

CITY OF SOUTH JORDAN

PLANNING COMMISSION STUDY SESSION

CITY COUNCIL WORK ROOM

January 25, 2022

Present: Chair Michele Hollist, Commissioner Nathan Gedge, Commissioner Steve Catmull, Commissioner Trevor Darby, Commissioner Laurel Bevans, Assistant City Attorney Greg Simonsen, Planning Director Steven Schaefermeyer, IT Director John Day, GIS Coordinator Matt Jarman, City Planner Greg Schindler, Planner Ian Harris, Deputy City Recorder Cindy Valdez, Meeting Transcriptionist Diana Baun

5:12 P.M.

Note: NO MOTIONS OR ACTIONS WILL BE TAKEN DURING THIS MEETING

I. Planning Commission Powers and Duties Training

Assistant City Attorney Greg Simonsen gave everyone a printed handout for reference during the training (Attachment A). He introduced our new commissioner, Commissioner Laurel Bevans. He welcomed everyone to tonight's training and discussed the purpose of the planning commission in our city. He began the training by discussing parts of our city code (Attachment A). Most cities around us have a seven member commission; with our city only having six members, attendance and participation is crucial. He discussed our alternate commissioner, and the importance of possibly having that commissioner in attendance more often.

Commissioner Nathan Gedge asked about our current alternate commissioner and whether they should be reappointed with the mayor's re-election.

Planning Director Steven Schaefermeyer explained that they are still waiting to hear on that appointment. They have been discussing whether it makes sense to explore a different model for our Planning Commission, however our current alternate can continue to participate and vote until they are removed or reappointed.

Chair Michele Hollist joined the meeting in person.

Attorney Simonsen continued with the training, referencing Paragraph A from Attachment A.

Commissioner Gedge noted that he and Chair Hollist had previously discussed re-electing a chair and vice chair, as some of the appointments to the commission have

changed.

Attorney Simonsen mentioned that other cities have a Book of Bylaws, he doesn't know of one available for our city. He did not say it was or wasn't needed, but pointed out that is a power the commission is afforded under the city ordinance.

Director Schaefermeyer said the city council has put together rules for other committees and boards, but the planning commission has always been treated a little bit differently.

Commissioner Gedge asked if the council had a book of procedures.

Director Schaefermeyer said the council generally follows Robert's Rules, as does the planning commission.

Commissioner Gedge said West Jordan's Planning Commission bylaws were based on their council's.

Attorney Simonsen referred back to Attachment A, and discussed the number of commissioners required for meetings and voting. He reminded the commissioners that if they attend a certain number of meetings they actually get credit for one hour of their training. He discussed outside boundaries and being familiar with the city's General Plan, including Daybreak and their plans. He suggested the commissioners visit areas on future agendas, familiarize themselves with what they will be voting on.

Director Schaefermeyer said the General Plan was updated recently. He had great plans over the last year to bring back pieces of it to the commission to discuss. The city's long range planner just quit, so he is open to questions and suggestions related to our General Plan.

Attorney Simonsen discussed zoning and suggested commissioners familiarize themselves with the zoning plans and rules since they are responsible for assigning and changing zones based on applications. He referred to Attachment A and discussed the planning commission's powers and duties in relation to zoning and the General Plan.

Chair Hollist asked if there was still any mixed use overlay on Redwood Road, or if that had all been cleaned up with the latest General Plan.

Director Schaefermeyer said it still exists; specifically, the village mixed use overlay exists only through development agreement. There is still some development happening, like Mo' Bettah's and the area by the District. Those buildings are very close to the street and that was a function of that zone; there is still more development to come in that area

and zone. They continued to discuss some homes that were part of the previous zone versus the newer zones, and that they are aware some of the neighbors aren't happy about the current and future construction under current development agreements.

City Planner Greg Schindler talked about the High Ridge Subdivision, that there was a promise of third acre lots near them, and the last commercial lot to be developed will be right next to a home.

Chair Hollist asked if they can suggest changes to the General Plan, or if they need to wait until review every 10 years.

Director Schaefermeyer welcomed those suggestions and ideas at any time, especially with all the growth. If they can stay ahead of the issues with amendments, and address them before they become an issue, it makes things much easier. It's hard to stay up to date with long range planning and our current development. He comes from a legal background and he considers the city staff and council as his clients. Many planning departments consider themselves the experts, but he wants to hear from everyone here what they think the city should be. He wants to do his best to balance what the city council, city manager and staff are telling him so he can try and figure out what they should be doing.

