

CITY OF SOUTH JORDAN
PLANNING COMMISSION MEETING
COUNCIL CHAMBERS

July 12, 2016

Present: Commissioner Mark Woolley, Commissioner Sean D. Morrissey, Commissioner Julie Holbrook, Commissioner T. Earl Jolley, Commissioner Brady Quinn, City Planner Greg Schindler, Planner Brad Sanderson, Planner David Mann, Assistant City Engineer Shane Greenwood, Staff Attorney Steven Schaefermeyer, Planner Jake Warner, City Recorder Anna West

Others: See Attachment A

6:30 P.M.
REGULAR MEETING

I. GENERAL BUSINESS

A. Welcome and Roll Call

Chairman Mark Woolley welcomed everyone and noted all Commissioners are present except Commissioner Morrissey who is on his way.

B. Motion to Approve Agenda

Commissioner Quinn made a motion to move Item E.1. to the beginning of the agenda and move Item A.1. to Summary Action. Commissioner Jolley seconded the motion. Vote was unanimous in favor. Commissioner Morrissey was not present to vote.

Chairman Woolley asked if there were any questions on Item A.1. or do we leave it on Summary Action.

Commissioner Quinn said he needed clarification on some things regarding the Lot Line Adjustment.

Chairman Woolley said we should take it off of Summary Action and just leave it as Item #2; are all in favor of amending that motion. All were unanimously in favor.

C. Approval of the Minutes from the Meeting held on June 28, 2016

Commissioner Holbrook motioned to approve the June 28, 2016 Planning Commission meeting minutes as printed. Commissioner Woolley seconded the motion. Vote was unanimous in favor.

II. INFORMATIONAL ITEMS AND OTHER BUSINESS

A. Staff Business

None

B. Comments from Planning Commission Members

None

III. CITIZEN COMMENT

Chairman Mark Woolley opened for Citizen Comments.

James Bowles, 3009 W. 10755 S., South Jordan, I would like to bring to your attention a precast wall that you have changes from masonry to the new Styrofoam “Rhino Roc” in the middle of where I live. I have draft horses on 2 acres of property and I have come down and talked to the city about it and to my recollection they told me that they have none of this new fence bordering any animals. They use it for sound barriers. I have gone to Herriman, Bluffdale and Riverton and asked them if they have any of this new fence to where I could go see if there have been any problems where they have animals bordering. They all told me they won’t allow that where there are animals because the animals rub against it and even though the people who make it, their claim is you can hit it with a hammer or whatever and it will withstand it. When I asked about the animals rubbing against it they had no answers for that. I have talked to Randy Bowler about it because he is developing Mckee Farms south of us and the people who make that fence said they would guarantee it against any damage, but the problem with that is if there is damage to it who is going to take care of the responsibility on the other side of the fence if they have damage done. I have also been told that the fence is better than vinyl and it does a better job with sound barrier but to where it will hold pressure against it like dirt pushed against it rather than just have the fence there. Up until we had that meeting and they told us that we were going to get a precast wall, we were under the impression it would be the masonry wall like on the other side at Bison Ridge. I personally would like to make sure that we can have that masonry wall for the security of being able to be good neighbors. My recommendation is that that fence is ideal anywhere except where there is going to be animals. My horses are big and they kick hard. I am here asking that you do what was originally done for buffer zones and use the masonry precast wall and not this new one.

Chairman Woolley asked Assistant City Engineer Shane Greenwood if he would address his concerns with the rest of staff. He asked if this can be used in lieu of the concrete fencing.

Assistant City Engineer Greenwood said the type of wall he is describing is called “Rhino Rock Wall” and it has been approved. He is correct; the manufacturer does offer a warranty for it, even for farm animals.

Mr. Bowles said when I questioned him on that he had never been addressed with the fact that animals rub against it. His comment was strictly regarding blunt force hits. This kind of masonry with Styrofoam in there is not going to withstand the kind of constant pressure of animals leaning and rubbing against it as 4 inches of cement with rebar in it. That’s why they use the precast concrete where there are large animals. Things change and people go out of business and their warranties are no good. You don’t have to worry about the masonry wall providers going out of business because the product will hold.

Chairman Woolley said it would take the decision of the City Council to make the change to the masonry wall. We can share your comments as part of the record and will make sure that senior staff knows.

Mr. Bowles said when I met with Randy he had another issue with that irrigation water. When the city widened 3200 W. they damaged one of the gate valves on the irrigation system and that thing leaks. I have been down here many times trying to get that valve fixed. I told Randy the best thing for them to do is to hook onto the existing pipe that is coming down McKee Ridge right now and extend that all the way to the canal, because if they damn that off the pressure will build up when it leaks and then it will blow out. When you make changes like that that affect people's lives, somehow we need to know that they are changing the specs like on these precast walls so you can get our input before we have an issue like we have right now.

Chairman Woolley said Mr. Greenwood is our Assistant City Engineer and he will make sure that we look into the valve issue as well.

Chairman Woolley closed the Citizen Comment.

IV. SUMMARY ACTION

None

Commissioner Morrissey arrived at this time.

V. ACTION

- A.1 Issue: LOT LINE ADJUSTMENT BETWEEN LOTS 137, 138 & P-129 OF KENNECOTT DAYBREAK PLAT 7**
Address: 4522 West, 4512 West, and 4508 West Talquin Lane
File No: LLA-2016.02
Applicant: Kennecott Land

Commissioner Quinn said I am not sure what we are doing with this lot line.

Planner David Mann said if you look at the location map that was attached in your packet, there is a parcel between the two properties where those houses are constructed by a pathway. Kennecott Land wants to adjust that to the width of the sidewalk because there is some landscaping that the home owners have been maintaining and want to keep maintaining so they have deeded that property to the adjacent land owners.

A.2 Potential Action Item – (See VI.A.1)

Commissioner Jolley motioned to approve Lot Line Adjustment LLA-2016.02. Commissioner Quinn seconded the motion. Roll Call Vote was 4-0. Commissioner Morrissey abstained from vote.

