are willing to invest in a property next to TCM in its current state.

### **Planning and Zoning Commission**

The Commission clarified that legally non-conforming uses can change ownership if the use is of the same or less intensity. The Mission would be able to make improvements to their

site so long as they do not expand the footprint of the structure. The Commission commented about surveys of missions located in others downtowns. None of the cities listed are as small as the City of Bryan, which has a limited Downtown, and none seems to be part of a redeveloping downtown segment. The ordinance that they approved will not prohibit making improvements to the Mission.

They recognize that TCM is doing a great job, which gives rise to speculations as to whether they are attracting homeless from other communities because their good reputation. They stated that the Downtown Bryan Master Plan is an example of good planning with a great investment from the citizens of Bryan. Planning, however, is an ongoing process.

The Commission agreed that facilities such as TCM are not compatible with the portion of Downtown needing redevelopment and that finding an alternate site near Downtown would accommodate both interests.

- **City Council Meeting: August, 12,2003**

### **Twin City Mission**

TCM staff identified the same concerns discussed in previous meetings, including their need to expand, their limited funds, and their need to be located in Downtown. They also pointed to their collaboration with the city by improving abandoned and condemned buildings according to the Downtown paint program, emphasizing that their neighbors are not doing the same. They asked the City Council not to take away the Mission's option to use the property they have already obtained in Downtown.

A new issue brought up in this meeting was the request to work together with the City and find a mutually agreeable place for TCM to relocate. It was expressed that the current plans of TCM to expand fits perfectly with Downtown Bryan Master Plan, resulting in a beautiful building with fencing and green space. It was also during this meeting that "environmental racism" was brought up, referring to the desire of the City to place the "undesirables" in a place where no one else wants to live.

### **Property Owners**

A neighboring property owner of the Mission commented about the perception problem in the north area of Downtown. His visitors have a negative image of the homeless who were often loitering on the street and sleeping in his doorway. According to him, the residents of the Mission are very visible in the downtown area which has led to a perception problem about the

safety of the area. He cited the example of Austin where the shelter is a couple of blocks from downtown, and stated that TCM could do the same. There is potential to residential use in Downtown but no one wants to invest in a property next to TCM. He stated that the Commission should consider the needs of everyone, not just the Mission's. He does not want Downtown to become a "campus" for non-profit organizations, as that is not the vision of the Downtown Bryan Master Plan. He remembers the consultants listed the Mission as a "challenge" in the Plan.

### **DBEDA**

Speaking on behalf of Downtown Bryan Economic Development Association (DBEDA), one member asked for the Council's support of the ordinance as it would create economic and cultural continuity and uniformity throughout the area. Another representative stated that the issue is one of stimulating economic development and growth in Downtown Bryan, not the worthiness of the location of charitable organizations.

### **Other charitable organizations**

A representative of Habitat for Humanity commented on the good relationship they have with the City of Bryan. He expressed his concerns about the effect that the rezoning will have in the use of two of their properties located in Downtown. Another representative referred to the NIMBYism towards Habitat houses, and noted that the City of Bryan has continued to support them. According to her, the City of Bryan cannot justify setting the TCM residents aside.

Health for All expressed their concerns about the initiative because they would like to expand their facility currently located in Downtown.

### **The public**

Citizens commented again that the location of the Mission needs to be downtown because of the proximity to other services, though one citizen pointed out that this is because no one wants the Mission to locate in their neighborhood. Several people asked for the City of Bryan to keep supporting the Mission and to continue being a friend to them. A citizen complained about the need for more information about the non-conforming uses. Staff from the Planning Department attempted to answer his questions.

A citizen referred again to the Consultants' recommendations in Downtown Bryan Master Plan and their acknowledgement of the future site of Twin City Mission on Bryan Street. He perceived that the City of Bryan is ignoring the expert's recommendations. According to him,

the Mission's inhabitants are not on the streets at night, and the real loiterers should be penalized. He pleaded for sympathy and brought up issues of human morality. He brought up the fact that alternative sites for the relocation of the Mission have been unacceptable so far, and would likely be unable to pass an environmental study. He ended referring to the bad image that the City is projecting by pushing away "the little people".