Commissioner Steven Catmull asked if they could see what comments were made on previous surveys.

Director Schaefermeyer said he believes they have all been made public. He said they wouldn't be surprised by the comments, they get blamed for all kinds of problems they didn't create like density and growth.

Commissioner Catmull discussed seeing more drive thrus in our city, and how things are changing.

Attorney Simonsen discussed the changes and amendments section from Attachment A, noting that everything has to come through the planning commission before being approved by City Council. He discussed the legislative changes on ADUs that came before the planning commission first, and reminded them that they can be the ones that originate consideration and changes in the ordinances. This is basically volunteer work, and they can spend as little or as much time as they choose. He discussed Section E, Subdivision Control, from Attachment A. He moved into conditional use permits and what they are for, he also talked about reasons for denial. He moved on from the handout and began referring to the book, "Ground Rules: Your Handbook to Utah Land Use Regulation; Written by Craig M. Call, J.D." He referred to page 82 and discussed the

review and uses of conditional use permits. Page 83 states “the presumption is that the use should be allowed since the ordinance would not provide for a use if the use were not deemed desirable in the first place. The decision as to whether the use is appropriate in the zoned area has already been made by the municipal council. When an application is filed for the permit, the time has passed to determine whether the proposed conditional use is appropriate for the zone.” As an example, he brought up the recent proposal for the Kum & Go off of 9800 S and Redwood. Many residents came in to oppose the gas station; they brought up benzene and one resident read some articles about it. They just wanted the gas station denied, however the zoning had already taken place so it really wasn’t within the planning commission’s power to deny the permit unless there had been something illegal or otherwise inappropriate proposed.

Commissioner Gedge said there were many comments that night, and asked if it would be appropriate for the chair to interject after the first comment and remind the public that they are able to give their testimony, however a gas station has already been approved.

Attorney Simonsen referenced page 85 and the response from the court of appeals in Utah regarding the case of Davis County vs. Clearfield City. The opposition of neighbors is not one of the considerations to be taken into account when determining whether to issue a development permit. On the other hand, if the neighbor presents scientific studies and substantial evidence, then it can be discussed and considered. The planning commissioners are not elected officials, they follow the law and if the residents don’t like them that’s okay.

Commissioner Gedge asked if the staff report could highlight when a topic has been previously debated and approved by the city council for a zone, and remind everyone that it’s just another application for something that had already been approved.

Chair Hollist compared it to the noticing they were doing for Daybreak agenda items, to remind residents of the commission’s limitations and powers.

Director Schaefermeyer said that something like a development agreement would already be in the staff report, but he may need to look at addressing things differently to help. Many times, staff has already met with the residents, explained the reasoning, and the residents still show up and complain.

Attorney Simonsen suggested having a statement of the standard in the staff report, and expanding it a little more before reading it to the public; that way the public is aware of the conditions that have to be followed. Attorney Simonsen mentioned the end of page 83, which states “if no conditions can be imposed to mitigate the negative aspects, then the conditional use permit may be denied, but only based on the record including findings

of fact on substantial evidence supporting the denial.” To deny a conditional use permit, the commission has to say something like “I have heard and am persuaded by the following evidence that was presented...” and indicate which study or expert findings proved it necessary to impose a condition, and what the condition is. If they are going to deny it, that needs to be spelled out in detail. Page 97 talks about a variance case, Wells vs. Salt Lake City Board of Adjustments, and it explains why giving those details for denial or condition are so important. One day this will happen here, where someone presents good evidence but something has to be denied on a conditional use permit, and we will have to provide a record of reasons for our decisions. On page 99 it reads “According to the court, if the board wanted its decisions upheld it had no choice but to provide the required findings.” In other words, you have to create a record of why you did what you did. In the case above, the case went to an appeals court where the appeal was upheld because there was “no evidence in the record that the board had individually considered each of the statutory requirements.” On page 100 it notes that a few years later the variance was requested a second time and the board did things correctly, placing the findings, backed by substantial evidence, in the record. He then went on to discuss substantial evidence, and what it is and is not. Ninety percent of every objection is going to have someone complaining “it will add to the traffic;” that is not substantial evidence. It would be different if they hired a traffic engineer to come out and do a study on the traffic, and they brought those findings while explaining the problems they are worried about in the future. In his opinion, reading an article about benzene on the record is probably not substantial evidence, as it is just hearsay. Hearsay is when the person giving the information is not a first person witness, they are getting the information from someone else. Hearsay is less substantial, and may be even to be excluded from the commission’s minds as they consider evidence.

