

**West Bountiful City  
Planning Commission**

**March 27, 2012**

**Posting of Agenda** -The agenda for this meeting was posted on the State of Utah Public Notice Website and the West Bountiful City website, and sent to Clipper Publishing Company on March 23, 2012 per state statutory requirement.

**Minutes of the Planning and Zoning Commission of West Bountiful City held on Tuesday, March 27, 2012, at West Bountiful City Hall, Davis County, Utah.**

**Those in Attendance:**

**MEMBERS PRESENT:** Chairman Denis Hopkinson, Vice Chairman Terry Turner, Steve Schmidt, Mike Cottle, Alan Malan, Planning Commissioners; and Laura Charchenko, Alternate Commissioner.

**MEMBERS/STAFF EXCUSED:** All present.

**STAFF PRESENT:** Craig Howe (City Administrator), Ben White (City Engineer), Heidi Voordeckers (City Recorder/Auditor), Cathy Brightwell, and Debbie McKean (Secretary),

**VISITORS:** Brent Day.

The Planning and Zoning Meeting was called to order at 7:30 p.m. by Chairman Denis Hopkinson. Laura Charchenko offered a prayer.

**I. Accept Agenda**

Chairman Hopkinson reviewed the agenda. Steve Schmidt moved to accept the agenda as posted. Alan Malan seconded the motion. Voting was unanimous in favor .

**Business Discussed:**

**II. Public Hearing to receive input on Title 16, Subdivisions- specifically, appeal language, requirement of curb and gutter, deferred agreement guidelines.**

Included in the Commissioner packets was a memorandum dated March 23, 2012 from Ben White and Cathy Brightwell describing the recommended changes to Title 16, Subdivisions with a draft of those recommended changes.

**ACTION TAKEN:**

**Alan Malan moved to open the public hearing at 7:35 p.m. to receive input on Title 16, Subdivisions. Motion was seconded by Terry Turner and voting stood unanimous in favor.**

**Public Comment:**

No members of the public came forward with input.

**ACTION TAKEN:**

**Alan Malan moved to close the public hearing at 7:40 p.m. on Title 16, Subdivisions. Motion was seconded by Steve Schmidt and voting stood unanimous in favor for members present.**

### III. Consider recommendation to City Council on Subdivision code changes.

Ben White noted that Staff and Planning Commission has discussed this item several times over the past year and have held multiple Public Hearings on the issue as well. The Chairman stated he was hopeful the recommended changes from staff regarding this ordinance had been reviewed by all of the Commissioners for the discussion this evening. Mr. White noted that the Mayor had provided direction to the Commission and staff at the previous joint work session to make proposals regarding specific findings for deferred agreements for curb, gutter and sidewalk. Deferred agreements are to be the exception rather than the rule when requiring public improvements. This issue has become a problem because the city is currently seeing more requests for minor/small lot subdivisions than large subdivisions.

Exceptions for Deferred Agreements need to be discussed and decided upon.

- There could be situations in our city where we may not need or want curb, gutter and sidewalk, but could be held to those standards without a change in this part of the ordinance. For example, 660 W, parts of 400 N and 1100 W
- Also may want to consider exceptions on open ditches, for example, 1000 North.
- May want to consider whether sidewalk and curb/gutter need to be required together.

Items discussed:

**Page 26 - #3** appeared to be vague to Chairman Hopkinson and he feels developers may be looking for a waiver in regards to this area. What criteria should be included and what procedures should be used in deciding the requirements of administration? How will future buyers be made aware of deferred agreements? All deferred agreements will be recorded with the County and appear on a Title Report at the time of sale. Staff was asked if there was a chance they would miss it when considering future development. Mr. White explained that when a permit is requested, staff pulls the plat and the information will be attached to the plat. This would start the procedure. The deferred agreement would also be attached to the title report from the small lot subdivision level.

Mike Cottle asked if sidewalks are required on both sides of the street, who would be required to put the sidewalk in if one side of the property is included as part of a subdivision but the other side is not. Mr. White noted the requirement applies only to the sub-divider and he is asking for suggested language to address this issue.

Page 46- Appeals Board. Under Variance Procedure.

Appeal authority as presently written could be either the Planning Commission or the City Council. It is necessary to change and correlate the appeal authority throughout the Code.

