

Perry City Planning Commission
3005 South 1200 West
7:00 PM July 10, 2014

Members Present: Chairman Dave Walker, Commissioner Steven Pettingill, Commissioner Tom Peterson, Commissioner Vicki Call, Commissioner Don Higley, Commissioner Travis Coburn

Members Excused: Vice Chairman Doug Longfellow, Council Member Brady Lewis

Others Present: Malone Molgard, City Attorney; Council Member Todd Christensen, Codey Illum, Perry City Planner; Lani Braithwaite, Karla Jeppesen, Steve Jeppesen, Jack Kunz, Peggy Kunz, Kevin Butters, Matt Firth, Megan Palmer, Kevin Butters

1. Approx. 7:00 pm-Call to Order and Opening Ceremonies

Invocation- Chairman Walker

Invocation was given by Chairman Walker

Pledge of Allegiance-Steven Pettingill

The Pledge of Allegiance was led by Commissioner Pettingill

Review and Adopt the Agenda

MOTION: Commissioner Peterson moved to adopt the agenda as written. Commissioner Higley seconded the motion. All in favor.

Declare Conflicts of Interest, If any

Request to declare conflicts of interest by Chairman Walker; Commissioner Pettingill stated he needed to leave at 7:45 p.m.

Approve the May 15, 2014 and June 5, 2014 Minutes

MOTION: Commissioner Pettingill moved to approve the May 15, 2014 and June 5, 2014 minutes as written. Commissioner Call seconded the motion. All in favor.

Report by Council Member Lewis

Council Member Lewis was not in attendance at the meeting.

MOTION: Commissioner Pettingill motioned to open the public hearing for Saver Investing Subdivision. Commissioner Peterson seconded the motion. All in favor.

2. Public Comments and Public Hearings

A. Public Hearing Regarding Item 3A (Saver Investing Subdivision)

Codey Illum stated that this property is located at 230 West 1750 South. He said it is one parcel of property that will be divided into two parcels. Commissioner Pettingill asked if there was a property line going through a building. Mr. Illum stated that the building has been removed. There were no public comments on this item.

MOTION: Commissioner Pettingill moved to close the public hearing for the Saver Investing Subdivision. Commissioner Peterson seconded the motion. All in favor.

B. Public Comments

There were none.

3. Land Use Applications

A. Final Recommendation to the City Council to Approve Saver Investing Subdivision.

Location: 230 West 1750 South. Applicant: Justin Palmer

Codey Illum stated that this is an existing parcel that the applicant has purchased with the intent of making into a two lot subdivision. He said that the largest portion of the barn has been removed and only a small portion of the barn is still erect next to the shop. Mr. Illum assured them that when a building permit is pulled the setbacks will be in place.

Commissioner Peterson asked what the setbacks were. Codey stated that this parcel as it exists is non-conforming. He said when the home is built on lot 2 it will be a minimum of 8 feet on one side and a combination of 22 feet with a 30 foot front setback and 20 feet in the rear. Chairman Walker asked if it meets city ordinances. Mr. Illum stated that it does.

MOTION: Commissioner Pettingill moved to approve the Saver Investing Subdivision and forward it on to the City Council. Commissioner Call seconded the motion. Roll Call Vote.

Commissioner Pettingill yes

Commissioner Call yes

Commissioner Higley yes

Chairman Walker yes

Commissioner Coburn yes

Commissioner Peterson yes

Motion Approved: 6 yes 0 no

4. Land Use Ordinances, Zoning, Design Guidelines, General Plan Etc.

A. Conditional Use Application for Domesticated Animals on property in the R2 Zone.

Location: Approx. 3300 South 1200 West, locally known as "Cherry Ridge Pit". Applicant: Cherry Ridge LLC (Tysen Butters).

Chairman Walker asked if there was any further discussion on this item. He said Mr. Butters has the right to fence his property. Chairman Walker stated that there needs to be an access road out of there with no key and no gate and a limited amount of animals.

Commissioner Call stated that there should also be a condition on how close the fence can be to the residential lots that are there, because he wants to run it up to the property line.

