

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, MARCH 01, 2011 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT: Barbara Poelman Chairperson
Lynda Berry Commissioner
Eve Jones Commissioner
Rob Munns Commissioner
Joan Peterson Commissioner
Lynn Duce Alternate Commissioner

ALSO PRESENT: Mark Bradley City Planner
Eliza McGaha Administrative Secretary

EXCUSED: Deon Dunn Commissioner
Larry Jensen Vice Chair

AGENDA:

Work Session

Regular Meeting

Pledge of Allegiance

Approval of Work Session Minutes and Regular Meeting Minutes

Public Comment (*Per Utah Code, will receive input only, no decision can be made*) for items not listed on the agenda.

Public Hearing / Application # 3231 / Change of Zone from GC (General Commercial) to R-M-15 (Multiple Residential District) / 41 South and 45 South 600 West / Diane Cook and Brigham City Corporation

Public Hearing / Application # 3275 / Amend Chapter 29.05 Supplementary and Qualifying Regulations and Chapter 29.12 Residential and Multiple Residential Districts to include "Keeping of Residential Chickens" as a temporary use in all districts within Chapter 29.12 with certain standards and regulations to be established in Chapter 29.05 / Brigham City Corporation

Public Hearing / Application # 3280 / Amend General Plan Map from Commercial/Office Mix-Use to High Density Residential for approximately 3.68 acres / Southwest corner of 800 South and 200 East intersection / Brigham City Corporation

Public Hearing / Application # 3281 / Change of Zone from P-GC (Planned-General Commercial) to R-M-30 (Multiple Residential District) on approximately 3.68 acres / Southwest corner of 800 South and 200 East intersection / Brigham City Corporation

Application # 3283 / Conditional Use Permit / Brigham Place Apartments / Southwest corner of 800 South and 200 East intersection / Eric Lofthouse

Regular Meeting:

Barbara Poelman opened the regular meeting at 6:30 p.m. and Joan Peterson led the Pledge of Allegiance.

Approval of Work Session Minutes and Regular Meeting Minutes:

No minutes were available for approval.

Public Comment (Per Utah Code, will receive input only, no decision can be made):

There was no public comment.

Public Hearing / Application # 3231 / Change of Zone from GC (General Commercial) to R-M-15 (Multiple Residential District) / 41 South and 45 South 600 West / Diane Cook and Brigham City Corporation:

Mr. Bradley introduced the item and presented a visual display of the subject lots. Ms. Cook's lot is vacant and the other lot contains a single family dwelling that the City would like to include in the rezone so as to not leave that lot isolated in the general commercial (GC) district. The lot to the north of Ms. Cook's lot was rezoned from GC to R-M-15 for the construction of a duplex. The proposed zone change is consistent with the general plan.

Diana Cook came forward and asked if her property was large enough to build a house on. Ms. Cook stated that her property was .25 of an acre. She said her property looks smaller than it was prior to the duplex being built next to it and thought the builder may have encroached onto her property. Mr. Bradley explained that the builder, Mr. Dickamore, pushed the duplex closer to the north so there would be more space on the south for the driveway to access a garage in the back. Mr. Bradley said Ms. Cook's lot is large enough for a single family dwelling, and under the R-M-15 standards the area is just large enough to fit a duplex which is what Ms. Cook said she would try to do. Mr. Bradley said he had spoken with the owner of the single family dwelling, Ms. Covert, and he had not heard any opposition to the application from her.

In reference to the Public Power staff comments, Mr. Munns said there was still an issue between the City and Box Elder School District with the power lines that cross 600 West by the ball field. Mr. Bradley said there is no easement between Mr. Dickamore's lot and Ms. Cook's lot. The easement that ran east/west north of Mr. Dickamore's property was vacated prior to construction of the duplex. The power line could not run between Ms. Cook's property and Ms. Covert's property without an easement. Mr. Bradley said he did not know exactly to what Mr. Munns was referring as far as the School District and ball field were concerned and as it did not pertain to the proposed rezone said he would be glad to talk to Mr. Munns about it after the meeting.

Motion: A motion was made by Lynn Duce to open the public hearing for application #3231. The motion was seconded by Eve Jones and passed unanimously.

There was no public comment.

Motion: A motion was made by Eve Jones to close the public hearing for application #3231. The motion was seconded by Joan Peterson and passed unanimously.

Motion: A motion was made by Lynn Duce to approve application #3231, which is changing the zoning from general commercial to R-M-15 as noted on the attachment to the application, based on and associated with findings of fact that the zone change request is consistent with the Brigham City General Plan, the zone change request is consistent with

surrounding zoning, and with the finding of fact with respect to the legislative body not being able to make an amendment authorizing zoning without that amendment being approved by the Planning Commission or was at first submitted to the Planning Commission for its recommendation and forward application to the City Council for approval. The motion was seconded by Lynda Berry and passed unanimously.