One person stated that it was important that the ordinance be approved for the sake of Downtown's redevelopment. Another recommended that TCM's new facility should have a screened-in porch where residents could sit without observation by visitors to Downtown.

### **City of Bryan Department of Planning and Development Services**

City staff stated that charitable organizations in Downtown would be grandfathered in their current location with their current use, but they could not expand under the new ordinance. They also stated that if charitable organizations own vacant property, they could not build a new structure that is a non-permitted use. TCM is identified in the Master Plan as a challenge to redevelopment, but the plan does not state whether or not charitable organizations should be excluded.

### **City Council**

A Council member made the motion to approve the first reading of an ordinance amending Ordinance #756, repealing the zoning district 'DT' Downtown, and creating the zoning district 'DT-N.' Concern was expressed that charitable organizations had purchased property in downtown to expand their facilities, but would not be able to do so under the new ordinance.

Council members also expressed concern about the perception in the community that the downtown area was unsafe due to the location of certain facilities. It was also suggested that the community come together to address the needs of the Downtown charitable organizations. The motion carried with four yeses and three noes.

- **City Council Meeting: September 9, 2003**

During the regular meeting of September 9, 2003, the Council approved the text amendment with a second and final reading of the ordinance.

#### **b. Issues**

From the analysis, five issues were identified and discussed for further understanding of the dispute.

- **Zoning vs. use of private property**

The dispute, like most disputes over land use, centers on the growth-equity conflict. The process of regulating land use in a city provides the basis for disagreement among the population raising a contradiction between private property and government intervention (e.g. zoning) to ensure the social welfare (Campbell, 1996).

“This tension is generated as the private sector simultaneously resists and needs social intervention, given the intrinsically contradictory nature of property. The conflict defines the boundary between private interest and the public good. This growth-equity conflict is further complicated because each side not only resists the other, but also needs the other for its own survival” (1996).

The Downtown Bryan Master Plan recommends that the Downtown Zoning District be extended from its current boundaries to create a cohesive urban fabric and zoning is the tool required for implementation. City staff believes that the proposed district will accommodate existing development and promote the revitalization of Downtown while protecting its unique character and of the surrounding areas.

TCM has purchased property in Downtown for the purpose of expanding its facilities and gathered funds to build a 34,700 square foot shelter. Though they have been working with the City to look at other possible sites, they want to expand in their former properties. TCM asks for charitable organizations to be listed as a permitted use in the Downtown North Zoning District. TCM asks for charitable organizations to be listed as a permitted use in the Downtown North Zoning District so that they do not fall under the classification of a legally non-conforming use and will remain eligible for expansion.

- **Location of charitable organizations**

TCM maintains that they need to be located in Downtown where their clients could be within walking distance to public transit, Health for All, and other services in the area. City staff does not directly address where TCM should locate, provided they choose to expand, but agrees with the Planning and Zoning Commission about the unique character of Downtown Bryan. (Downtown Bryan is a narrow area, consisting mostly of 2 parallel streets). City staff simply maintains that existing charitable organizations may remain as an existing non-conforming use. As mentioned by the City of Bryan, Bryan’s downtown was “adversely impacted in past decades by changing market demands” resulting in disinvestment and deterioration of the Downtown.

Service-dependent and homeless populations usually concentrate in Downtown, either from being left behind or attracted by lower property prices and access to other services. A problem arises when these concentrations are “dismantling in the face of gentrification and urban renewal”(Dear and Wolch, 1987).

- **Economic revitalization of Downtown Bryan**

TCM cited other homeless shelters located in revitalized Downtown areas proving that their location there will not constitute an obstacle for development. Their survey included cities such as San Antonio and Houston, Texas. City staff did not directly address whether or not TCM is a deterrent to economic revitalization, but again cited the recommendations of the Downtown Bryan Master Plan. The Planning and Zoning Commission recognized that the case studies were not similar to that of Downtown Bryan, and at the July 17, 2003 meeting, stated that facilities such as TCM are not compatible with a portion of Downtown needing redevelopment.