Chairman Walker stated that he can put a fence on the property line. Commissioner Call stated that the Planning Commission is considering a conditional use permit and we can put conditions on that permit. Commissioner Higley stated he would have to put up two fences. Commissioner Call asked why. Commissioner Higley said the residents would be on his property and still be up against the animals and if there is no fence at all he could move it back 8 feet on his property. Commissioner Call stated that there would be a buffer between the edge of the residents' property and the barbed wire fence he wants to put in.

Commissioner Higley stated that the kids will still go through the buffer. Chairman Walker stated there is no way to stop that.

Commissioner Call stated if you go and look at the property it is on a vertical drop. She said it is a much less likely of children going up against the barbed wire fence, then if it is sitting right there on the level at the edge of their property. Commissioner Call stated that in the beginning Mr. Butters wanted to put 4-5 horses on the property and at subsequent

meetings he was talking about putting in cattle. She said if she were a neighbor she would be much more amenable to having horses. Chairman Walker asked Mr. Butters if he was going to have cattle instead of horses. Mr. Butters said it would be horses and cows. Chairman Walker asked him how many horses and cows would he have. Mr. Butters reported that the city ordinance allows 2 animals per acre, but he would not have nearly that many. He said they would have 4 or 5 animals. He stated they want to have some animals there to keep the weeds down and currently they have 3 horses and no cows. Codey Illum stated that he can have 28 large animals by city ordinance. Mr. Illum stated that the Planning Commission can put a condition of how many animals they can have on the property, and then have it reviewed every year by the Planning Commission.

Council Member Christensen asked if the Planning Commission can determine the type of fence on a conditional use. Mr. Illum commented that it has to be a reasonable condition. Kevin Butters stated that they have the right to put the fence on the property line to keep people and trash out etc. He said as far as the access they could put a lock box with a key. Chairman Walker stated that he did not want to do that. Commissioner Pettingill felt that the access should not be a portion of the discussion. Malone said that it needs to be kept separate from the conditional use permit application. Mr. Butters stated that he realizes that it is an emergency access road and is willing to put up a gate and a key box for the emergency vehicle to get through. Mr. Butters stated that a conditional use is a permitted use upon which they can impose reasonable conditions. Malone stated that there is a list of standards in the Perry City Code. He said there are 14 different things that as an applicant is suppose to show that the conditional use will meet. Mr. Molgard said that number 9 stated that fencing, screening, and landscaping to separate the use from adjoining uses and mitigate the potential for conflict in uses. The effects of any differences in use or scale have been mitigated through careful planning and establishment of appropriate conditions. Malone stated with those in mind what appropriate conditions can be placed to separate the two uses and mitigate the potential conflict of those uses.

Mr. Butters stated that they could put up an 8 foot electric fence in addition to the field fence. Commissioner Coburn stated that his concern is safety with the barbed wire fence and the electric fence with children right on the property line. Commissioner Pettingill stated when the residents in Cherry Ridge are having a BBQ and the wind starts to blow just right it would be a real big infraction to the BBQ. He said that the R2 zone was the best zone at the time; it is a highest density zone. He said there were a lot of things that weren't required by City Ordinances. Commissioner Pettingill stated that it was the city's fault and also the fault of the developer. He said this is not the time to expand the use of this. He stated if he were the city, he would make the zone R5 and they could have their cows and that would be the end of the subdivision. Commissioner Pettingill felt that the Planning Commission is bending over backwards to facilitate this so he can put it in greenbelt.

Chairman Walker stated that he can have cows on his property other then there is a conflict with the zones. Commissioner Pettingill stated that he has already said his sediments in previous meetings "No". Commissioner Peterson felt the same way. Commissioner Call stated that if you go back to the covenants that they established, when they first put in the subdivision they held those residents to not having the exact same thing that they are trying to put in the same zone. She said it's good when it fits the condition one year and it is not good when it doesn't fit their condition the next year, or ten years. Malone read "The

Conditional Use Permit procedure is intended to provide greater flexibility in land uses while at the same time, preserving Perry City characteristics and assuring compatibility between the conditional uses, the uses on adjoining properties, and Perry City at large. The Planning Commission will review all proposed conditional uses and may impose conditions of approval to preserve the character of the zone district and to mitigate potential adverse effects of the conditional use. In the rare situation where Perry City and the applicant cannot devise conditions that satisfactorily mitigate adverse effects of the conditional use, Perry City shall deny the Conditional Use Permit". Malone said that the Planning Commission should involve the applicant in this process to figure out what conditions you both can come up with that will mitigate the adverse effects. Commissioner Peterson stated that the Planning Commission has done this with public hearings and discussions with the applicant. He felt it was a time to make a decision.