Public Hearing / Application # 3275 / Amend Chapter 29.05 Supplementary and Qualifying Regulations and Chapter 29.12 Residential and Multiple Residential Districts to include “Keeping of Residential Chickens” as a temporary use in all districts within Chapter 29.12 with certain standards and regulations to be established in Chapter 29.05 / Brigham City Corporation:

Ms. Poelman mentioned that the Chief of Police suggested this application also go under Title 4. Mr. Bradley handed out a copy of the proposed ordinance to those in the audience who were in attendance for this application so they could follow along.

Mr. Bradley explained that there was a request made to the City Council to allow for the keeping of chickens in the city, primarily referring to the residential zones. The City Council requested that the Planning Commission do further study and research on that so research was done with other cities that have ordinances to allow the keeping of chickens in residential areas. The Planning Commission has had much discussion on this topic and a draft ordinance was created. The keeping of chickens will be a temporary use subject to the conditions outlined in Chapter 29.05.250.

Mr. Bradley said the Police Chief advised that if a regulation for the keeping of chickens is adopted by the City Council it should be placed in Title 4 Animals and Fowl rather than in the supplementary section as well as a consideration for hiring an additional Animal Control Officer (ACO). The majority of staff recommends the keeping of chickens in residential districts not be allowed; they have concerns about the proposed use in residential districts. The ACO sent a letter to the Police Chief regarding raccoons and various diseases that can be transferred from raccoons to other animals as well as to humans. There has been much discussion for and against the keeping of chickens in residential districts.

Ms. Peterson asked about the current court battle Pett versus Brigham City that was referenced in the Police Chief’s comments. Mr. Bradley explained that case dealt with the general maintenance of chickens and the impact it is having on the neighbors. Ms. Poelman asked if an ordinance would be to the City’s advantage in cleaning up those types of situations if the ordinance referred to certain items that needed to be done. People may think that a chicken ordinance may increase the number of those who have chickens but there are those who already have chickens with no ordinance to regulate them. Mr. Bradley replied the ordinance would be a regulatory benefit as long as it can be enforced. Enforcement often happens after there is a complaint. Ms. Jones commented that if regulations are put in place people will have to meet them, and currently there are no standards or regulations for people to meet. Ms. Berry added that Riverdale determined they could use their nuisance ordinance rather than redeveloping a new ordinance specifically pertaining to chickens. She asked if Brigham City had a nuisance ordinance. Mr. Bradley replied that there is a nuisance provision in Title 4. Dealing with nuisances is subjective and enforcement needs something with teeth when things become objectionable.

Mr. Bradley said if the Commission chose to move the draft ordinance forward it would be a temporary use instead of a use that would run with the land that could be grandfathered over time. That way if there were problems involved the Council could choose to remove that use from the residential districts and would not be a grandfathered use. Currently, the only way keeping chickens is grandfathered is if the property owner can prove that the chickens have been on the property since before 1978.

Ms. Berry asked what it meant to be kept in a sanitary condition as indicated in section F of the draft ordinance; what would be considered a sanitary condition for a chicken. Mr. Bradley replied that was a good question for the Planning Commission to decide.

Ms. Jones commented that as a chicken owner she has experience with chickens and said she disagreed with some of the staff comments. She said chickens will not fly into the power lines because they cannot get that far off the ground. Her chickens have not gotten out. There are financial advantages to keeping chickens because if one buys the kind of eggs that one can get from free-run chickens, they can make three eggs, which would save money. Ms. Jones disagreed with the Police Department comment that stock and fowl are not companion animals any more than a snake or reptile because they do not give comfort and companionship. Ms. Jones said her chickens are her pets and they love her and she loves them as do her children. Her children pet them and the chickens come up to them. Ms. Jones said if they are kept well they can be a good companion animal and a good pet. She said there can be nuisances such as noise and smell with any animal such as cats and dogs, particularly dogs. Dogs and chickens can get loose, but Ms. Jones said she has not walked down a street in Brigham and seen a chicken flying around but she has seen a lot of dogs.

Mr. Duce asked why the R-M-15, 20, 30, and 40 zones were included in the residential zones where chickens will be allowed. Mr. Bradley said there are a lot of single family homes in the multi-family classifications so they were included to be able to cover all areas that have single and two family homes in them. Mr. Duce questioned allowing two family dwellings to be included.

Regarding the minimum lot size of 7,000 square feet, Ms. Poelman asked if that was too small an area to put a coop and run into. Mr. Bradley replied that was not too small an area according to other cities based on the coop sizes and the number of chickens. The initial draft had the size at 8,000 square feet based on the R-1-8 zone. The R-M-7 allows for a single family dwelling on a 7,000 square foot lot which is the reason for the reduction in order to be consistent with the single family dwelling lot sizes.