- **Not in my backyard (NIMBY)**

Not-in-my-backyard or NIMBYism is an exclusionary phenomenon which typically arises among those who live near a controversial site (Oakley, 2002). Related to housing, it is a label most commonly applied to people who oppose subsidized dwellings, group homes, and shelters for the homeless (Pendall, Rolf, 1999). “NIMBY sentiments arise because of geographical proximity. “The closer an unwanted facility, the greater the likelihood of community opposition” (Wolch and Dear, 1993).

In this case, it is a homeless shelter facility that is raising contradictory positions. Concerns about NIMBY were brought up by TCM advocates. Many neighboring business and property owners in Downtown agreed with the proposed rezoning, and expressed their negative perception of the homeless. According to Dear and Wolch, opposition arguments can usually be narrowed down to three specific concerns: property values, personal security and neighborhood amenity (1993). During the public hearings, the most common arguments in favor of the rezonings were the presence of TCM as a deterrent to revitalization, and concerns about loitering and panhandling by the mission inhabitants. Comments such as “the new TCM facility should have a “screened-in porch where residents could sit without observation by visitors to Downtown” and “my visitors are scared of TCM residents” exemplify public sentiments towards the Mission’s inhabitants. Those expressing sympathy for TCM were mainly members of a neighboring church and other charitable organizations.

- **Environmental Justice**

Environmental racism is referred to the relationship between race and the exposure to environmental harms (Westra and Lawson, 2001). This term was incorporated by TCM advocates during the meetings. According to the previous definition, the term does not apply to the rezoning dispute since the topic is not related to toxic waste, landfills, or other sites that could be considered an environmental harm. The fact that TCM advocates used this term reveals a lot about their perception of the rezoning and the treatment they feel they have received from the City.

### **III. A critical review of the negotiation process that has taken place**

An official agreement was reached during the hearings with the City council vote. The negotiation of the dispute, however, was distributive, as only one party could “win.” The resulting decision could only be to accept or denied the rezoning proposal.

The public hearing format is a presentation and reaction format. During the presentation, an individual or panel provides information to a larger interested or affected group. This audience then gives their comments or reactions to the panel (i.e. The Planning and Zoning Commission, City Council, etc.). Communication flows entirely in one direction, so problem solving, by the nature of the public hearing format, is less integrative (Godschalk, 1994). The public hearing format, also called the advisory model, remains in widespread use even though hearings are often criticized for occurring late in the planning process and encourage organized opposition rather than collaborative problem solving (Godschalk et al, 2003). However, this advisory model is mandated in the state of Texas as laid out in the Texas Zoning Enabling Act. Although the governing body has the legislative power to approve and adopt zoning, precise notification and public hearing requirements are a prerequisite to the ability to act. The proper procedure for adoption of zoning is:

- Notification of all owners within 200 feet of the subject property to be zoned ten days prior to the public hearing held by the zoning commission;

- The zoning commission conducts a public hearing and makes a recommendation to the city council via a written report;

- Fifteen days prior to the public hearing by the city council, a notice of the zoning change and public hearing must be published in the newspaper of general circulation property;

-A public hearing is conducted by city council and a determination is made about the zoning (McDonald et al, 2002).

Besides the requirements for the public hearing format as mandated by the Texas Zoning Enabling Act, ethical standards support the use of the advisory model in rezoning cases. By participating in collaborative problem solving before a zoning decision, a city is essentially making the regulation of land use a negotiable procedure, stating in a way, that “everything is up for sale.” By negotiating land use, the City could also find themselves in court, should they be accused of contract zoning.

#### **IV. Feasibility of reaching a settlement**

Despite the fact that an official zoning decision has been made in accordance with all procedures of the Texas Zoning Enabling Act, an integrative problem solving effort can now occur between the two parties. We see here a possibility for an agreement that could benefit both sides. The Mission wants to expand because they are running out of space to keep providing their services. They need more space for their clients. The City is in need of the services provided to the homeless by the Mission. However, they do not want to sacrifice the economic revitalization of their Downtown. If the city wants the mission to relocate, and the mission is willing to move, a mutually agreeable consensus can be made. A problem arises, however, because the Mission cannot afford to move. They would need to find additional economic resources to purchase land in an alternative location and to relocate and build a completely new building. Currently, TCM is waiting for an incentive from the City in order to relocate. The City is interested in providing TCM with some assistance, but needs a clear directive from TCM as to what facilities are needed in order to enter into negotiations.