Chairman Woolley said we will now go to Item E.1. This is not a public hearing, but we deferred the vote. We had discussion and the Public Hearing on May 24, 2016 and we moved it off for a month. We had a group of citizens meet with city staff to make recommendations for the Text Amendment and two weeks

ago we again discussed it at the June 28th Planning Commission meeting. There were only 3 Commissioners present at that meeting so we decided it would be well to defer final discussion and vote to tonight.

E.1 Issue: ZONE TEXT AMENDMENT – AMENDING SECTION 17,130.040 (FARM ANIMAL FLOATING ZONE) OF THE SOUTH JORDAN CITY MUNICIPAL CODE
File No: ZTA-2016.03
Applicant: Melvin & Eileen Luker

Commissioner Quinn said in reading through the minutes I understood the majority of what the Commission had discussed but I would like to hear Commissioner Holbrook's concerns regarding lowering the large animal points from 20 to 15.

Commissioner Holbrook said I would like to thank all the people that have helped us and educated us on this issue. It has been most helpful. Most of us are from rural backgrounds and we understand rural issues. I agree with moving the donkey up to the large animals but I don't agree with lowering the point system for a couple of reasons. The point system has been in effect for a long time. If we change it we are impacting about 2,200 ½ acre lots and that would mean they could have two horses, whereas before you couldn't. When you move in to something that is already there, you know it's there but if you moved into something knowing it wasn't there and now it is that is what harm we would do in reverse if we change that. I think we have here very good people that take very good care of their animals and we can't assume that everyone is as good as these people in taking care of their animals. I am concerned that we will open ourselves up to more unintended consequences. It's not that I am against having two horses; it is that this has already been in place and I am concerned of the impact on the other 2,200 ½ acre lot owners.

Commissioner Jolley said I know we have had this discussion many times and have heard the comments from the residents and I totally agree that we should reduce the points from 20 to 15 just for the simple fact that it is a better situation to have two horses than one. We are not going to affect 2,200 lots. There may be that many out there but I don't think there will be that many to take advantage of it. It is just a more humane thing to do for those that choose to have large animals. I do not agree with the 10% flexibility on the size of the lot. We should just keep it at ½ acre with the 30 points.

Commissioner Morrissey said I don't have any additional comments from what I have made at the last two meetings on this issue. I think the 10% flexibility could be an issue that could be exacerbated if we did allow that so I am not in favor of allowing any type of flexibility. I want our ordinance to make very clear what people are and are not allowed.

Chairman Woolley said what I am understanding based on our discussions is as we look at the recommendations that the changes would be that the donkeys would be moved from medium to large animals, there is a debate as to whether the points should change from 20 to 15 for large animals, then minimum lot size would be ½ acre, and we were in favor of prorated point increase based on even increments. Is that still the feeling of the group?

Chairman Woolley asked Planner Jake Warner if he had anything additional to add.

Planner Jake Warner said as I read through the minutes I wanted to clarify on the prorated point increases that we were all on the same page. There was something in there that Mr. Morrissey said that made me think maybe we weren't on the same page. This is a staff suggestion, if you want to see a little more

flexibility. We do have people that might come in with .95 of an acre and right now we are required tell them that they are only held to the points at .5 of an acre because additional points are only awarded on ½ acre increments. I think staff would be in favor of that as long as they meet the minimum lot size, whichever it ended up being. We were not suggesting that points should start smaller than what is currently the minimum lot size.

Commissioner Quinn said as far as the prorated point system, is it in increments of ¼ acre?

Planner Warner said right now you get 60 points per acre, so if you have .9 of an acre you would have 90% of 60 points to use as you would, based on the point system, but you could not go above that.

Commissioner Holbrook asked if this allows you that. Planner Warner said you would need to recommend that change because currently it is based on ½ acre increments. Staff is not in favor of reducing the minimum lot size.

Chairman Woolley said as a reminder this is a Legislative Action Item and we are making a recommendation of approval to the City Council so whoever makes the motion will need to keep that in mind.

E.2 Potential Action Item – (See VII.E.1)

Commissioner Quinn motioned to recommend to City Council that we reduce the number of points from 20 to 15 for large animals; that we move mules/donkeys to the large animal category and that we implement a prorated point increase beginning with a minimum lot size of ½ acre. Commissioner Jolley seconded the motion. Roll Call Vote was 4-1 in favor. Commissioner Holbrook was opposed.

Planner Warner said originally this was scheduled to go to City Council on July 19th but because of their schedule and the tentative outcome of this meeting it has been pushed back to August 2, 2016 for City Council.

Chairman Woolley said those of you that are here tonight we would advise you to be at that Council meeting.

VI. PUBLIC HEARINGS AND POTENTIAL **ADMINISTRATIVE ACTION ITEMS

****Administrative Action = Less Discretion, Substantial Evidence (Objective Standard)**

**B.1 Issue: DAYBREAK VILLAGE 8 PLAT 2
PRELIMINARY PLAT
Address: 6180 West 11500 South
File No: SUB-2016.39
Applicant: Kennecott Land**

City Planner Greg Schindler reviewed the background information on this item.

Kennecott Land Applicant was not present.

Chairman Mark Woolley opened the Public Hearing. No speakers. He closed the Public Hearing

B.2 Potential Action Item – (See VI.B.1)

Commissioner Holbrook made a motion to approve File SUB-2016.39 with all South Jordan City Requirements be met prior to recording the plat. Commissioner Quinn seconded the motion. Roll Call Vote was unanimous 5-0 in favor.

**C.1 Issue: DETACHED GARAGE
CONDITIONAL USE PERMIT**
Address: 11521 South 4135 West
File No: CUP-2016.05
Applicant: Jesse Sanchez

Planner David Mann reviewed the background information on this item. He said staff is recommending approval of this item because it is roughly 120 sq. ft. more than the 60% requirement on a lot that is significantly larger than the majority of lots in the subdivision.

Commissioner Morrissey asked how many others lots in the subdivision have an accessory building.

Planner Mann said I don't know if any of them do. It is only one-third built out now and the majority of the lots on the east side of the subdivision are only half this size so it doesn't afford them the room to put in a detached garage.