Mr. Bradley referred back to the Police Chief's comment that the language was not strong enough and felt Title 4 would cover it. Ms. Berry asked if this ordinance would be absorbed into Title 4 or if it would be separate and referenced by Title 4, or how it would work. Mr. Bradley said it would be part of Title 4. Ms. Berry asked if the permitting and costs would be similar to those of dog licensing which is yearly. Mr. Bradley replied that could be a consideration; the draft ordinance has the time frame set at two years. A new section would need to be added for chicken registration in Title 4 which would make reference to the fees, educational material, application, and coordination with the zoning office to govern the location of the coop.

Ms. Poelman noted that the Public Works Department, which is culinary water, street, waste treatment, and storm, are the only ones that support the application, the other departments in one way or another have some opposition. She asked if this is an issue that staff does not really want to see. In regards to the discussion of the Pett versus Brigham City issue, Ms. Poelman said it seemed that having an ordinance would be of benefit to the City. Mr. Bradley said the staff review discussion was similar to what has been seen here. Some staff members live in more rural areas and can see a benefit of having more space as compared to a more urbanized area.

Ms. Jones asked if the other cities had seen an increase in complaints or enforcement issues with the addition of the chicken ordinances. Mr. Bradley replied that one of the biggest problems was educating the public regarding the provisions of the ordinance. Ms. Jones asked if the concerns addressed by staff had been seen in the other cities. Mr. Munns commented that he thought it would take time for problems to develop after adopting the ordinance. He said there are a lot of cities out there that allow chickens that have a problem such as Miami.

Motion: A motion was made by Joan Peterson to open the public hearing for application #3275. The motion was seconded by Lynn Duce and passed unanimously.

Roger Baron came forward and stated that he and his wife are chicken owners and his grandparents had chickens here in the city when he was growing up, so he has had some experience with chickens. He commented that Brigham City has a lot of good employees and good staff but there are some whose attitudes have been that property owners should be denied the use of their property unless a good reason is seen to grant it instead of taking the stance that property owners should be allowed to use their property any way they want unless there is a reason to restrict it. Mr. Baron said he has seen that as a cultural thing with Brigham City for many years as if they are afraid that citizens will run away with it if they are given those rights; they forget that the citizens are what make up the city. Mr. Baron stated that he has always thought that someone should be able to use their property any way they want to as long as they do not unreasonably interfere with someone else's use of their property; which seemed to him as a rational way to look at it.

Ms. Berry asked what Mr. Baron meant by unreasonably interfere. Mr. Baron replied that was sometimes for the courts to decide or, in this instance, for the Planning Commission to decide in regards to the ordinance. That is why they have ordinances, to define what is unreasonable. Mr. Baron said that is why the Planning Commission is here, as a group of citizens, to say what they think is reasonable or unreasonable as far as use of the property citizens should have; to say we are going to let chickens be here unless they are unreasonably interfering would not work.

Mr. Munns said he agreed to some extent with Mr. Baron's comment that they should allow citizens to use their property how they want. He asked if that included, within city limits, using their property for agricultural purposes. Mr. Baron's reply was, unless it unreasonably interferes with their neighbors' use of their property. Mr. Munns said it is not zoned for agriculture. There were differences of opinion as to what animals are considered agricultural and domesticated. There could be an argument that dogs could be considered agricultural because they are used for things such as herding sheep as well as an argument that chickens are domesticated. Mr. Munns said chickens are a farm animal; if it is a farm animal and it is not zoned for agriculture then it should not be on the property within city limits. Mr. Baron asked why it should not be allowed if it is not bothering the neighbors. Mr. Baron stated freedom is freedom and they should have the freedom to use their property how they want. He said the City can define agricultural. Mr. Munns said if a person wants an agricultural animal they should move to the country. Mr. Baron commented that the reason Mr. Munns said it is agricultural is because that is how Mr. Munns thinks it has been defined; it is a definition of terms issue. Agriculture can be defined in anyway wanted; it is up to us as to how to do it.

Mr. Baron stated that he and his wife enjoy having their grandchildren over and showing them the chickens; they have three chickens. The grandchildren also gather the eggs and they get a good experience from that. He said they appreciate being able to have those chickens and as long as that use that they put to their property, of having a couple of chickens, does not interfere with their neighbors he does not see why that should not be something they should be able to do. Mr. Baron said he thought the burden of proof should be on those who oppose the chickens to say why the citizens should not have them. The citizens should not have to come forward and say why they should have them; it should be assumed they have the right to do that unless there is a good reason not to grant them that right, unless is unreasonably interferes with their neighbors use of their property.