Commission Comments:

- Alan Malan- **Page 6- Subdivision Committee** – Why is this definition here and why was planning director removed from the definition? Mr. White noted that this is a dead definition in the code but he left it in even though it is not used. Planning director was changed to zoning administrator as it is the current job title in use. He has found no where in the current ordinances that requires or applies to this definition. It was recommended from the commission to remove the whole definition from the ordinance. **Page 17 -#1** – language regarding storm water drainage for the 10 year storm event was not clear to Mr. Malan, but appeared very clear to Mr. White. Mr. White explained the language and conditions that could occur. It was suggested that a period (.) be placed after City Engineer and change the wording a bit to read better. *Tentative plan* should be changed to read “storm water plan.” **Page 18 – Paragraph 2 D.** - Mr. Malan thought that it should read “The City should notify the sub-divider rather than the planning commission notify...” **Paragraph E.**- would like to remove “forth” in the last sentence. **Page 26- Paragraph 2** – not clear - 3<sup>rd</sup> line down from the top- change language to be required by the City’s design standards and to read better.

- Steve Schmidt- He is trying to understand the Appeal Authority process. Mr. White explained the process and who would be in charge of hearing the different appeals. If unable to be resolved at the city level then it would move to the courts. The majority of the appeals would be heard by the City Council.
- Terry Turner- **Page 31- 16.24.030** - needs to understand if that was the end of the appeal process. Mr. White noted that this will be discussed in the next item on the agenda.
- Mike Cottle- no comments.
- Laura Charchenko wondered if sidewalks needed to be concrete since we have some sidewalks in the city that are asphalt. Mr. White noted that the asphalt sidewalks that are in PUDs are maintained by the Homeowners association. **Page 29- Appeal Authority** - how is the appeal board appointed? To be discussed in the next agenda item.
- Chairman Hopkinson- **Page 29 regarding the 16.24.010 Appeal Authority under B.** He wondered why the appeal responsibility of the next step isn't the Planning Commission instead of the "board of appeals." Mr. White noted that the City Council had that discussion and that is the way they wanted it. It was discussed that there were very few things that the Planning Commission would not be hearing as the land use authority so it may not be appropriate to hear an appeal. Mr. Hopkinson felt the City Council would be hearing a lot more than they used to hear. Mr. Hopkinson invited input from the commissioners on this issue before moving it forward to the City Council for adoption. Mr. White noted that this is legal counsel's recommendation along with lengthy discussion from the City Council. Mr. Hopkinson felt that it was a lawsuit ready to happen. Mr. Schmidt pointed out that some of the people hearing the appeal may not have experience or know all the facts but the issue on appeal is whether or not the code was appropriately applied and not the actual decision made. Mr. Hopkinson was still concerned that this is not the proper procedure to use in this process. Mr. White noted that there had been discussion to have the Mayor be the sole appeal authority, but it was decided that the Mayor is a voting member in the case of an absent City Council member and would likely have been involved in the decision.
- Mr. Howe noted some information regarding Appeal Authority in training classes from the ULCT. He said several cities use Administrative Law Judges. He spoke that this subject has been discussed in length. He noted that there have been no appeals heard while he has been City Administrator so it's difficult to know if the process works correctly.
- Mr. Hopkinson felt that we need to chew on the language in this section and share comments before sending it forward to the City Council. Staff will inquire with the Steve Doxey about this language. Mr. White also noted that they may want to speak with the former Planning Commission Chair for his advice. Sometimes a different set of eyes reviewing the language serves us better. Mr. Schmidt agreed but noted that from time to time as a business man he has ignored legal advice to his advantage. Fairness is the issue stated Mr. Hopkinson and he feels this language is heinous.
- Mr. Hopkinson would like the commission to forward comments via email to the staff whether they would like changes to be made or not. Staff should hear from all of the commissioners in this regard before the meeting on the April 10<sup>th</sup>. Mr. Hopkinson and Mr. Schmidt noted that they would not be at the April 10<sup>th</sup> meeting. Cathy Brightwell needs to receive the information before next Friday in order to get it into the packets.

#### **ACTION TAKEN:**

No action was needed at this time. Still under review.

#### **IV. Consider recommendation to City Council on text changes to Chapter 17.08.120 Appeal from decision of land use authority; 17.08.130 Variances and 17.12.030 Rules for locating boundaries to be consistent with overall appeal authority language (Public Hearing was held on October 10, 2011).**

Included in the Planning Commissioner's packet was a memorandum from Ben White/Cathy Brightwell dated March 22, 2012 regarding Code modifications to Sections 17.08.120, 17.08.130, 17.12.020, and Chapter 2.40 with an attached copy of the suggested redline changes to those sections.