Commissioner Morrissey said under the permit for conditional use under the subsection it talks about how it should be consistent with the character of the surrounding area which analysis includes but is not limited to consideration of nearby structures and uses and applicable declarations (CC&R's). I am struggling to figure out how that fits that criteria for conditional use because one of the things I am frustrated with as a Planning Commissioner is when we have these types of conditional uses presented where it seems like if someone doesn't meet our ordinance in a particular area so they go to the caveat the conditional use. I feel like now the burden has been shifted to us because they have used the conditional use and we have to come up with a reason why it can't be done; and the reason has to be justified by substantial evidence. We also have to tell you that we can't mitigate around it.

Staff Attorney Steve Schaefermeyer said you start with any detrimental effects and you are right, it is approved unless those detrimental effects can't be mitigated.

Commissioner Morrissey asked what the point is of having an ordinance to meet certain criteria and you give them an out to it with a conditional use.

Staff Attorney Schaefermeyer said there may be some issues approving this bigger accessory building that staff has not identified for whatever reason; then at this point I would suggest you table it and have staff go look at specifically why you think there would be a problem with a bigger building. If nothing is identified then in the future we should look at changing the code if this continues to cause problems time and again.

Chairman Woolley said my understanding is the code says it has to be a minimum of 10 feet is there a reason that this is 5 feet.

Planner Mann said for accessory buildings behind the back line of the house the minimum starts at 3 feet and then is based on a scale as you go above 16 feet you have to have a foot of setback for every foot of height; so for 18 feet would be a 5 foot minimum setback required here.

Planner Mann said you can see the garage is showing in the PUE line and the applicant did provide release letters from the five utility companies.

Chairman Woolley said this is a significantly larger lot than the adjoining lots in the subdivision. The adjoining home owners behind it will have much smaller lots and they will be closer.

Commissioner Quinn asked if we could hear from the applicant to get further information on this.

Jesse Sanchez, 4839 W. 8580 S., West Jordan (Applicant); my wife and I wanted to move to South Jordan and we have been looking for a ½ acre lot so I could build this size of a garage. We found this lot and the builder said it would be no problem to build it, so we bought the lot. We then found out we had the 10 foot easement all the way around the lot so I went to all of the utility companies that I was asked to go to and they gave me letters saying not a problem to go 5 feet. The house is already being built and we have been waiting for this hearing. One of the neighbors already called me to say he didn't have a problem with it.

Commissioner Holbrook asked if there is any reason why you couldn't reduce the garage footprint a little bit.

Mr. Sanchez said this was to be my wife's dream home and I wanted to have my dream garage and this is where we want to retire. I am a car collector so I need the space for my classic cars.

Commissioner Morrissey said I would like to know more of the intended use of the garage.

Mr. Sanchez said the garage is strictly for my cars. I will not be doing any business from the garage.

Commissioner Jolley said if the builder would have built your home slightly larger then you would have the appropriate size garage.

Mr. Sanchez said we didn't know this then and he didn't know anything about the size of what it had to be.

Chairman Woolley closed the Public Hearing.

Commissioner Quinn said I want to point out that Commissioner Morrissey stated according to the documents to approve conditional uses an accessory building should be consistent with the character of the surrounding area. I agree with his observation that the surrounding area doesn't have accessory buildings; however, this lot doesn't fit the surrounding area either. The lot is significantly larger than other lots in the area and therefore it can accommodate such as building, whereas, the other lots would not. I see the point that it is not necessarily consistent with the character, but neither is the lot. I understand where the applicant is coming from, I am a car fan myself and 150 sq. ft. can make a difference. I don't have a problem with this particular accessory building and I don't think that this structure will impede on anyone or anything with the lot size.

Commissioner Morrissey said there are other neighborhoods that surround this that have lot sizes of similar nature and size so the opportunity to review those is there for staff to see if there is any accessory buildings in similar nature and likeness to this. Looking in totality and what the circumstances we're facing as far as burden of proof; I really don't have anything else to say as far as does this create any detrimental effect?

Chairman Woolley said the reality is that we have an ordinance that allows for accessory buildings. In my mind's eye, the only detrimental effect, because the lot will allow for both the structure and an auxiliary structure that happens to be the choosing of the owner. I don't have a problem with the building in any subdivision if it meets the city ordinance. Where I struggle on this one is we continually have requests to go beyond the 60%. In this case we don't; but other circumstances where we have had other uses and other things that weren't appropriate to the neighborhood.

Commissioner Morrissey said he would like to hear from Staff Attorney Schaefermeyer on what qualifies as a detrimental effect.

Chairman Woolley said if it doesn't meet the ordinance and the size is the primary detrimental effect is in fact that a detrimental effect?

Staff Attorney Schaefermeyer said you still have to point to some sort of evidence. Right now we have a staff report that says there are no detrimental effects. There were some questions about what houses are built and it sounds like not all of them are built but have we gone out to the site. It is hard for me to say is something a detrimental effect if we haven't looked at it. Maybe staff has looked specifically at that but it doesn't address it in the staff report.

City Planner Greg Schindler said if the size is considered the detrimental effect, would it still be a detrimental effect if he built the house a little bit larger so the size wouldn't be a detrimental effect. I don't think the size is a detrimental effect because the property allows up to 40% of the property to be covered with structure and this doesn't even come close to the 40% limit. Technically he could build two garages that were 900 sq. ft. each and still be within code. Our ordinance might be flawed but the 60% works in most cases but when you get to a larger piece of ground maybe it should be based on the size of ground and not necessarily the size of the structure. You don't want the accessory structure to be larger than the primary structure because then it would no longer be an accessory structure.

Chairman Woolley said it is possible that it is too early to know what a detrimental effect would be.

Commissioner Jolley said maybe some of the adjacent property owners would object because they have a building too close to their back yard impeding their view.

The Commissioners all discussed how their emotions have had an effect on this item because of past CUP's they felt like they had the burden to pass when they really didn't feel like they should be allowed. Their emotions are about the ordinance itself and how it is applied in these situations.

City Planner said Staff Attorney Schaefermeyer is trying to work with our staff to change some of these things for conditional use permits. We are working on an ordinance for exceptions and things and standards and such.

Chairman Woolley said I have been doing this for well over 30 years and I have yet to see any City in any state I have worked in that had the perfect ordinance to cover all size lots. We have a percentage of 60%

and if that doesn't work then you can go through the conditional use process for detrimental effect. We need to come up with some suggestions that we could take to our next joint session with the City Council to discuss.