Mr. Illum stated that the Planning Commission cannot use what has happened in the past to make a decision on this. He said it is a conditional use permit and is allowed by conditions which in the R2 zone we allow this use. Codey stated that he has to refer to the city ordinances to show where there is a conflict. Codey said that if the residents in Cherry Ridge have an acre they too can have a cow. Commissioner Pettingill stated that nobody has an acre in the R2 zone. Mr. Illum stated that the Planning Commission is held to follow the City Ordinances. Malone stated that if the Planning Commission denies this they have to make specific facts as to why they denied it; the facts have to hold up and be factual. Malone stated that if you say they have cows that come up to the fence, it will not hold up in court. He said if you are going to deny this, you need to have factual reasons why there will be an adverse effect on the adjoining property owners. He said it cannot be hypothetical it will not hold up in court. Commissioner Pettingill stated that once this applicant is finished the Planning Commission needs to look at the R2 zone and its uses. Malone stated as legal counsel he is uncomfortable in denying it unless they cannot come up with conditions to put on it that both sides cannot agree on. He said in his opinion they need to work together in coming up with some conditions that work for both the applicant and the City. Commissioner Pettingill stated that there are a lot of conflicts in the City Ordinances. He said every time we have something like this it goes to City Council and then comes back to the Planning Commission and then we implement something like this, like having animals in the R2 zone and there shouldn't be.

Codey stated that the ordinances are living documents and we have to make the best judgment that we can for the betterment of the City. He said that the City is held by ordinances and the Planning Commission cannot make a decision on public claimer. Codey said if you deny it, show us where you can deny it. Commissioner Coburn stated that the ordinance states that a 6' solid masonry or solid vinyl fence must be utilized to protect and buffer a single family residential use or zone from any other use. Malone replied that they are both zoned the same but with a different use. Codey said it is allowed on both sides. Malone said that is the conflict. Chairman Walker asked for the applicant to move closer so that the Planning Commission members could talk to him. Chairman Walker asked if a masonry fence would be acceptable. Mr. Butters replied "No, they are too expensive". Chairman Walker asked about a vinyl fence. Mr. Butters replied "no they are also too expensive". Mr. Butters suggested 2 fences, one barbed wire and an electric fence with screening bushes.

Commissioner Pettingill said once the gate is open, Mr. Butters will have his buddies with horses bringing theirs in. Commissioner Pettingill asked how many horses he wanted. Mr. Butters stated 5-6 horses. Commissioner Call remarked that the public concerns were the fence and what type of animals he was going to put in there. Mr. Butters stated he could put a field fence and then an electric fence on the opposite side. Commissioner Call asked Mr. Butters about putting the fence at the bottom. Mr. Butters said the reason why they want to put it on the property line is because people can't decide where their property line is and whatever area is between them and the property line turns into the waste dump. He said the reason why he is asking for the conditional use permit is to run the horses, drop the taxes \$10,000 a year, keep from having to spend an additional \$3,000-\$4,000 to haul couches away, policing all the kids, and putting out campfires. Codey said if there is an enforcement issue Mr. Butters needs to call the police.

Chairman Walker stated Mr. Butters suggested putting in a field fence with an electric fence a few feet back from the field fence, and plant screen brushes. Chairman Walker asked how high the fence will go. Codey stated he can go as high as 6 feet. Mr. Butters stated with field fence you put 3-4 feet of light mesh and then 2 strands of barbless wire on the top. He said kids and animals can go through it and won't get hurt. He stated the electrical fence would be put on the downhill side. He said this would only be proposed by the side with the houses.