Mr. White noted that this is the sister section to the appeal authority just discussed in the subdivision chapter. He suggested that this language should go to City Council at the same time as the subdivision language. Commission comments follow:

- Alan Malan- Part D- redlines. He is concerned about the fairness of this issue. He does not like that if more information was found, they would not have the right to add their evidence to the appeal. Mr. White explained the process as it would be presented and he noted that this item was discussed in great length with the City Council. Mrs. Charchenko noted that the appeal can be held off to a later date if necessary by the City Council.
- Steve Schmidt, Terry Turner, and Mike Cottle had no comments.
- Laura Charchenko inquired if the language and terms in this ordinance will match the ordinance previously discussed. Mr. White noted that City Council will marry up the two.
- Denis Hopkinson clarified that Chapter 2.40 will be deleted. "Board of Adjustment" will no longer exist and will be titled "Board of Appeals." He suggested that the same section be deleted out of the other ordinance.
- Mr. White noted that it has been deleted throughout the ordinance as required by the State Code. Ben White noted that Planning Commission is the Board of Appeals for Historic Commission and Variances as explained in a memo dated November 4, 2011 from Ben White regarding Code Modifications to Title 16 Subdivision, 17.08.120 and 2.40.

#### **ACTION TAKEN:**

**Alan Malan moved to approve the appeal language in Chapter 17 as was presented this evening but to hold it until the Chapter 16 Subdivision changes are sent to City Council. Both documents should go together. Mike Cottle seconded the motion and voting was done by a Roll Call Vote:**

**Mike Cottle – Aye  
Terry Turner- Aye  
Steve Schmidt- Aye  
Alan Malan- Aye  
Denis Hopkinson- Aye**

#### **V. Discuss changes to Conditional Use Ordinance, including adding criteria for farm animals.**

Included in the Commission Packets was a memorandum from Ben White/Cathy Brightwell dated March 23, 2012 regarding Conditional Use Ordinance Chapter 17.60 with an attached redlined draft showing proposed changes from legal counsel, Steve Doxey.

Cathy Brightwell explained that this ordinance needed to be re-visited so that it applies to all types of Conditional Uses and she addressed the proposed changes. A separate section was added to include Farm Animals as it was too hard to merge it into the entire document. The Exception Section is being deleted. It is not needed because a Conditional Use is already an exception. Pg 3. 17.040.D - Counsel proposed alternative language and staff needs to know which one the Commission prefers. Page 4 – language was added to include the new uses. General Inspection - language was added to allow inspections before approval. Staff feels that when considering Conditional Use permits for ADU's and Farm Animals, inspections need to be done before a recommendation can be made to the Commission, but they still need the authority to inspect after the fact as well. Cathy Brightwell also explained that because the Conditional Use Chapter is in Title 17 we need to schedule a Public Hearing before moving it to the City Council.

- **Page 1** – Commission approves of changes.
- **Page 2**- Exceptions have been stricken. Denis Hopkinson noted that these changes close a legal loop hole and asked if the commissioners were okay with this. This is a

suggestion from legal counsel. Mr. White noted that the variance ordinance still provides an avenue for exceptions. Commission approved of this change.

- **Page 3- D.** – Findings for Conditional Use does not make sense to Alan Malan. Mr. White explained the language and the commission prefers the original language rather than the alternative.
- **Page 4- F.** – Too lengthy of sentence? Suggest striking first five words to begin at “Conditional Use”. Terry Turner wondered if allowing the word “may” instead of “shall” puts too much burden on staff. “May” language stays.
- **Page 5- Review and Revocation of Permit- B. 2<sup>nd</sup> Paragraph** -“serve on” or “serve to”? Serve on will stay as it is the customary legal language. Steve Schmidt had a concern with the language in A. Would like staff to be involved in the investigation of determining the violation. Cathy Brightwell thought that the issue was covered in the following sentence. Alan Malan wants language to be included that staff will go out and review the situation before issuing the letter or notice.