Commissioner Trevor Darby asked what level of detriment has to exist to deny a permit. If it makes someone uncomfortable, or causes them to be delayed five minutes a day, that doesn’t seem like it’s enough detriment; is there a standard that qualifies something as detrimental and big enough to justify denial.

Attorney Simonsen referenced page 84 and the Davis County vs. Clearfield City case. Davis County proposed using a remodeled home as a treatment center for those suffering from substance abuse. This is not a great example because substance abuse cases have their own set of rules, but this addiction recovery center was denied. The court said “in stating that the denial was arbitrary, capricious and illegal the court of appeals stated ‘nowhere in the transcripts is there believable information or evidence on which the Clearfield City Council could have rationally believed that the proposed mental health facility would pose any special threat to Clearfield City’s legitimate interest.’ The court also went on to find that the maps presented and relied upon were arbitrarily drawn and were not presented or explained to the public. With regard to concern over real estate values, no studies were made and no opinions were given by professional real estate

appraisers, nor was there any credible evidence of reduced property values produced in the hearing. The opposition did not have factual support in the vague reservations expressed by either the single-family owners or the commission owners. The reasons did not justify denial of the permit, even though they would have been legally sufficient had the record demonstrated a factual basis for them.” Decisions made by the planning commission are available for public viewing, and they will have to justify their decisions and make sure those reasons are on the record. They have to decide if they were convinced of the danger through hard, substantial, scientific evidence; not an article from Facebook or something a member of the public expressed personal concern about.

Commissioner Darby asked if the two questions “does it propose a legitimate threat to someone’s interest, specifically health, welfare or economic” and “is there legitimate, documentable proof to these expected damages” would get him to the right place to determine detriment.

Director Schaefermeyer said those questions would definitely get them closer to a good decision. He has also heard it argued that not only do they need to answer Commissioner Darby’s questions above, but they should also be able to point to something in the ordinance that shows the city even cares about the issue at hand. Certainly having evidence from the city code or General Plan that the issue is something the city cares about would make a difference.

Commissioner Darby thanked them for that information. They get many conditional use applications where they hear a lot of emotional hearsay, like the example of saying “I’ve seen kids almost get hit by cars.” The reality is most of us have, and a building being applied for isn’t even built yet, so it clearly didn’t cause the problem.

Director Schaefermeyer said the reality is that fear is not substantial evidence, and a lot of what they hear is fear based.

Chair Hollist asked about personal experience and how important that is.

Attorney Simonsen said personal experience can be evidence, that is one reason why he encouraged the commissioners to get out into the city and look around.

Chair Hollist said that since the meeting two weeks ago she has been counting drive thrus. She did find a drive thru that had 18 cars in it, and she realized that it does happen.

Attorney Simonsen said to imagine you were in front of a judge, and you’ve gone on the record saying you denied a conditional use permit because you drove past a random location that had 18 cars in the drive thru. Do you think the judge would be persuaded

that you acted reasonably in denying a conditional use permit for a use that was previously zoned for that area because of that one piece of evidence; he thinks it would take more than that.

Commissioner Catmull asked to discuss the fact that conditional uses live with the land, and the variety of futures that exist; how do they navigate that situation.

Chair Hollist asked additionally for guidance as to what they can implement to mitigate. She thinks it is not likely they will outright deny a permit, but assistance with mitigation would be helpful.

Attorney Simonsen said that's just about impossible to predict in advance.

Chair Hollist mentioned the Kum & Go permit, they put in a condition for a higher fence. She then asked what would have happened if the applicant had said they didn't want to do it; could the commissioner have still said "sorry, but we still feel like this is appropriate with a mixed zone."

Attorney Simonsen said yes, as long as they have the evidence to back it up, they have the right to impose conditions. He pointed to page 85, related to the same case discussed above, where it says "Local government must rely on facts, and not mere emotion or local opinion, in making such a decision."

Chair Hollist asked if they are allowed to ask questions during this training about issues being presented tonight.

Attorney Simonsen said he believes those questions should be discussed during the regular meeting. If she wanted to ask him or one of the planners a question during the meeting, so it's on the record, that is certainly okay.

Planner Schindler said he is sure they will have questions on the first item on the agenda.

Chair Hollist asked about appropriate mitigations for safety concerns. If our land use plan points to wanting two places to enter and exit residential neighborhoods, but there is only one, are they allowed to impose special conditions in that case to ensure the road is always clear.