#### **V. The role of power in negotiations**

The Planning and Zoning Commission and the City Council had the formal authority “derived from occupying a key position in a hierarchical organization” (Lewicki et al, 2001). In this case they occupy a key position in the decision making process for rezoning requests. The City of Bryan has the power to use zoning as a tool to regulate land use. The City is committed to the implementation of the Downtown Bryan Master Plan and they consider the zoning requests will help them in the process.

Later in the process, TCM acknowledged that they had little power to influence the final decision. However, they engaged in a lobbying campaign to express their interests and seek support from the community. They were able to draw media attention and they won the sympathy of a large segment of the population. They gained certain power from the sympathy and vulnerability of their position, as the “victims’ situation is likely to be supported by others on an emotional level” (Lewicki et al, 2001). During the meetings some spokespersons appealed to charity, to sensibility and to understanding of the Mission’s residents needs.

By July’s meeting, however, they knew it was a lost battle. “I honestly don’t think there was anything we could do to prevent the loss. Their minds were made up, it was all in vain on our behalf”, expressed a TCM representative. Other charitable organizations shared the “victim’s support” of TCM. However they could have done more to attract other organizations and gain coalitional power.

The public has relative power to influence in public decisions. City Council members are public elected officials and are responsible to their constituents. Media coverage attracted public attention, which may have forced elected officials to cave into public pressure. For example, the final vote of City Council included four yeses and three noes, making the decision a close one. (The Mayor, however, chose to vote against the rezoning, though he is only supposed to vote in the event of a tie. We can see here, the power of public pressure on an elected official who may have desired the vote to look closer than it actually was. Without the Mayor’s vote, the outcome would have been four yeses, and two noes.)

## **VI. The role of communication and data/information in negotiations**

During the public hearing process, data uncertainty existed about whether or not the Mission is a deterrent of development in Downtown. According to the Mission, the City perceives them as a negative element for economic development in the area. An impact analysis of other cities’ shelters was cited. The results of this study, however, were not credible because of the different sizes and different stages of development between the case studies. There are real state studies about the impact of homeless shelters on property values that could have been used as a reference during the negotiation. Those studies will have to be accepted by all parties. From the public hearings, it was evident that there was a great deal of misunderstanding about what the consultants actually recommended. Each party tended to remember what best suited

their interests, often citing the consultants, but with different interpretations. In general, the consultants were seen as the experts, and could be invited to further negotiations. However, if roles in the negotiations are not clearly defined, the consultants could end up being forced to play the role of judges. An improper definition of roles would be detrimental to the collaboration process.

A survey of missions in other cities, constantly referenced by TCM, was not credible for all parties. TCM made the survey without specifying methodology or chosen criteria. Technical data is often the determinant in any negotiation process, though it is generally polarized between the interests of each participant. In this case, City staff, the P&Z Commission, and the City Council indicated skepticism about the survey given the fact that it included cities so different from Bryan in different stages of the redevelopment process. Thus, the survey could not be used to aid in decision making because it was only deemed acceptable by one party.

Following this decision making process it was evident that the City Council was susceptible to community response. Decisions about facilities such as homeless shelters, homes for the mentally disabled or halfway homes will continually arise in the development of a community, usually accompanied by contradicting opinions. The value differences between incoming renovators and long-term residents of these areas are often contradictory. Each group has a different perception of the community and its future. Gentrifying central neighborhoods are communities that are in the process of experiencing conflicting visions of their future identities (Spain, 1993).

## **VII. The effectiveness of a facilitator or third party in negotiations**

Despite the drawbacks of the advisory model of the public hearing process, the Planning and Zoning Commission tried to be effective facilitators, making sure to differentiate between emotional issues and land use issues. In almost every meeting, the Commission was sure to state that the dispute was not one of the City against the Mission, and praised the Mission for its hard work and dedication to the community. The dispute, however, was heated with emotion. It is clear that TCM felt victimized in the process, which could damage relations with the City in the future. In order to prevent this from occurring, we feel it would be wise to engage a third party facilitator in future negotiations.