Codey was concerned about the bushes and not being able to water them. He said if the plants die he will have to go out and plant one to replace them. Mr. Butters stated that there are drought resistant plants he would put in and they take a few years to grow. Chairman Walker asked if the field fence will be 6 feet high. Mr. Butters stated yes. Chairman Walker stated that the field fence with the electric fence 3-5 feet away, not to exceed 6 horses. Commissioner Call asked if they were voting to recommend to the City Council. Malone said yes. She said we are recommending that the city council approve the conditional permit with these conditions. Commissioner Call stated she did not like the electric fence. Her concern is for the children in the daycare. Commissioner Coburn stated that it will be a low voltage electric fence. Chairman Walker asked if they wanted shrubs. Commissioner Coburn stated that should not be a condition, he can put them there if he wants too.

MOTION: Commissioner Coburn moved to recommend to the City Council the conditional use permit with the conditions of no more than 6 horses, 6 foot field fence installed on the residential property line, with a 5 foot buffer zone with an electric fence. Commissioner Higley seconded the motion. Roll call vote.

Commissioner Pettingill	no	Commissioner Call	no
Commissioner Peterson	no	Commissioner Higley	yes
Chairman Walker	yes	Commissioner Coburn	yes

Motion Failed: 3 yes 3 no

Commissioner Pettingill stated that the developer has broken promises in the past. He said the Planning Commission is supposed to implement an agricultural use against an R2 zone. He said it is very conflicting, and the ordinance does not specify. He said he is

going to the city and tell them that we need a definitive ordinance. There is ambiguity. Commissioner Pettingill stated that the ambiguity is you shouldn't have conflicted uses in the same zone. He said these conflicting uses should be resolved even within the zone. Commissioner Pettingill said that the ambiguity is usually to the Planning Commissions discretion as per Title 10 in the State Land Use manual. He said the ambiguity is Perry City's fault. Commissioner Pettingill asked Malone if he thought the Conditional Use Permit is going to be followed. Malone stated that we have to assume that it will be. Malone stated we can enforce it. He said we have ordinances in front of us and we have to follow them. He stated that if it can be approved with reasonable conditions, which he felt these were reasonable conditions, if it can be approved that way, it has to be approved that way. If it is not approved with reasonable conditions then he has legal right to go after Perry City. Malone stated that you are worried about the children, the landowners, and the fence and the applicant has come up with a field fence that takes care of that issue along the fence line and it is still being denied. Commissioner Call stated that her "No" vote is based on the conditions that we set. She said based on the information that they received from the citizens that live along the border. She felt the field fence and the barbed wire were ok, but the electric fence will set some people off.

Commissioner Pettingill left the meeting at 7:45 p.m.

Lani Braithwaite said that she has a field fence along her backyard and her grandchildren cannot get through it. She said they cannot climb over it. Commissioner Higley stated that Mr. Butters has bent over backwards to do everything he can to make the residents happy, but yet he can't get anywhere. Commissioner Higley stated that he used to live in a neighborhood that had a 6 foot fence and they didn't put an electric fence up. He said he wouldn't want an electric fence in his backyard.

MOTION: Commissioner Peterson moved to re-vote. Commissioner Coburn seconded the motion. Roll call vote.

Commissioner Call yes

Commissioner Peterson yes

Chairman Walker yes

Commissioner Higley yes

Commissioner Coburn yes

Motion Approved: 5 yes 0 no

Mr. Butters stated that unless the Planning Commission is worried about the horses nibbling the kids through the fence, he does not have to put the electric fence in. He said he is putting the electric fence in to keep the horses away from the field fence. Commissioner Call stated that one of the resident's concerns was to have the horses come right up to the fence.

MOTION: Commissioner Coburn moved to recommend to the City Council the Conditional Use Permit with the conditions of no more than 6 horses, 6 foot field fence installed on the residential property line, with a 5 foot buffer zone with an electric fence. Commissioner Higley seconded the motion. Roll call vote.