Planner Schindler asked everyone to consider that this specific subdivision was approved with the one entrance, and now we're going to punish a development with the proper zoning for something they have no control over. It should have had a second exit, but it has been there for 45 years and it never happened.

Attorney Simonsen suggested using the minutes from the last meeting, specifically looking at the public comments, and deciding whether residents presented substantial evidence of a harm or detriment that is reasonably likely to occur. Evaluate what was said, line by line, and decide if it was just fear. If not, was it hearsay, was it backed by facts or actual evidence that you would be willing to put on the record for a “no” vote and feel confident that when it goes before a judge he will note that your decision was based on specific reasons. He is not telling the commission it is one or the other in this case, he is simply recommending they look at the public’s comments and decide for themselves what the basis of the concern is. He referenced page 86, under Tips for Participants where it says “Conditional uses are often used, but not understood. There is a tendency, by members of the planning commission or legislative body that once a matter of some discretion is before them, to act as if they had legislative discretion and therefore that they may impose any decision they consider desirable; as shown in the Clearfield case, that is not true. As an applicant that wants your application for a conditional use permit to be approved, come prepared for factual evidence supporting the application.” That often doesn’t happen, most of the time the applicant comes in and thinks that since they got a favorable recommendation from the staff, things will be fine. The night of the hearing all the neighbors show up and raise issues that the applicant might not be prepared to respond to. Additionally, the book’s author continued with “If you are among the citizen planners involved, don’t deny the application unless you have evidence to support your denial. With a conditional use permit application question, what you are addressing is not ‘why,’ it’s ‘why not.’” In other words, if you intend to deny a conditional use permit application, make sure you have evidence to support that you cannot mitigate the significant anticipated detrimental effects. If a resident says there is going to be more traffic, that probably is not significant enough to justify a denial. He would hope our land uses are bringing in more traffic, as he would hate to be a store that didn’t do that.

Chair Hollist said this is talking about denying, but she is more interested in the mitigation.

Director Schaefermeyer said that from a staff perspective, it’s helpful for commissioners to say there might be a detrimental effect, and that the commission would like to see “X” brought back to them. It’s difficult, from the staff perspective, when they feel they’ve brought something worthwhile back to the commission, and it doesn’t appear to be enough. If they’ve done something that initially wasn’t enough, he asked the commission to share that with them. Sometimes staff can have offline conversations with the applicants when they aren’t in the heat of the moment; they want to get their permit approved and their project to turn out well, so they’re more willing to agree to additional terms at that time. Then, when staff brings things back to the commission, even if the neighbors still aren’t happy, the commission feels like they’ve come to some sort of resolution.

Attorney Simonsen will try and get some ideas of mitigation to the commission in the future, things like limiting operating hours.

Chair Hollist asked if they are even allowed to limit those hours, as she thought that was against the rules.

Director Schaefermeyer said we need to ask what we are limiting, what's the harm we are trying to avoid by limiting those hours for this applicant, especially when the business across the street or in a nearby property doesn't have the same restriction. As staff, trying to have those conversations up front with the property owner can be difficult as the applicant can usually look at similar businesses that do not have a conditional use permit and say "they can do it, why can't I." If something is really a concern for the city, like properties near homes, why don't they just restrict it across the board.

Planner Schindler said they have chosen to limit hours of operation in the past on things like gas stations with carwashes attached that are right next to a residential zone, but it's usually due to a noise issue next to a residential area.

Attorney Simonsen said we don't have billboards here, but he used to represent a billboard company and he was in a hearing where someone came in and said the billboard shines in their window at night and keeps them and their baby up; that is a firsthand witness to a problem.

Chair Hollist mentioned that it was after the fact.

Attorney Simonsen said that may be, but conditional uses can be amended.

Commissioner Catmull asked who could amend or revoke a conditional use permit.

Director Schaefermeyer said the revocation process is outlined already, he believes it goes to the city council.

Commissioner Catmull thought that was only an option if they failed to meet a condition.

Director Schaefermeyer said that if they failed to meet a condition, the city can revoke their permit after going through an analysis. There is a process for that, but it's along the same lines that get us to a condition in the first place. Now they are considering whether this is just because this use is there and annoys somebody, or is it because they really aren't following a condition that was imposed.

Planner Schindler asked about what happens if something new comes up after it's built; it

wasn't added as a condition because it wasn't anticipated as a detrimental effect.