Chairman Woolley said we apologize for our debate here but we have had some other issues and this precipitates some more of those emotions.

Commissioner Morrissey said I don't want to get to a motion and not discuss this issue. Say for example there are windows in the back; if you were a neighbor behind this person with an accessory building of this size do you want windows in the back there or light protruding from the back. I would like to know the testimony of that applicant on what will be there.

Mr. Sanchez said I don't have any windows in the back or on the sides. There will be two windows on the front of the garage that faces the home.

Commissioner Quinn apologized to Mr. Sanchez for the Commission's lengthy discussion and noted it has nothing to do with his application. He said we are excited to have you in South Jordan.

C.2 Potential Action Item – (See VI.C.1)

Commissioner Quinn made a motion to approve File CUP-2016.05 for a detached garage located at 11521 South 4135 West provided that all applicable City Department Requirements, as stated in the Municipal Code, are met. Commissioner Holbrook seconded the motion. Roll Call Vote 5-0 in favor.

**D.1 Issue: BUSINESS LICENSE APPEAL
MAXIMUM DANCE HOME OCCUPATION**
Address: 3895 West Leicester Bay
File No: AP-2016.04
Applicant: Mark and Taralee Lowrance

Planner Brad Sanderson reviewed the background information on this item. Our business license denied the application because you need to be within an inhabitable space and they were requiring that the garage doors be filled in and there were some issues with them not having a current registration for the business with the state. There were some complaint/concern letters received as well as a number of phone calls that our business license department received. Since then the applicants have filed this appeal with the city and they have been able to address or complete the items required. They have chosen to locate the business within the second floor over the garage in lieu of filling in the garage doors. They have since been able to register the business with the state. By way of our code it states that "the City's Business License Department may approve the application if all requirements are met and if no additional information conflicting with the provisions of the chapter have been filed within the 14 day of the mailing." We did receive those complaints within the 14 day period so they are here before you to go over those complaints. I have talked with the applicants a number of times and they have assured me that they have in the past operated the business that was similar to a commercial business in the interim while they were trying to complete a space in another jurisdiction and they were exceeding the hours of operation, the allowed number of employees and the number of vehicle trips that were coming to and from this location for a period of time. They have apologized to the adjacent residents and from this point forward are now proposing to restrictions to the code. They do need to operate from this time forward as a home occupation and not as a commercial business. The purpose of this meeting is a formality as long as they meet the

requirements and restrictions within the code. Our recommendation is, as long as they do that our recommendation is in favor of it.

Commissioner Quinn said in one of the letters they expressed that the business had traffic coming to and from up to the hours of 9 pm. I just want to make sure that staff addressed with the applicant that home occupation hours conclude at 7 pm.

Planner Sanderson said in the letter the applicant provided both Mark and Taralee, both signed the letter and I had them copy and paste those restrictions within the letter itself. Letter K does state that they have to conclude by 7 pm. By signing it, it is a commitment in writing.

Commissioner Jolley asked if Code Enforcement will be monitoring this to make sure it is being occupied in the location indicated and not in the accessory building.

Planner Sanderson said I can't speak for the Business License Dept. or Code Enforcement, but in the past it has been complaint driven. If there is a complaint or phone call that they are having a large number of vehicles show up or that they can hear music or whatever coming from the accessory building I would hope that they would get a call from the neighboring residents expressing concern and that we would definitely look into it.

Chairman Mark Woolley opened the Public Hearing.

Mark Lowrance, 3805 W. Leicester Bay, South Jordan (applicant); my wife, Taralee Lowrance, couldn't be here, she is home sick with the flu. I want to apologize again to all of the neighbors that are here. As was mentioned we are building another warehouse space in Riverton and that space took several months longer than it was supposed to. We had intention to use whatever space would be allowed at our home for smaller sized classes which is for my wife to have private lessons. We had a commercial business license at a space on Redwood Road for a number of years and the building was bought and we were forced to leave fairly quickly so we were not able to finish out that space in Riverton. In error, we decided we would use the detached garage space that we have because it was large enough to accommodate most of the classes. We did go to all of the neighbors, and I tried to reach out to them and ask them if there were any problems to please call me because we operated at a dance studio in the basement of a home in South Jordan for about 9 years. We outgrew that and that is when we ended up moving. We did have a Conditional Use Permit in that studio for up to 12 students and we didn't have any complaints to the city about that studio. I think a lot of it had to do with us getting feedback from neighbors and if there were any issues with vehicles we would handle it immediately with the customers. We want to have a good relationship with our neighbors and if there are any issues from this time forward we would handle them immediately. We had too many complaints and will not allow our customers to go against the requirements. We have told everyone up front to drop off at the top of the street or they can drop off at the church parking lot around the corner or park and walk their students down. That is what we are proposing to just do the administrative tasks of a small business out of our home and the small size classes we would have.

Amy Dudley, 3859 W. Leicester Bay, SJ; in his proposal he stated they were going to have smaller class sizes and they were going to have them in the room above the garage. Have you seen the room above the garage? I would like to request that you go there and see the room; because if you saw the dance studio you would know this is a dance studio. I can't let my little girl ride around in the cul-de-sac because of the traffic. I did see all of the dancers there tonight and they are parked alongside the house and I don't want cars parked alongside my house. I don't want the drop offs on the corner; that is where I live and that

defeats the traffic purpose. Dunsinane is a very busy road and the church across the street; it is dangerous for the girls to cross the street as well. I don't want people dropping off their kids in front of my house. I want to know what the hours of operation are going to be. I want to know how many sessions, what days of the week and what are their hours.

Brandee Johnson, 3899 Holyoke Place, SJ; there are a few problems that I see with this. When I was coming out of my cul-de-sac to come here today, there were a lot of cars parked on Dunsinane. When you have cars coming both ways you can't do that. One has to pull over so you can get around it. The other issue is the safety of small children. I have two small boys that I have allowed to play in our cul-de-sac the last 6 years and they want to play with kids in that cul-de-sac, but with all of the traffic I don't feel safe having them ride their bike there, walk there or anything without a parent with them. I have witnessed some very rude people coming out of the cul-de-sac when you are driving on that road coming from the business, which is also a problem. We don't have speed bumps on Dunsinane to slow them down so they are speeding out of there and causing a lot of issues and it is a nuisance.