In looking at the ordinance, Mr. Baron stated that it was very well written other than maybe some changes that need to be made but it is designed in such a way that if someone adhered to it, it would not bother the neighbors. He said they all knew how big a nuisance dogs can be, much more of a nuisance than anybody's chickens; it is hard to keep dogs from barking and getting loose. Chickens do not bark and generally do not get loose; they are not an animal that causes a lot of problems, and if

there are just a few, it seems that would be something that should not interfere with anyone's use of their property including being next door to someone who has chickens. Mr. Baron also said it should be allowed because of the benefit to families of having a few eggs if they want because of financial reasons, or if they want to have some chickens so they can show their children or grandchildren how to raise animals. Mr. Baron said he saw no reason why it should not be allowed and he thought there are benefits to the citizens to be able to have that use of their property.

Ms. Poelman asked Mr. Baron how he took care of the odor and asked if the proposed ordinance was sufficient to take care of that issue. Mr. Baron replied that chickens do not have a lot of odor; it depends on how they are kept and over what kind of an area they are allowed to roam. He also said he just received a copy of the ordinance so he did not know if it was sufficient for that. He said he shared the concern regarding sanitary condition and commented that chickens were not meant to be as sanitary as a hospital operating room, and suggested that be defined differently. Mr. Baron commented that they would not want the neighbors to have a problem with the odor of the chickens; if the neighbors have a problem with that it would be a situation that needs to be cleaned up. Generally speaking, Mr. Baron said chickens do not have much of an odor. He said he recalled going to his grandparents to feed their chickens, they had about 50 chickens and he could hardly smell them outside the chicken coop. There is very little odor if they are properly taken care of; it does not matter what kind of an animal it is, if it is not taken care of it can cause odors and problems.

Geraldine McGaha came forward and said she was the one who started all of this. Ms. McGaha said she follows the news daily for what is going on in our country which is one of the reasons she came here. She is concerned with how things are going and it came to her mind that if she had 4 to 6 chickens she could help her husband and their children if things got to the point in the economy where they would have to take care of themselves, so she went to the City to see if she could have some chickens in her yard. Ms. McGaha expressed appreciation to the Commission for thinking about it and hoped that it would come to fruition for everyone. She said she felt it was something they may all need to have at some point in the future.

Bill McGaha came forward and stated he was somewhat qualified to speak on the subject because he grew up on a farm where he raised hundreds of chickens as well as pigs, cows, and horses. He spent four years studying horticulture and animal study. Mr. McGaha said he thought the staff had done a good job. He commented that Mr. Baron spoke well and truthfully, but disagreed with Mr. Munns comments. Mr. McGaha said chickens do not smell and are not a big mess, sometimes their feathers come loose. The droppings can be used, as is stated in the draft, in the garden; it is very good fertilizer and is not messy like that of a horse or a cow. He mentioned that there are a number of horses within the city limits and he has not heard of any complaints about them. There are also some chickens within the city limits and Mr. McGaha said he had not heard of anyone complaining about them either. He thanked the Commissioners for the good job they are doing and also for their consideration.

There was no further public comment.

Motion: A motion was made by Joan Peterson to close the public hearing for application #3275. The motion was seconded by Eve Jones and passed unanimously.

Ms. Berry asked if the draft ordinance would need to be rewritten to fit into Title 4. Mr. Bradley recommended that the draft ordinance language be added to Title 4 and presented to the City Council for review and discussion. They may have it come back in final format in Title 4 after working with the Chief of Police. If the Planning Commission felt there needed to be some changes to the language prior to the recommendation to the City Council those changes can be addressed and the draft ordinance brought back until the Planning Commission is comfortable in making the recommendation.

Ms. Poelman stated that she was uncomfortable with the Planning Commission making a recommendation for the addition of an additional ACO. Many of the other commissioners concurred with Ms. Poelman's statement. Mr. Bradley said it would not hurt to ask them to consider the addition of an ACO.

In regards to section F, Ms. Berry said she was uncomfortable with the language 'kept in a sanitary condition and disposed of in a sanitary way' and suggested the wording be further described or left out. Ms. Poelman asked if there would be anything in Title 4 on other animals that would address that issue more specifically. Mr. Bradley replied that there was some language on that but at the same time they could add some additional language while working with the ACO due to the experience she has on how to add more language or better define it. The more the ordinance can be simplified, the better it will be. Mr. Duce suggested changing the sanitary language to state, 'clean condition free from objectionable odor'. He also recommended the wording in paragraph B under residential districts be, 'residential chickens are allowed in the various zones' and 'R-1-40 districts shall be further blended to single family units within these zones which have a separate legal lot or parcel of record' and that they limit it to single family dwellings. Mr. Duce said he did not think it appropriate to include apartments, duplexes, and such; he could foresee a lot of problems with that and recommended it be limited to single family dwellings. Mr. Bradley noted that there are duplexes that can be platted for individual ownership.