**Chairman Hopkinson requested to have staff make corrections to the existing draft and present them to the Planning Commission in a staff report at the next Planning Commission meeting.**

**VI. Set Public Hearing on April 24, 2012 at 7:35 or as soon thereafter as time permits for changes to Conditional Use Ordinance.**

**ACTION TAKEN:**

**Terry Turner moved to set a public hearing on April 24, 2012 at 7:35 p.m. or as soon thereafter as time permits for changes to Conditional Use Ordinance. Mike Cottle seconded the motion and voting was done by Roll Call Vote:**

**Mike Cottle – Aye**

**Terry Turner- Aye**

**Steve Schmidt- Aye**

**Alan Malan- Aye**

**Denis Hopkinson- Aye**

**VII. Discuss changes to Historic Preservation Commission Ordinance, including moving certain sections to a new section in Title 17.**

Included in the Commissioner’s packets was a memorandum dated March 22, 2012 from Ben White, Cathy Brightwell and Heidi Voordeckers regarding the Historic Preservation Commission with a redlined copy suggesting changes to that Ordinance.

Mr. Hopkinson informed the commission of who the current members sitting on the Historical Commission were and where they lived in the city. The Historic District was established about the same time as the Historic Commission. Mr. Hopkinson described the boundaries of the Historic District.

Mr. Hopkinson disclosed that he owns one of the largest pieces of property in that district along with Councilmember McKean having family that owns property in that district.

Chairman Hopkinson explained that there has been some problems with the current process of bringing house plans to the Historic Commission for approval. The process has lacked some degree of authority to follow through and neither Staff nor the building inspector has had the authority as well. It is proposed to change the role of the commission back into the main focus of being the caretakers of the Historic District as to what makes it historic, what keeps it historic, and preserving the City’s history. The Architectural design approval process would become the responsibility of the staff. Mr. White noted that currently a bond is held for any homeowner getting a building permit and is proposing to raise the amount of the bond in the historic district to allow enforcement of the approved plan. If the building plan is not completed as approved, the bond would not be released.

- Alan Malan- supports the proposal that Denis Hopkinson made this evening.

- Cathy Brightwell added that separating the responsibilities would leave the Historic Commission Ordinance with the duties of Historic Preservation, History of the City, and considering properties to be added to the Historic register, along with providing advice on property improvements within the historic district. The areas suggested to be removed from the Ordinance would go into Title 17 in the R-1-10 zone, as a new section called the Historic Overlay District which would lay out the process and establish an architectural review committee. A public hearing will need to be held regarding Title 17 which is a land use issue.
- Wasatch Meadows was built before the Ordinance was in effect but agreed to design the lot on the corner to satisfy the Historic District requirements.
- Page 5 – Laura Charchenko questioned what a broad patter is? It was suggested that it could be “pattern” or “matter”. Mr. Howe read the definition of patter and it is not clear if it should be applicable to the ordinance. Cathy Brightwell will investigate.
- Alan Malan suggested that any homes on 800 West should be subject to the design requirements but may be let the developer decide about the lots not facing 800 West.

Mr. Hopkinson would like each commissioner to review this proposed Ordinance change and submit their suggestions to staff.

**VIII. Consider setting Public Hearing for language/responsibilities moved from Historic Preservation Commission Ordinance to Title 15.**

**No public hearing will be scheduled at this time.**

**IX. Staff Report**

- Heidi noted meetings for the Finance and Budget Workshops.
- Farm Conditional Use Application to be heard at the next meeting.
- Meetings scheduled for June 26<sup>th</sup>, which is the Primary Election, and on July 24<sup>th</sup> for the State Holiday, will be canceled unless important agenda items make it necessary to hold a meeting and then the meeting will be rescheduled on the Thursday after the regularly scheduled meeting.

**X. Commissioner Reports/Updates**

- Encourage the Commission to do their homework on the Holly Expansion.

**XI. Approval of Minutes of March 13, 2012**

**ACTION TAKEN:**

**Alan Malan moved to approve of the minutes dated March 13, 2012 as presented. Terry Turner seconded the motion and voting was unanimous in favor.**

**XII. Adjournment**

**Alan Malan moved to adjourn the regular session of the Planning Commission meeting. Steve Schmidt seconded the motion. Voting was unanimous in favor. The meeting adjourned at 9:42 p.m.**

  
DENIS HOPKINSON-CHAIRMAN

  
HEIDI VOORDECKERS/CITY RECORDER

  
DEBBIE MCKEAN /SECRETARY