Willie Murnin, 3876 Leicester Bay, SJ; as I was leaving home tonight at 6:15 to come to this meeting there were cars parked all along Dunsinane and to get out of our cul-de-sac I just about got hit head on by a car coming down there because he was blocking the view of the traffic going south bound on Dunsinane. I would recommend that they not park on Dunsinane because the street is not wide enough. There is only room for one vehicle. Speed is an issue and I did mention it to Mark a couple of times.

Commissioner Holbrook asked Mr. Murnin to give a concept of how many cars are the issue.

Mr. Murnin said when I pulled out, there were probably 5 parked along Dunsinane and about 4 parked in the church parking lot. There were no cars parked on my street but they were parked right up to the edge of the intersection where we come out of Leicester Bay onto Dunsinane and I could not see the traffic that was coming from the north. I am assuming all of the cars were related to the studio because there was nothing else going on at the church baseball field.

Commissioner Holbrook asked if cars are parked at the church like you said you saw today when the church has activities. Mr. Murnin said yes. The church users usually park further south in front of the church where they don't block the view of the traffic from the north.

Melinda Schulz, 3894 Leicester Bay, SJ; I live directly across from Mark. They are good neighbors. I wonder what brought us here and why this was not handled properly in the first place. Why a license was not applied for and why the cards did not go out a year and a half ago. I understand that the City of South Jordan does not differentiate between a cul-de-sac and a through street when granting business licenses; there is a huge difference. There is one way in to my street and one way out. My home is for sale. Approximately 8 weeks ago I had a gentleman and his wife come back for the third time with a tape measure and paint chips. My husband and I were parked in the LDS Chapel parking lot looking down the street and unfortunately it was a dance night. Thirteen cars went in and out of that cul-de-sac. That is 54 times by my front door. The next day the realtor called me and said as a young family there is too much traffic. My home is under contract again and is supposed to close the end of July. I feel an obligation to tell the perspective buyers that they could be living across the street from a commercial business. I have no guarantee that there is going to only be 5 cars. That is still 20 times by my front door. I have a driveway that will hold 4 cars and I have had to literally turn around in my driveway to face the road to pull out safely. They drive tremendously fast and have had tires screech in the cul-de-sac and have had girls standing in my yard and when somebody is getting ready to write a check for \$470,000 they don't want to

live across the street from a commercial business and that is what it is. I know the Lowrance's have put a lot of money into that building but this is a pretty big chunk of my retirement I am looking at. I can't afford to have more buyers say what is going on here. Parking on Dunsinane is a safety hazard and parking in the church parking lot I can bet you they have some pretty good liability attorneys. I don't understand why the business can't be run entirely out of the Riverton studio. I don't feel good about this; I know it is a part of their income, but I also have to protect my property value. I have been there for 10 years and one of the reasons I chose that area is the cul-de-sac and no traffic. Leicester Bay is not a place for a commercial business.

Commissioner Holbrook said you mentioned something about a year and a half ago; what did you mean by that. Has this been going on for a year and a half? Ms. Schulz said let me tell you how I met Mark. All these cars were lining the road and blocking my driveway and I put an orange sticky note on every single car saying "do not block my driveway." Within 45 minutes Mark was in my driveway apologizing. He said his wife had a small dance class. This has morphed into a commercial business and it needs to be in a strip mall or in a warehouse; not in a cul-de-sac in a residential area.

Amy Robinson, 3858 W. Leicester Bay, SJ; I am a very non-confrontational, peaceful person and I miss that in our neighborhood. I just wanted to reiterate what she said about a cul-de-sac. If you have cars coming and going there will be four passes by my house for each student. Not like on a regular street where you drop them off and leave; this is a big difference. Mark and his family are good people but this just can't be. This is our neighborhood and it is not peaceful anymore. It has been nicer since someone complained.

Shawn Matheson, 3910 W. Leicester Bay, SJ; I think Mark would be the first to admit that he and Taralee made some mistakes and he has apologized to the neighbors and I think he has been very genuine in his apologies. That being said, there were a number of mistakes I think the Lowrance's made in not obtaining the proper licenses and such. What I would like to submit for your consideration is if the Lowrance's are meeting the expectations of the city, absent the emotion that we as neighbors have experienced, would that merit keeping a license for them. It is my understanding that they are now meeting the requirements. I think if it is a small amount of cars coming to the home I would be fine if they came into the circle. I think they have taken a very proactive step to redirect cars. I do agree with my neighbors that that would be even more problematic if those cars are on Dunsinane or at the church parking lot because then mothers with small children are going to have to walk their children down the street to be able to get them to come back. If it is just a few cars and it is within the ordinance of time I have no problem with a few cars coming and going within those hours.

Bill Schulz, 3894 W. Leicester Bay, SJ; I am right across the street from Mark. I think what we really need to consider here are the safety issues. I know Mark would never want anything to happen to any of the kids or people to have accidents on the road. When you look at Leicester Bay, when traffic comes in they zoom around and they park on our street or a little bit down. There have been some instances that I know where people are blocking the view and at one time Marks wife was backing up her car and hit another because she couldn't see. I am happy that no severe accident has happen yet. This is a cul-de-sac and we have safety issues involved. This is a commercial enterprise. They have a facility in Riverton and I do not understand why they can't have all of their dance stuff there. If one child were hit by an automobile because of the cul-de-sac and everything, if you approve this, there is no guarantee this won't happen. I know Mark would not want that. He can talk to the people all he wants. Their place is not a facility to have that kind of traffic in there.

Trace Robinson, 3858 W. Leicester Bay, SJ; Mark is a great man and has a great family and this is nothing to do with them personally. In my profession I deal with a lot of traffic issues as an engineer. Dunsinane Drive is a problem. Leicester Bay is a problem. Both of those streets are 24-26 feet wide and you put any car parking there and you have a traffic issue. I live right on the corner so every car that goes in and goes out goes past my house. Add on to that a very busy church and we have a lot of traffic there. This is a commercial use and doesn't belong here in this neighborhood. Cars are parking in front of my house blocking Dunsinane Drive or if they park at the church that is not a solution. What mother is going to drop off their child in the middle of winter and say now walk over there a block away to go to the dance studio; it will be back into the cul-de-sac.