Section F needs some further work. Ms. Jones suggested saying 'all coops and runs shall be kept free from objectionable odor' because if they are free from objectionable odor they are pretty clean; if it is allowed to build up until they are unsanitary and dirty then it will smell bad. She commented that what she considers sanitary may not be the same as what her neighbor considers as sanitary, but free from objectionable odor should be obvious to everyone. Ms. Berry said she liked how Mr. Duce used the word 'clean' and preferred the use of the word 'clean' to the word 'sanitary'.

Mr. Munns commented that he has experience with livestock and animals because he was raised on a farm and continues to work on a farm on a daily basis. He said he does not have a problem with people keeping chickens if they do it the right way. Mr. Munns said his concern is that if they pass something there will be a lot of people who do not do it the right way which will cause a burden on the ACO and could potentially be a nuisance to neighbors. He said there may come a time when we need chickens and need to rely on eggs as a food source, but to say at this time, in a tough economy, that one wants to raise chickens for the eggs; eggs can be purchased at the store for less. Mr. Munns referred to Ms. Jones comment that the eggs from her chickens had Omega-3 in them and asked if store bought eggs did not. Ms. Jones said they did not unless they are free-range. She feeds her chickens but they also free-range; they get the Omega-3 from the greens. They get the Omega-3 from the flaxseed she feeds them in the winter because there are no greens for her chickens to eat in the winter.

Mr. Munns said the percentage of dogs in town is greater compared to the percentage of chickens in town so there will be more dogs seen running loose than chickens. Chickens for the most part will go to where they are fed, where they know there is a food source. Ms. Jones agreed. Mr. Munns said if the chickens are not taken care of the right way, there will be chickens roaming the streets. He asked if collars would have to be put on the chickens like dogs and wondered how people would keep track to know whose chickens are whose. He said eventually a chicken will get picked up by the ACO and something will have to be done with it.

Ms. Poelman reminded everyone that it will be the City Council that will make the final decision.

Ms. Berry commented that the last time they met they discussed a closed area for a run and identified a size for a chicken coop. She asked if there was a need to identify a minimum size for a run per number of chickens a person has. Ms. Jones said they should put some language in there regarding that and

suggested language be added to state that there shall be an enclosed area for a run with a minimum of 5 square feet per chicken. Ms. Berry stated she was in agreement with Ms. Jones' suggestion.

Mr. Duce said Mr. Munns brought some good points forward; however, if the Commission does not come up with some kind of wording, problems would continue to occur with people having litigation over this particular issue and it would be better to have something established than remain silent and continue to have problems and have them unregulated because there are a number of people that do have chickens and their rights need to be protected. Mr. Munns said he agreed that they need to have something on the books, but after looking at all the staff comments he wondered if they were overlooking something. He said Ms. Jones takes care of her chickens but worried about what would happen after the novelty of someone getting some chickens wears off. Mr. Duce commented that he thought they have wording in the draft ordinance to handle Mr. Munns concern because if someone does not abide by the ordinance then they will lose their right to have them. Mr. Munns asked if there was wording in there about animal control taking them like they would take a dog to the pound. Ms. Poelman responded that Title 4, which is where this ordinance would be put, would take care of that type of situation. Mr. Duce added that paragraph J states that if one does not comply with the ordinance their permit will be revoked.

Motion: A motion was made by Eve Jones to forward application #3275 to the City Council with recommendation to approve with making note that the language for the ordinance, rather than being in section 29.05.250, be instead moved to Title 4 and that some of the language be changed particularly letter B, 'residential chickens are allowed in the following zones and shall be further limited to single family dwelling units' leaving out two family dwellings; also in letter E number 5, 'there shall be an enclosed area for a run with a minimum of 5 square feet per chicken'; also in letter F sanitation maintenance number 1, 'all coops and runs shall be kept in a clean condition and free from objectionable odor'; with the findings of fact that the City Council was approached by residents to allow chickens in the residential district, the City Council referred the request to the Planning Commission for further study, the recommended amendment follows the legal process as outlined in the Utah Municipal Code, and the stipulations that we are modifying the draft to make reference to Title 4 Animals and Fowl rather than section 29.05.250. The motion was seconded by Joan Peterson.

Roll call:

Rob Munns – No
Lynda Berry – No
Joan Peterson – Yes
Eve Jones – Yes
Lynn Duce – Yes

The motion passed 3 to 2.

Public Hearing / Application # 3280 / Amend General Plan Map from Commercial/Office Mix-Use to High Density Residential for approximately 3.68 acres / Southwest corner of 800 South and 200 East intersection / Brigham City Corporation:

Mr. Bradley explained that this application and applications 3281 and 3283 are all linked together. He displayed a map of the area. The property owned by the Brigham Place Apartments (BPA) is in the middle of the property owned by Utah State University (USU) which is in the middle of their future USU campus. A lot of effort has been made by multiple entities to relocate the BPA project outside of the future campus area to the north which will require a change to the general plan and the zoning map.