### **VIII. Summary of limitations for reaching an agreement**

In terms of conflict resolution practice, three main topics were identified as important. These topics should be addressed by the stakeholders in order to engage in effective negotiations in the future. They include inadequate forums for communication, a lack of communication, and conflicting perceptions. The public hearings used at the beginning of the process resulted in inadequate channels of communication because they did not promote a real understanding of interests and concerns. The public hearings created a forum where only distributive negotiations could take place, leaving no room for collaboration and problem solving.

A lack of communication was perceived at the beginning of the process. Twin City Mission staff complained about a misleading public hearing notice which prevented other charitable organizations from attending. That perception eroded some of the trust held in the City of Bryan by TCM. During the meetings it was evident that terms such as “grandfathered use” and “non-conforming uses” were not clearly understood by some of the population. In fact, it appears that, despite their involvement with the consultants in the planning process, TCM did not fully understand the ramifications that would occur through the implementation of the Downtown Bryan Master Plan. Perhaps here the City failed in its communication efforts by not educating the stakeholders fully about the implications of the revitalization.

Conflicting perceptions were a problem during the initial stages of the process. TCM feels that they have been left out of the revitalization process and that their interests are not as important to the City as others. The City feels the success of the revitalization process will, in the end, bring benefits to the entire community. Though the goals of both stakeholders seem mutually exclusive, they each need the contributions of the other in order to succeed.

### **IX. Recommendations on ways the negotiations and/or settlement could have been improved**

The perception towards the process was a win-lose situation. Twin City Mission feels that they were the losers. Again, this is a critique of the advisory planning process, where the ability to expand the possibilities is severely limited as is the ability to generate a solution that could include everybody’s interests. The conflict is not an intractable one, but it does set a precedent in the relationship of the city with other institutions and the public in general. Thinking about the long-term relationship among both should lead the way on reaching an agreement.

**a. Role of the mediator**

The mediator will need to set the tone for a collaborative process, introducing the concept to the participants and establishing the procedure. In an atmosphere of division and distrust, the mediator's most important task will be to identify commonalities between parties. The mediator should help the parties understand their interdependence, their mutual need or their common ground. Finding an alternative site for TCM will be the main issue and the goal of this process. The site will have to fulfill the needs and expectations of the Mission while complementing the City's development plans. The City understands the need for the Mission and recognizes its good job they have been doing thus far, and is willing to help the Mission to overcome the externalities of the rezoning. TCM has the option to stay at its current location, content with the restrictions of a legally non-conforming use. The Mission has, however, shown interest and the need to expand to provide better service to their clients. They desire support from the City in order to relocate.

The City believes that a revitalized Downtown would raise the City's tax base, allowing them to allocate more money to HUD and other programs which benefit the poor in the community. Both parties are interested in the public good, but disagree on the means necessary to achieve that end. The City of Bryan believes that the rezoning is needed in order to promote development in Downtown that will benefit the entire community (public good). However, TCM opposes the regulation because it affects the use of their property (private interest) and impedes their efforts to bring service to the community (public good). The mediator should start by making the parties commit to the success of the meeting and separate their emotions from the issues. It is critical for the mediator to be seen as impartial by the parties if we want them to commit and trust the process (Susskind et al, 1999).

**b. The meeting structure or format**

The proposed meeting structure is a closed-door meeting involving TCM Staff , City Planning Staff, and the City Manager. No time limit will be set, but certain topics need to be addressed and solved. The meeting will start with a brainstorming session about the site requirements for the Mission's relocation. This session will follow a community-visioning model with the purpose of getting the parties to dream about the future of the Mission by asking a series of leading questions (Godschalk et al, 2003). In this session, the Mission might consider a campus-like setting, including themselves and other charitable organizations like Health for All.

A campus setting, for example, would allow more charitable organizations to build alliances and pool their resources. The mediator should encourage creativity and “thinking outside the box,” stating that no idea is a bad idea.

During the next phase of meetings, TCM will agree on their location, facilities and land requirements. During this phase, the facilitator will implement issue-specific participation techniques, as parties tend to be more engaged and able to provide useful input when focused on specific issues. Such a procedure will facilitate a two-way education process between parties (Godschalk et al, 2003).