Chairman Woolley closed the Public Hearing.

Chairman Woolley thanked everyone for their comments.

Commissioner Quinn said one of the ladies asked how many visitors would be allowed and the letter states that they would not allow any more than 6 visitors per day to their home and be completed by 7 pm. I would like to piggyback off of Ms. Schulz comments and express my frustration on why were the original requirements not met. That concerns me. That being said, I love that the applicant has taken the initiative to correct these issues to meet with the City to find out the requirements and to do what is necessary to mitigate some of these problems that the neighbors have expressed. Emotions are running high in this room tonight and it appears that the neighbors have a good relationship with the Lowrance family, which is fantastic; but there are a significant number of complaints regarding this. If the applicant sticks to what their plan states it would mitigate most of the concerns from the neighbors. If there were no more than 6 students per day and concluded by 7 pm. If that's all that is taking place then I could see moving forward with this; however, I do have concerns with the original business requirements not being met. That poses a little red flag on whether or not the business regulations for a home based business in South Jordan would actually be met. Those are some of my concerns.

Commissioner Morrissey asked to have the applicant come up and address some of the other questions that were asked.

Chairman Woolley said we can have him come up after we have our discussion first.

Commissioner Jolley said I see the comment about 6 vehicle trips per day and it appears to me they have upwards of 5 students and the parents are not staying there so if they are coming and going that creates more than 6 vehicle trips.

City Planner Schindler said a trip is considered a round trip there and back. It is not just trips it is visitors and customers coming to the home whether they walk or drive.

Commissioner Holbrook asked staff about the characteristics of the Dunsinane street. Is that part of a plan, is it a typical road?

City Planner Schindler said it is a long straight street and we have had many complaints over the years about people traveling way too fast down the street. It goes from Sky Drive, about 9800 South, to 10200 South without any interruption or curve until it gets to the end. Shane can answer that with the traffic committee regarding speeding on that street.

Assistant City Engineer Shane Greenwood said it is an older road so it is our older standards. It is a few feet narrower than our current standard.

Commissioner Quinn said I know the speed limit on Sky Drive is 25 mph, what is the speed limit on Dunsinane? Mr. Greenwood said it is 25 as well.

Chairman Woolley asked Mr. Lowrance to come back up to the podium.

Commissioner Morrissey said I wanted to know if you met with the neighbors before this meeting to discuss resolution to this issue.

Mr. Lowrance said I had no idea of the affect this was having. We have talked with everybody as we go about the day and back and forth from church. I did hear about one or two vehicles that we were concerned about and those clients are no longer with the studio. I can honestly tell you that I feel blind sighted by much of this because I have always tried to have such an open dialog in requesting any type of information like this from all of my neighbors. Apparently I am not as approachable as I thought I was. That doesn't have any bearing on the mistakes that we made. We never should have allowed that many people to be taking classes out of our home. We just didn't know what to do because the building was literally sold out from under us and they gave us 30 days to be out. I have had phone calls from three of our other neighbors that are not here and they reached out to me. They said they were sorry this was happening.

Commissioner Morrissey said you currently run a studio out of Riverton? Mr. Lowrance said yes. Commissioner Morrissey asked if this was a spillover from that studio. Mr. Lowrance said at this point what they experienced was the full studio being run. We didn't get that space finished until the very end of March, so we were not able to use it until April. Our proposal now is just the small classes that can't be done at the other facility so we do not have to run classes till 9 or 10 at night and carry over into the weekend.

Commissioner Morrissey asked if he currently had this operating out of his house. Mr. Lowrance said I was honestly shocked that were cars on our street. Commissioner Morrissey said are you currently operating the business there and are there currently dance classes going on. Mr. Lowrance said apparently there are. Commissioner Morrissey said you are going to know that; yes or no. Mr. Lowrance said there has not been any dance classes for the last little while. Apparently there was one running tonight but I have no idea about it.

Commissioner Jolley said the name of the business is Maximum Dance is that correct. Mr. Lowrance said yes. Commissioner Jolley said it operates out of Riverton under that name is that correct. Mr. Lowrance said yes. Commissioner Jolley said that is a business entity operating there and now you are applying for a home occupation for this business to operate secondarily out of your home. Mr. Lowrance said right. Commissioner Jolley said my view is that these business licenses are for home occupation; you are obviously operating a dance studio in Riverton and supplementing it with your home. What is the reason for supplementing it with your home? Mr. Lowrance said for tax purposes and we have always used a portion of our home for a business. Commissioner Jolley asked if that was for convenience for your wife. Mr. Lowrance said yes; because she has other teachers that teach from the commercial space and then she has these small classes that she can do at the studio while it is being used.

Commissioner Morrissey asked if there are instructors that come to the house to teach. Mr. Lowrance said no.

Commissioner Holbrook said you had the problem where they were month to month and they told you that you had 30 days to move and you moved to your home. When was that? Mr. Lowrance said it was back in June of last year. Commissioner Holbrook said so you basically operated your whole commercial business from June of 2015 to April of 2016? Mr. Lowrance said yes. Commissioner Holbrook said even tonight you were having larger classes is that correct? Mr. Lowrance said I have no idea if there were people that came over. I haven't been home at all and I didn't know about any other classes that were operating.

Commissioner Quinn asked if there have been any classes taught out of your home from the time the new dance studio was built up to tonight. Mr. Lowrance said yes. He said there have been solos with one or two cars here and there.

Commissioner Morrissey asked for clarification purposes, you said since it opened operation. Mr. Lowrance said since the completion of the Riverton dance studio up to tonight. Commissioner Morrissey asked if there has been any dance lessons since you were denied your business license. Mr. Lowrance said I don't think so, but I don't know for sure. She may have had one or two. I know she was doing choreography for a wedding and there were two cars that showed up.

Commissioner Jolley said the business entity, Maximum Dance, is apparently operating out of two locations. They apparently have a business license in Riverton; does this make this entity not a home occupation because it is operating commercially out of Riverton and flowing over into a private residence?