The parking lot used by the Aldersgate Methodist Church is partially owned by the church; the northern portion of the parking lot, including the north entrance, is owned by the BPA group.

The BPA group is planning on a two phase project; phase one will have three buildings and phase two will have two additional buildings. The first phase is what will be involved with the general plan and zone change. They are trying to make a trade that will be equal in area to be able to make the future road work; the extension of Fishburn Drive which is proposed to curve southward to connect to 900 South.

Motion: A motion was made by Joan Peterson to open the public hearing for application #3280. The motion was seconded by Rob Munns and passed unanimously.

There was no public comment.

Motion: A motion was made by Eve Jones to close the public hearing for application #3280. The motion was seconded by Lynda Berry and passed unanimously.

Ms. Poelman stated that the land area had been approved previously and it would seem to the advantage of Brigham City and USU to have the land exchange made. Ms. Jones agreed and said it would be nice to not have the apartments in the middle of the campus. Mr. Duce asked if the Methodist Church was aware of what is taking place; Mr. Bradley replied that they were aware and said Paul Larsen had been in touch with an individual from there. There had also been discussion of relocating the parking as part of the trade; the latest plan is to leave the parking for the church alone.

Ms. Jones asked if they wanted to amend the general plan for just that area or if they wanted to amend it for the entire area so they wouldn't have to do this again in six months. Mr. Bradley said if the developer chose not to go through with the second phase they could develop a commercial use in that area.

Stan Roland commented that in the second phase they would have to answer where the road is going and asked if there would be a bunch of questions they would have to answer. He said they have already delayed the project and are just trying to move forward with the first phase where they do not need to have a definitive answer on all the other questions.

Motion: A motion was made by Eve Jones to forward application #3280 to the City Council with recommendation for approval with the stipulations that the City Council approve the amendment upon successful land trades between USU, Orvieto Investments, and Brigham Place Apartments, and with the finding of fact that from time to time there is a need to update and amend the general plan map to best reflect the future land use designations, that the amendment to the general plan map is desirable and is in the best interest of the citizens of Brigham City specifically pertaining to the future of the USU BC Campus, and that the Planning Commission shall make a recommendation to the legislative body for amendments according to the general plan as per Utah Code Section 10-9a-302 subparagraph 1. The motion was seconded by Joan Peterson and passed unanimously.

Public Hearing / Application # 3281 / Change of Zone from P-GC (Planned-General Commercial) to R-M-30 (Multiple Residential District) on approximately 3.68 acres / Southwest corner of 800 South and 200 East intersection / Brigham City Corporation:

This request has been made in order for the Brigham Place Apartment developers to build the desired project, which they were going to build in the other location, in this new location.

Motion: A motion was made by Lynn Duce to open the public hearing for application #3281. The motion was seconded by Rob Munns and passed unanimously.

There was no public comment.

Motion: A motion was made by Eve Jones to close the public hearing for application #3281. The motion was seconded by Lynn Duce and passed unanimously.

Motion: A motion was made by Lynn Duce to approve application #3281 and forward to City Council for their consideration; in association with this the stipulations that the Planning Commission, since we have recommended to the City Council that they approve the amendment based upon successful land trades between USU, Orvieto Investments, and Brigham Place Apartments group, with the findings of fact that the zone change request would be consistent with the Brigham City general plan upon approval of the general plan amendment which has already been approved, and that the legislative body may not make an amendment authorized by the subsection, Utah Code Section 10-9a-503, unless the amendment was put by the Planning Commission or was first submitted to the Planning Commission for its recommendation. The motion was seconded by Eve Jones and passed unanimously.

Application # 3283 / Conditional Use Permit / Brigham Place Apartments / Southwest corner of 800 South and 200 East intersection / Eric Lofthouse:

Mr. Bradley presented a visual display of the proposed development. There are three buildings and a proposed clubhouse/office. There is an easement identified for a future road that will need to be constructed; however, due to the nature of the pending land trade, the final location of that road has not been determined. It has been proposed to extend Fishburn Drive using a southward curve to connect into 900 South. The landscape plan needs to be refined and finalized as part of the approval in regards to what will be allowed. The City forester is allowed to look at the number of trees to determine what is necessary and what will fit the site compared to the standard requirement of trees per square foot of undeveloped area. Mr. Bradley recommended that a sample of the materials be presented to the Planning Commission so they can better understand what the applicants intend to use; it is within the jurisdiction of the Planning Commission to determine whether it is acceptable as part of the approval of the project especially in looking at the nature of the project site being close to a bank and a future campus.