Attorney Simonsen said he will research that, but his initial impression is that if something has been approved on a conditional use permit the city can come in and ask that the permit be modified; again, he will need to do some research and get back to everyone on the exact answer. He closed by mentioning page 86 and a paragraph that addresses the question on how much evidence is enough. The author writes "Remember that substantial evidence means one, beyond a scintilla of evidence, and two, that a reasonable mind would accept the evidence as adequate to support a conclusion." This commission is comprised of reasonable people, he thinks if they state on the record their reasons for what they're doing, generally they will be able to state a reasonable purpose. Remember, if no one has bothered to present evidence in front of them, as is commonly the case, they will probably need to approve the permit.

Director Schaefermeyer said this is why they are trying to get away from conditional uses in the code. The better thing to do, as a commission and a city council, is to decide if a use is appropriate in a specific zone. Then, there would be mitigation included in the code for certain uses, avoiding the process of finding detrimental effects. Anyone could go to a table in the code and indicate what is needed for the situation up front, so that anyone applying for that use will know what needs to be provided to the city.

ADJOURNMENT

Planning Commission Study Session adjourned at 6:22 P.M.

This is a true and correct copy of the January 25, 2022 Planning Commission Study Minutes, which were approved on February 8, 2022.

**Cindy Valdez
Deputy Recorder**

such action, the City Council shall hold a public hearing thereon, and that such proposed addition to or modification of the official map shall be submitted to the Planning Commission for its approval. In the event of Planning Commission disapproval, such additions or modifications shall require a favorable vote of not less than a majority of the membership of the City Council. The placing of any street or street lines upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or taking or accepting of any land for street purposes. In order to preserve the integrity of the official map, no permit shall be issued for any kind of building or structure or part thereof on any land located between the mapped lines of any street as shown on the official map. Any person aggrieved by his inability to obtain such permit may appeal to an Appeal and Variance Hearing Officer. (Ord. 2014-05, 2-2-2014; amd. Ord. 2016-19, 8-2-2016)

E. Subdivision Control: From and after the time when the Planning Commission shall have adopted a major street plan and shall have certified the same to the City Council, no plat of a subdivision of land lying within the City shall be filed or recorded in the County Recorder's Office until it shall have been submitted to and approved by the Planning Commission and such approval entered in writing on the plat by the City Attorney, the City Engineer, the Planning Director and the Mayor. The filing or recording of a plat of a subdivision without such approval shall be void. The Planning Commission shall prepare regulations covering the subdivision of land within the City. The City Council shall hold a public hearing on the subdivision regulations and thereafter may adopt said regulations for the City. Whoever being the owner of or agent of the owner of land located in the subdivision within any area of the City for which a major street plan has been adopted by the Planning Commission and the City Council, except for land located in a recorded subdivision, transfers and sells such land without first preparing a subdivision plat and having such plat approved by the City and recorded in the Office of the County Recorder, shall be guilty of a Class C misdemeanor for each lot so transferred or sold; and the description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from such penalties, except that in subdivisions of less than ten (10) lots, land may be sold by metes and bounds, without the necessity of recording of plat if all of the following conditions are met: (Ord. 2014-05, 2-2-2014; amd. Ord. 2019-01, 3-5-2019)

1. The subdivision layout shall have been first approved in writing by the Planning Commission;

2. The subdivision is not traversed by the map lines of a proposed street as shown on the official map or maps of the City, and does not require the dedication of any land for street or other public purposes; and (Ord. 2014-05, 2-2-2014)

3. If the subdivision is located in a zoned area, each lot in the subdivision meets the frontage, width, density and area requirements of the land use ordinance or has been granted a variance from such requirements by an Appeal and Variance Hearing Officer. The City may enjoin such transfer or sale by action for injunction or may recover the said penalty by civil action. (Ord. 2014-05, 2-2-2014; amd. Ord. 2016-19, 8-2-2016)

4. The Planning Department has provided notice as required by this title and the State Code. (Ord. 2014-05, 2-2-2014; amd. Ord. 2019-01, 3-5-2019)

F. Inspections: The Planning Commission, its members and employees and staff, in the performance of its functions, may enter upon any land at reasonable times to make examinations and survey and place and maintain necessary monuments and marks thereon.

G. Governmental Immunity: The members of the commission shall be deemed included in the definition of "employee" found in the Governmental Immunity Act of Utah, Utah Code Annotated section 63G-7-101 et seq. (as amended).