Staff Attorney Schaefermeyer said I don't believe so. Generally you can have a commercial business, if you're an attorney for example, you can have your LLC or whatever running out of your home as a commercial business. That is something I could look at more closely for you; but we are requiring them to get a separate business license for this specific location.

Commissioner Holbrook said I am trying to put all of this together and I understand the issue where you had to move quickly and do it from your house. There are so many inconsistencies after that. If you are a business owner and you are having 50 people come in during the day, 20 to 30 students per day, and you didn't notice the impact that was having on your neighbors? They are saying that some of this is continuing even now; that really concerns me because that is inconsistent. I am sure your intentions were probably good but I just can't believe that you didn't notice the impact you caused.

Commissioner Morrissey said I express the same concerns and want to say that for the record. I can tell your neighbors like you and I also understand the concerns of the neighbors based on what has been represented today and their concerns regarding safety. My main concern in evaluating this is just the inconsistency as well. Operating a business after you have already been put on notice that you are doing it illegally doesn't do you any favors in my eyes. Based on that behavior you have given us your word through a letter that you are going to operate the business according to the ordinances set forth in South Jordan and you are not meeting the standards right now even under the appeal process. That is frustrating to me to hear the testimony I have and the inconsistency, and have a letter stating oh we'll comply now because we have to. The other issues I have is that this is a business that is running out of a house because the business in Riverton is just not large enough for the capacity. As a business owner

that is a decision you have to make as far as maximizing that capacity or moving to a new location. Based on the safety and behavior, I don't believe the behavior of the applicants has changed or is going to change to comply. I am inclined to deny this based on what I have heard.

Chairman Woolley said I understand the circumstances that drove the decisions and I appreciated Mr. Matheson's approach and his comments. I think that sometimes we get caught up in past behaviors but yet we still have a concern as to what will be the future behavior. My question for staff is, we have a department here in the city that has denied this application and yet our staff report is recommending approval of this appeal and I am struggling with that.

Staff Attorney Schaefermeyer said my understanding is that the business licensing official denied it based on one set of circumstances and now the applicant is saying they are going to another thing in compliance with our code. That is where some of the inconsistency is. If they are operating right now that is still not allowed under our code without a business license. The applicant should be able to answer questions about whether or not they are currently operating a class. That puts you in a strange spot. The business license official denied it for a certain set of reasons that the applicant is now telling you have changed, but there has been neighbor's testimony tonight that says it hasn't actually changed. You can decide based on what evidence is before you what you want to do. I might suggest that if we want to clarify some of this mixed information that we table it and ask staff to continue to look into it. My understanding is that this all started because of a Code Compliance issue. That indicates to me that there is still an ongoing Code Enforcement case against the applicant. Generally we say we will stay further enforcement or further prosecution if you go through the proper steps to rectify the situation; but if there is some concern that that has not been rectified or there is not intent to rectify the situation then in the interim, if you decide to table it, we will have Code continue to look into the case.

Commissioner Holbrook said if we approve this tonight, and I get the feeling that the neighbors are very vigilant about this, if things were to continue in a manner that was not in compliance with the license, then if the neighbors called in and said look then have 10 cars over there right now and I just saw 15 kids run over there, then Code Enforcement would check on that; is that correct?

City Planner Schindler said I don't know if Code Enforcement could check on if there are classes after hours because they only work to 5 pm. You would have to take the word of whoever made the complaint.

Commissioner Quinn said what is the result of said violation?

City Planner Schindler said if they are violating it, it can come back to the City Council for revocation of a Conditional Use Permit.

Staff Attorney Schaefermeyer said if you were to deny or approve it tonight, anyone can appeal that to the City Council as a result of your action tonight.

Commissioner Quinn said I have quite a few hesitations in approving this, but, I also tend to lean toward the property owners rights. If the property owner is in line with home based business requirements and they state they are going to be in line with, I don't have a problem approving it. I have hesitations with past behavior and what will happen in the future.

Commissioner Jolley said I have the same feelings and I think there are safety concerns. I am not comfortable with it. I think it is a safety hazard to the neighborhood.

Chairman Woolley said we just talked to the City Council recently about home based businesses and their issues and intensity was a significant part of that discussion. We didn't verbalize the through street versus the cul-de-sac and yet we did talk about the intensity being primary in all of our discussion and concern. This is obviously one of those. In having driven the area over the weekend and being familiar with it, the comments made tonight are very accurate. Dunsinane is a traffic problem. The only option in allowing for a home occupation business is that they have to maintain those limited number of trips. I don't want to remove that right from the Lowrance's but the neighbors have rights too. It is problematic because of the neighborhood, and problematic because of the streets, and problematic because of the behaviors.

Staff Attorney Schaefermeyer said if you were to approve the appeal which would overturn the business licensing decision, I think there would still be some additional department reviews and they would have to still be issued a license. We are not sure what building inspections would be required, if any, but that is something that the building department like the Planning Department, when a business license comes through, reviews it; between now and whenever they get the actual license in their hand they are still not allowed to conduct classes out of their home.

Chairman Woolley said I appreciate you clarifying that. So the applicant would have to be willing to agree to that; that until those reviews and then the license was actually formalized that there would be no classes whatsoever.

Commissioner Holbrook said do I understand correctly that if there are no motions then it fails; is that correct? Chairman Woolley said that is correct.

D.2 Potential Action Item – (See VI.D.1)

Commissioner Morrissey motioned to deny appeal application File AP-2016.04 by Maximum Dance based on the testimony of the neighbors tonight that a business is still operating out of the applicants home without a proper city business license; although the applicant has agreed through letter stating they will abide by all city ordinances they have failed to do so over the past months during this appeal process; also due to safety issues pointed out by the neighbors regarding the visits and drop off zones identified throughout their testimonies and also due to the fact that the applicant runs a business out of Riverton with the opportunity to run its entire business out of that Riverton studio. Commissioner Jolley seconded the motion. Roll Call Vote was 4-1 in favor to deny. Commissioner Quinn voted against.

Chairman Woolley said for the benefit of the citizens the appeal has been denied and for the benefit of the applicant, the appeal can be appealed to the City Council.

Chairman Woolley called for a 5 minute break.