The required usable open recreation area will be 19,250 square feet, which is based on the number of units (72). There are three identified areas equaling approximately 15,320 square feet that can count toward that requirement; however, the applicants will need to provide additional area. There will also need to be five feet of landscaping between the parking lot and the property line to meet those requirements. The detention basin is offsite from the first phase and staff will need details on how the applicants are going to tie it to the project. Mr. Bradley noted that approval of this application would need to be subject to the plat amendments, which includes easements and property lines. The applicants are also requesting a reduction in parking from two parking stalls per unit. The Planning Commission may reduce the parking ratio in multi-family units in developments with at least 40 units if they find the parking to be adequate and will not be detrimental to the surrounding area. Mr. Bradley said there was not much concern for visitors parking on the street, but there was concern with people

parking in the church parking lot or at the bank. He suggested there should be some fencing to control that. Staff recommended the front area not be fenced because it would have a better aesthetic look if it remained open. There should also be some protection around the playground area.

Tony Johnson, Stan Roland, and Travis Taylor, representatives for Brigham Place Apartments, came forward to represent the application. Mr. Johnson stated it was not their desire to move the project; they would rather have built the project where it is at. He said there are conditions that are causing additional cost such as with fencing. In order to get the approval from the State to allow moving the project location, they had to agree to build the same size buildings, including the same number of units. Mr. Johnson said moving from a rectangular site to a square site with a lot of jogs has been difficult. He stated they entertained the request at the City's behest as well as Utah State University. Their project has a fixed budget and there is no source for additional costs that may be imposed upon it. Mr. Johnson said they want to do the best they can with the project and thought what they are presenting will address the concerns.

Stan Roland stated the building is the exact same building that has already been approved. He said the previous site required a fence to be built between the project and the old Kmart building. If there is more fencing, it would be a different fence; there are only two approved fences.

Ms. Berry asked to what degree the applicants wanted the parking reduced. Mr. Roland stated they had two parking stalls per unit including an additional ten at the other location. The new proposed location is oddly shaped and they have added as much parking as they could. Mr. Roland said they are asking for a reduction of five parking stalls from what is required; which is what is allowed under the ordinance for reduced parking plus 12 stalls. Mr. Roland stated that part of the parking issue with the Methodist Church is resolved with the University's plan for the area north of the road that was discussed to be parking. Mr. Roland stated that USU said they are open to and have done across parking agreements with people before, which will hopefully be the answer for the Methodist Church and possibly part of this. Ms. Poelman commented that there are many churches in town that do service and other business during the week. Mr. Roland said they make sure they close the parking lots one day every year to stop the prescriptive easement.

Mr. Duce asked if their buildings would be built in phases. Mr. Roland replied that this project is the first phase and has the exact same buildings, units, and number that they had approved before only on a different piece of property. In phase two the club house would take care of both of those. There will not be a phase two until there is money for a phase two; which will be driven by need. Mr. Roland said the property will probably extend down further when the alignment of the road is done and everything is done with USU. The other portion may possibly house another two buildings (phase two) or a commercial development. The plan is contingent upon the USU trade and the road being aligned further south.

Ms. Jones stated she was concerned about the green space; there are strict requirements for green space and she thought the applicants were not meeting it. Mr. Roland said he thought they met the green space but did not meet the recreation area space. Mr. Bradley said green space is the landscaping. The front yard setback (20 foot minimum) cannot be counted toward the recreation playground area and depends on how things are landscaped for it to be considered usable; rock or xeriscaping would not be allowed. A clubhouse, tot-lot, playground, basketball court, or just a green field could count toward the useable recreation area.

Mr. Roland said the detention basin would not be part of the green space. In the trade, they have a site plan that justifies two buildings; they are negotiating how much further the land will go down. He said they overlooked the recreation area; they did not do any calculation when they laid out the plan. Ms. Jones said she would like the plan reworked so there is enough recreational area because the plan could be shifted due to the 30 foot setback on 800 South and they are only required to have a 20 foot

setback. Mr. Roland asked if it could be passed with the condition that they move it forward 10 feet and they meet the minimum recreation area. Mr. Roland said they could landscape the detention basin. Mr. Bradley said it would need to be part of the lot in order to do that.

There will be 139 parking stalls instead of 154 which is 12 more parking stalls than the minimum that the ordinance allows. There is twice as much frontage for visitor parking. There will be one assigned covered parking stall for each unit.

Ms. Jones asked if they had reviewed the staff comments. Mr. Roland said they had read them all. Regarding parking, which had already been discussed, Mr. Roland said they are exceeding the minimum ordinance by 12 stalls and are five stalls short of the standard ordinance. There should be 144 parking stalls and there are only 139, and it could be reduced to 127. Mr. Bradley said the Planning Commission could reduce it as long as it is determined that it will not have a detrimental impact on the surrounding property. The proposed Fishburn Drive alignment is a compromise that seems to work for all parties, but has not been officially approved. Mr. Johnson asked when that would be approved because they need to know that they are going to be able to exchange property for property before they can go. He asked if the road alignment would need City Council approval. Mr. Bradley replied that he did not know where that stood.