Commissioner Call yes

Commissioner Peterson no
Chairman Walker yes

Commissioner Higley yes
Commissioner Coburn yes

Motion Approved: 4 yes 1 no

B. Discussion Changing the Land Use Chart to allow for back yard hen chickens

Malone stated that we do not allow chickens in some of the zones in Perry. He said that Matt Firth came in to the last Planning Commission Meeting and did a power point presentation and was very well informed. Malone stated that Brigham City allows the residents to get a permit but then they can have a certain amount of chickens. Chairman Walker stated that he has chickens around him. Malone stated that residents can have 9 small fowl per 20,000 square feet in some zones. He said that the discussion is asking for it to be allowed anywhere. Council Member Christensen stated that the City Council discussed the amount of chickens per lot, no rooster, locations, storage of food, the concern of raccoons and other varmints getting into it because it attracts more into the area. He said they sent it back to the Planning Commission to look at the criteria. Codey stated his concern is there is no one on staff to enforce this. Commissioner Call stated that there are a lot of residents that already have chickens and are not following the ordinance. Mr. Illum stated that Perry does not have a code enforcement officer, or a building inspector to follow up with these things. He said when the Planning Commission reviews this they need to think about these issues. Chairman Walker felt that it is their property. If they want to have chickens, they can have chickens. He said if I don't want my neighbors to have chickens then I buy his house. Codey explained that any home in the RE1/2 zone or 40,000 square feet or larger lots in the R1/2, R1/3, R1A, R1, or R2 zones, if you have 40,000 square feet or more it is an allowed use. Malone stated that it is one large animal or 9 small animal/fowl. Mr. Illum stated that Mr. Firth has 1/2 acre and he has to have at least 40,000 square feet to have chickens in the zone he is in, that is the ordinance as it is now. Council Member Christensen stated that the council is concerned about free roaming chickens and the enforcing of the ordinance. Matt Firth stated that he has the same concerns that have been discussed. He said he doesn't own chickens now and felt it would be a great addition to the family to be able to teach his children how to take care of animals. He has some of the same concerns with his neighbors getting upset that he has chickens. He said he has made a proposal that was included in his presentation that he gave last meeting. Mr. Firth stated that the example ordinances include some of the concerns such as not to disturb the neighbors and their rights. Mr. Firth said that there was a study done by a University regarding 20 cities and their chicken ordinances. He said out of those 20 cities 15 of them had very positive feedback. He stated that 15 cities reported that the ordinance was a positive experience, 6 of the cities reported that it was neutral, and 0 reported that it was negative. Mr. Firth stated that out of the 20 cities, the number of ordinance violations from 10 cities there were no violations. He said 5 cities reported 1-4 violations, 1 city reported 5-10. He said the number of violations we can expect in our size of city is relatively small. Codey stated that he had worked here for 7 years as a code enforcer and he took one chicken and one rooster due to the crowing of the rooster. Mr. Firth stated he has talked to other cities and it has all been a positive experience with very few negative comments. He said he did a survey of 69 cities that are equal to or greater than Perry along the Wasatch Front. He said 87% currently have ordinances for backyard hens. Perry is one of 7 that don't have an ordinance and there are two more cities that are in the process of discussing

the ordinance. He said he has a neighbor that has chickens and a rooster and he likes the sound of the rooster. Mr. Firth commented that he does not want to go against the city ordinances. Commissioner Call stated that her biggest concern is the chickens that are allowed to wander. Commissioner Peterson stated that he has an ordinance, and it is very well detailed and well written and if in fact we approve the ordinance it will put a lot of people in violation already. Commissioner Peterson stated for Mr. Firth to send us the ordinance and presentation again and be on the next planning commission agenda. Malone stated that if the CCR's did not allow chickens but the city ordinance allowed them, then the CCR's would be the one that would be followed.

5. Review Next Agenda-Thursday August 7, 2014

- A.** General Plan Circulation Element Public Works Session 3 of 3 starting at 6:30 p.m.
- B.** Hen Chickens allowed in all zones

6. Adjourn

- A.** Motion to Adjourn

MOTION: Commissioner Higley moved to adjourn. Commissioner Coburn seconded the motion. All in favor.