VII. PUBLIC HEARINGS AND POTENTIAL *LEGISLATIVE ACTION ITEMS

*Legislative Action = More Discretion, Reasonably Debatable (Subjective Standard)

- F.1 Issue: TEXT AMENDMENT – AMENDING CITY CODE SECTION 17.04.300 (REQUIRED LANGUAGE WITHIN ALL DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS DOCUMENTS) TO ADD LANGUAGE PREEMPTING HOMEOWNER ASSOCIATIONS FROM PROHIBITING SOLAR AND OTHER RENEWABLE ENERGY DEVICES**
- File No:** ZTA-2016.06
Applicant: City of South Jordan

Staff Attorney Steven Schaefermeyer reviewed the background information on this item. This was basically someone contacting the city that was upset that their HOA could restrict them from installing a solar power on or near their home. A few City Council members asked that we look into ways that in the future we can address these types of situations. There is a state law in our land use code 10.9A.6.10 and it says “restrictions for solar and energy devices...” basically a couple of sentences that allow cities to deny subdivisions based on either their CC&R’s or other deed restrictions that don’t allow things like solar panels. It even includes clothes lines which can be considered as an energy device because it saves drying costs. The caveat there is “reasonably sited.” Potentially with these changes an HOA could have in their CC&R’s some rules about where you can put a renewable energy device. In going forward, new HOA’s couldn’t outright ban it under this change. If you turn to the change copy, page 101 of the PC packet pdf, that paragraph that I cleaned up a little bit is already required in CC&R’s. When I approve a plat one of the questions I ask the Planning Department is are there any proposed CC&R’s for this. By code those CC&R’s have to have that language about maintenance so that if a HOA falls through then the city can step in through a special assessment area to maintain those. The thought was to just piggyback this new paragraph which basically says you can’t prohibit reasonably sited renewable energy devices and this paragraph can’t be deleted from your CC&R’s.

Chairman Woolley asked about the language of Item B. It states the City Attorney may approve variations of the paragraphs required under subsection A when individual circumstances dictate. Will you elaborate on this?

Staff Attorney Schaefermeyer said for example this would apply for commercial. Sometimes commercial properties have CC&R’s so you wouldn’t be calling that a homeowner association you would be calling it something else. Sometimes based on the way that whoever has drafted it has written it and it makes sense to word things a certain way; but I don’t think that gives the City Attorney any authority to change it.

Chairman Woolley talked about a subdivision he did a long time ago, one of the home owners wanted to put a wind generation device on the roof and the city denied it. It was very low profile. Do we have any language in our ordinances now or have those all been removed.

Staff Attorney Schaefermeyer said we don’t have any language as far as I can tell, having talked to Greg that regulates renewable energy. As it becomes more common, it may be something that the city would want to look into. I don’t know what reasonably cited means. Eventually down the road if we define what is reasonable, then obviously home owner associations have a guide of whether they can go beyond that or not. You see solar panels on roofs around South Jordan and as long as they fall within the other restrictions that a home would be required to with regards to height or gables or whatever, then it’s allowed. Potentially wind turbines are not allowed in South Jordan.

City Planner Schindler said wind turbines are actually permitted in South Jordan. We have a wind energy conservation systems ordinance section. Some wind turbines and wind energy is allowed as a permitted use and some come as a conditional use if it is outside the parameters. The ones placed on a roof can't exceed a certain height.

Commissioner Holbrook asked how this would affect townhomes; basically your HOA is responsible for the roof. If you are putting solar panels on your roof you would be telling the HOA tuff luck.

Staff Attorney Schaefermeyer said in that case if you don't have the right to modify your building, period, then the city couldn't tell the city otherwise. There may be some situation where the townhome has the right to modify their roof or whatever. This applies to new developments.

Chairman Mark Woolley opened the Public Hearing. No speakers. He closed the Public Hearing.

F.2 Potential Action Item – (See VII.F.1)

Commissioner Holbrook made a motion to recommend to the City Council approval of Ordinance 2016-24. Commissioner Quinn seconded the motion. Roll Call Vote was unanimous 5-0 in favor.

VIII. OTHER BUSINESS

None

ADJOURNMENT

Commissioner Morrissey made a motion to adjourn. Commissioner Quinn seconded the motion. Vote was unanimous in favor.

The July 12, 2016 Planning Commission meeting adjourned at 9:00 p.m.

Meeting minutes were prepared by City Recorder Anna West.

This is a true and correct copy of the July 12, 2016 Planning Commission minutes, which were approved on August 9, 2016.


South Jordan City Recorder

Attachment A



JULY 12, 2016

PLANNING COMMISSION MEETING SIGN IN SHEET

<u>PRINT NAME</u>	<u>ADDRESS</u>
* Melinda Schutz	3894 Leicester Bay ST
X Wtz SCHULZ	" " SOUTH JORDAN
L.L. Marshall	2940 W. 10755 So.
Brent Bowles	3009 West 10755 So.
Jesse Sanchez	11521 S 4135 W So Jordan
Willy Phillips	2622 W Horseshoe Cir.
* Amy Duder	3859 Leicester Bay
Mel & Eileen Luker	2928 W. 10755 So
* Willet & Tammy Murnin	3876 W Leicester Bay
Mark Lowrance	3895 W. Leicester Bay
Cheryl & Dan Diener	10510 S. 3010 W.
Chris McCoy	2074 W. 9640 S
Dayle Sant	10500 S. 3010 W.



JULY 12, 2016

PLANNING COMMISSION MEETING SIGN IN SHEET

PRINT NAME

ADDRESS

Jay Sant

10500 S. 3010 W.

Collette Tomlinson

2868 W. 10460 S.

Kristi Collins

10749 S 2200 W

Robert Collins

10749 S 2200 W

* Brandee Johnson

3899 Holyoke Pl.

Ron Lewis

3008 W. 10755 So

REBECCA LEWIS

3008 W. 10755 So.

Pamela Sorensen

2617 W. Rustic Meadow Cir.

Elaine Beard

2592 W North Forty Way

Glen Beard

2592 W North Forty Way

* Tracee * Amy Robinson 3858 W. Leicester Bay

* Shawn Matheson

3910 W. Leicester Bay