Concerning covered parking, Mr. Roland said they would look the same and asked if it was important to know right where they are. Ms. Berry replied it was important because it seemed they thought there was a controversy associated with that about how it was going to be located. Mr. Roland replied there was not. Mr. Bradley commented that covered parking often covers the architectural design of the buildings, although there is a benefit of having covered parking, it should complement the building. Mr. Roland said they had done a rendering to show the carport. The new configuration is different but there will be a carport in front of each of the buildings. Ms. Poelman said they had indicated previously that the carport would be substantial and of quality, not of materials that would be inexpensive to do. Mr. Roland said it is a steel carport that is substantial enough to meet the wind and snow loads and will not collapse; it will be pretty standard. It will have some pitch but will be a metal roof.

Ms. Poelman asked if any of the conditions had changed since they approved it a few months ago. Mr. Bradley clarified that the other site had not been approved; only the design guidelines for the buildings had been approved.

Ms. Jones wanted to hear that they are willing to fence around the playground area to keep the children safe and keep them out of the Methodist Church parking lot.

Norman Fukui, representing the Bank of Utah, stated they have no opposition to the change and recognized the benefit the housing and USU will bring to the community and are supportive of it. He said their concern is the fencing between the two properties. Their drive-thru borders that property and they feel it is critical they have fencing in place to protect the residents of the proposed housing as well as the bank customers. Mr. Fukui said they have no particulars as to the type of fencing and are not opposed to anything. He said they would like that issue addressed as best as it can be. Mr. Johnson asked if the bank would participate in the cost of putting in the fence. Mr. Fukui replied that he thought that would be possible if the bank had some input as to what the fencing will be; they could talk about it and negotiate.

Ms. Berry said she sensed that Mr. Bradley would like this application continued to have the applicants address some of the issues more firmly. Mr. Bradley replied that are some things that have not quite been addressed. He said the key is for the Planning Commission to be specific if there are certain conditions that need to be addressed such as with the fencing. It also needs to be considered that the new location is next to a well-kept bank rather than behind the old Kmart building as was the previous site.

Mr. Duce asked if the applicants could address the items in question and provide a response to the Planning Commission, and meet with the bank representatives to come to an agreement on what type of fence will be done there. He also asked that they provide detailed plans as to how the other issues will be addressed. Mr. Duce commented that he felt they had been rushed with this application.

Rod Vaughn, with the Board of Trustees with the Methodist Church, said they are supportive of the project. He said the church will lose out on some of their parking lot area. The church parking lot is used on other days besides Sunday. He said it would be good to have a fence around there to avoid interference. Mr. Vaughn said the last time they spoke with the applicants they were going to talk about a swap between their parking lot and the area on the south side on the corner. Mr. Johnson said the university had changed that.

Mr. Roland said the staff had not seen their answers to the comments. He said they could agree to put an approved fence along the bank property. Ms. Jones commented that they needed to hear the applicants were in agreement with the Bank of Utah to do the fencing and the Methodist Church to do adequate fencing. Mr. Roland asked if the church was willing to participate in half the cost of the fence. Mr. Vaughn said he was not authorized to do that and they have a limited budget, so the fence could be a problem for them.

Ms. Berry stated she agreed with Mr. Duce in continuing the application because she also felt rushed. Ms. Jones suggested the applicants resolve the issues with the staff comments and return in two weeks to the next meeting. Mr. Munns said if they could come to an agreement with the fencing he did not see a reason to hold it up.

Ms. Jones said there were three issues that needed to be addressed if it is approved at this meeting. Those issues are fencing including all the way around the playground, the recreational space, and the detention basin. There will need to be a determination about the reduction in parking as well. The different types of fencing were discussed but not decided upon. Mr. Roland said they were agreeable to put a six foot tan vinyl privacy fence in the areas that were suggested. Ms. Peterson commented that the applicant was agreeable to having a 20 foot setback instead of a 30 foot setback incorporating it into the recreation area; she said she wanted to see how that will work. Mr. Roland said they were going to landscape the detention basin area and include it in the recreation area. Mr. Roland said they could create an easement that ties it to the lot. Mr. Bradley said that area would need to be part of the lot being created in order to include it; an easement would work for two lots but the City would not allow a grassy area that is not part of that lot to be counted towards that project.

Ms. Poelman suggested the applicants resolve some issues with staff so there are fewer things to be concerned with.

Motion: A motion was made by Lynda Berry to continue application #3283 until the next scheduled meeting, March 15, 2011. The motion was seconded by Joan Peterson and passed unanimously.

Motion: A motion was made by Joan Peterson to adjourn. The motion was seconded by Eve Jones and passed unanimously.

The meeting adjourned at 8:55 p.m.

*This certifies that the regular meeting minutes of March 01, 2011 are a true and accurate copy
as approved by the Planning Commission on May 03, 2011.*

Signed: _____

Eliza McGaha, Administrative Assistant