The next step is to look at alternatives sites, the financial possibilities of TCM and possible city support for the relocation. Input from the City’s Community Development Staff will be needed here to consider the financing alternatives for TCM. If both parties agree, they will be invited to these sessions. Finally, the mediator will facilitate the parties’ choosing the best option among the possibilities.

### **c. The Ground Rules**

“Typically, ground rules cover three facets of the negotiation: the process, the agenda and the behavior” (Susskind et al., 1999). Ground rules are designed and established to facilitate the process and to commit parties to the process. However, some cases (e.g. the Northern Oxford County Coalition) have shown that ground rules emerge from experience in the process. Therefore, additional ground rules can be included as they become necessary. Procedural ground rules will include how group decisions will be made; the roles and responsibilities of participants, including the mediator, the media, and the public; confidentiality; and attendance at the meetings.

Ground rules for the agenda include: the range of issues to be addressed, the introduction and use of data, work distribution and some sort of a timeline with deadline goals. There will be no time limit for the process, but the mediator will prompt them to agree on certain deadlines for the purpose of efficiency. Unforeseeable circumstances may arise, so these deadlines are in no way set in stone. The parties should agree on how to deal with data in order to facilitate the process and efforts in decision-making. The parties should agree on reliable sources of information (the Master Plan consultants, Bryan Economic Development staff), as well as acceptable standards (alternatives that both can afford) and objective criteria to evaluate the alternatives.

Behavior ground rules include guidelines for the roles and relationships among participants. Rules such as a no-interruption rule or a time-out rule may be necessary if discussions get out of hand. In order not to get bogged down with fundamental differences, a “disagreements list” might be imposed, where contentious items can be listed and discussed at a later meeting date. Freedom to express opinions and omission of negative labels and blaming will ensure a better working environment. Considering ethical concerns, honesty and straightforward communication are expected from all participants.

**d. Role of Experts**

During the process the parties should seek expert advice if they feel it is needed. Possible experts could include a designer or construction specialist to provide design options and cost estimates, or a real estate specialist that will help the parties find an adequate new location for the Mission. Again, in dealing with funding possibilities, we recommend inviting Community Development Staff due to their experience in dealing with HUD funds. The mediator will have to make sure that both parties legitimate the invited experts. The group should agree on reliable sources as well as standards and objective criteria for decision-making which will facilitate the decision making process.

**e. The Final Agreement or Product**

The final agreement should be a formal written agreement explaining the final plans for TCM relocation. This document will clearly specify the location of the new site, funding sources, and the responsibilities of the involved parties. The document should also include an agreed plan of action to ensure implementation. The agreement will be signed by both parties, and there will be a press conference to inform the public about the agreement. In the case of unforeseen circumstances, changes to the agreement can occur so long as both parties agree. In such an event, both parties must also sign an amended agreement.

**IX. Postscript on the dispute**

Members of Twin City Mission Board of Directors and staff met with the Bryan City Manager, Planning, and Community Development Staff, and representatives of DBEDA in October of 2003, and again in June, 2004. Little progress has been made since the City Council ruling in September of 2003. Both meetings have occurred at the request of Twin City Mission, and neither meeting has been facilitated by a mediator. TCM asks the City to:

- Participate in the purchase of the Mission's current properties;
- Provide the Mission with population growth estimates and demographics information so that the Mission can make future projections for capacity;
- Provide transport of new homeless arrivals from Downtown to the Mission's new location;
- Provide land or funding for the Mission's new shelter location; and
- Permit the Mission's retail store to remain in Downtown.

During the June meeting, the Bryan Planning Staff assured the Mission that their retail store is a permitted use under the new 'DT-N' Downtown North District, and would be permitted to remain, or even expand in the future. Bryan Planning and Community Development Staff promised to gather population projections and demographic information for the Mission, though they indicated that this information may be difficult to project for the homeless population of Bryan. This information was provided to the Mission in a subsequent meeting that month. The City Manager informed the Mission that they may want to seek transportation arrangements with Brazos Transit which is a separate entity from the City. Representatives from DBEDA indicated that they may be willing to purchase transport tickets for the homeless for a limited time after the Mission's move, since it would be their businesses whose image would most likely benefit from such an arrangement.

The City Manager informed TCM that the City would not be interested in purchasing the Mission's current property, but that the City would be open to donating any city-owned land that may suit the Mission's needs, provided that that land is not already earmarked for some other city use. TCM staff indicated that the Mission would have to perform the necessary projections in order to determine what size shelter and parcel of land that the Mission will need.

Bryan Community Development Staff informed the Mission that their petitions for funds would have to come from Community Development Block Grants which could be allocated for the construction of new facilities. Community Development Staff also informed the Mission of other possible grant monies that may be available, and asked the Mission to set up an appointment to search for other grant monies.

Though the meetings appeared to have gone well without a facilitator, it seems as though both parties are waiting on the other to act first, rather than agreeing on a concrete plan of action. Before the City can help the Mission in its search for alternative sites, the Mission must be able

to give the City an idea of the size of parcel, ideal locations, etc. The Mission, however, was waiting for population information from the City before venturing to make any decisions that would be necessary to search out city-owned properties.

In light of this new information, a series of facilitated meetings are still recommended in order to develop momentum towards the goal of the Mission's relocation.

## **X. Discussion questions**

- How can public hearings be changed to improve communication process with the population?
- How can we moderate NIMBY attitudes when a new project will be developed in the community?
- How does a NIMBY attitude among the community affect the collaboration process?
- Do you agree with the negotiation recommendations of the authors?
- Based on what you have read, what would you suggest for future negotiations between parties?

## **XI. Possible exercises**

- Students will be asked to read Part I of the analysis and some of the meeting's minutes. They will then be asked to identify the main issues related to the conflict. Later in class they can compare with the Stakeholder Matrix and discuss. What issues could they add to the analysis? How would they go about facilitating a negotiation process? Students will then be asked to read Part II of the analysis and compare their suggestions with those of the authors.

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### **Bryan City Council Minutes:**

Regular Meeting August 12, 2003

Regular Meeting September 9, 2003

**Planning and Zoning Commission Meeting Minutes:**

November 21, 2002

December 5, 2002

January 9, 2003

July 17, 2003

Planning and Zoning Commission Staff Report. Zoning Request, RZ02-23. City of Bryan  
Memo from Beth Wilson, Downtown Project Planner to Planning and Zoning Commissioners.  
November 12, 2003.

**Interviews:**

Mr. Doug Weedon Twin City Mission Executive Director

Ms. Beth Wilson, Downtown Bryan Project Planner.

**Plans:** *(Both plans are available at [www.bryantx.gov/departments/planning/default.htm](http://www.bryantx.gov/departments/planning/default.htm))*

LRK, Inc. (2001). Downtown Bryan Master Plan

Wilbur Smith Associates (1999). City of Bryan Comprehensive Plan Update.

**Appendix A: Timetable of Events**

**Appendix B: Organizational Chart**

**Appendix C: Stakeholder Matrix**

## **Appendix D: Planning Department Staff Report**

## **Appendix E: Planning & Zoning Commission Meeting Minutes**

## **Appendix F: City Council Meeting Minutes**

## **Appendix G: Recommendations for regulations related to social services facilities**

Dear and Wolch provide the following recommendations of how zoning laws can be used to encourage and manage the development of a local community care system (1987). Such ordinances would:

1. Explicitly define residential care facilities of a specific size-range as residential uses and extend 'by right' siting privileges to them in residential zones,
2. define larger residential facilities as multifamily uses and extend 'by-right' siting privileges to them in multifamily residential zones;
3. define walk-in nonresidential facilities as commercial uses most similar to medical and legal offices, so that they are permitted in the same areas;
4. identify for special use-permit procedures those larger-scale residential and nonresidential facilities not covered in the above categories;
5. establish 'density' limits for various classes of facilities, specifying either the minimum distance to separate service establishments or the maximum density of facilities or service users allowed in subareas of the city or identify the impact level of different facility types and specify combinations of low- and high-impact facilities allowed in subareas of the city; and
6. Subject facilities to health and safety regulations applicable to similar structures, for instance, to prevent group homes from having to meet business or hospital standards.