

APPROVED

BRIGHAM CITY PLANNING COMMISSION BRIGHAM CITY COUNCIL CHAMBERS

April 17, 2012

PRESENT: Barbara Poelman Chairperson
Larry Jensen Vice Chair
Eve Jones Commissioner
Lynda Berry Commissioner
Joan Peterson Commissioner
Rob Munns Commissioner
Lynn Duce Commissioner
Reed Hancey Alternate Commissioner

ALSO PRESENT: Mark Bradley City Planner
Jared Johnson Community Development Manager
Julie Jeppsen Administrative Assistant

EXCUSED: Michael Bott Alternate Commissioner

AGENDA

Pledge of Allegiance

Approval of 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 # 3381 / Amend Chapter 29.12 Residential and Multiple Residential Districts, Section 29.12.120 Special Provisions / Keeping of Large Animals / Carlin Maw

Public Hearing / Application # 3384 / Planned Unit Development (P.U.D.) Subdivision / Francis Townhomes P.U.D. / 253 & 261 North 100 West / Dallon Stephens

Application # 3383 / Conditional Use Permit / Francis Townhomes P.U.D. / 253 & 261 North 100 West / Dallon Stephens

Application # 3385 / Conditional Use Permit / Industrial (testing, design, and fabrication of cylinders) and Onsite Residential Dwelling / 470 East 1000 South / Bill Kann

Application # 3382 / Permitted Use Permit / Design Review for Fencing / 1100 South Main / R.C. Brothers

Discussion:

REGULAR MEETING

Regular session opened at 6:00 p.m. by Barbara Poelman and Lynn Duce led the Pledge of Allegiance.

APPROVAL OF MINUTES

Motion: A motion was made by Lynn Duce to accept the April 3, 2012 Regular Meeting minutes as corrected. The motion was seconded by Joan Peterson and passed unanimously.

PUBLIC COMMENT There was no public comment.

Public Hearing / Application # 3381 / Amend Chapter 29.12 Residential and Multiple Residential Districts, Section 29.12.120 Special Provisions / Keeping of Large Animals / Carlin Maw

Mr. Bradley presented information regarding the application including specific information related to animals. The property is currently zoned R-1-10. There were several specific neighboring properties discussed that have grandfathered rights for large animals. Several parties have approached the city regarding animal rights for this specific property. Mr. Bradley explained the ordinance as it relates to this property and the amendment requested in the application. He explained that the City's legal council and the Director of Community and Economic Development have indicated that this is not the legal or appropriate approach to change an element of a zoning district that would only benefit a few or specific parcels. Mr. Bradley explained the other options available such as a rezone or an overlay etc. The surrounding property owners were all notified of the application.

Eve Jones and Lynda Berry asked for clarification of the different requirements for private stables. Mr. Bradley explained that in this area they are a grandfathered use. Barbara Poelman asked why this one piece is not included in the grandfathering and if there was a possibility of a road at the back of the lot. The history of the property was discussed and Mr. Bradley explained the process that caused this property to lose the grandfathering status. Specifically, animals have been removed from the property for more than one year, which is a time frame requirement that loses the ability to be "grandfathered" or remain a "legal non-conforming use" per Utah Code.

The possibility of future development of surrounding properties was discussed. Lynda Berry inquired about the wetland status of the Eagles property. Mr. Bradley stated that there are wetlands in the area (using Kotter Canyon Subdivision) however he is not certain of the wetland status of that particular parcel. Wetlands in general may impact some of the overall development in the area.

Motion: A motion was made by Larry Jensen to open the public hearing. The motion was seconded by Lynn Duce and passed unanimously.

The Public Hearing was opened by Barbara Poelman.

Mike Belnap explained that Fannie Mae owns the property. There remains obvious evidence of large animals on the property in the past. All of the neighbors have horses. They would simply like to see a vacant repossession taken off the market and returned to use as it was designed. The zoning doesn't make sense to them when all of the neighbors have horses and/or large animals.

There was discussion about the physical layout of the property being in harmony with keeping of large animals.

Lori Belnap came forward and explained that she currently has a buyer interested in the property but they want to have horses.

Mr. Bradley explained that the Community Development office has based their opinion on the history Brigham City Animal Control has provided. He explained the state code described as non-conforming, non-compliant uses which are commonly referred to as grandfathered uses. The use must be continuous with no lapses in use of more than one year.

Eve Jones clarified what constitutes the continued use that qualifies the property as grandfathered.

Robb Munns contacted his brother who is familiar with the previous owners. He confirmed that there were horses on the property that were removed when the prior owners left the property. It has been longer than a year.

Motion: A motion was made by Larry Jensen to close the public hearing. The motion was seconded by Eve Jones and passed unanimously.

The Public Hearing was closed by Barbara Poelman.

There was discussion regarding the legal advice given to staff.

Eve Jones stated that there should be an overlay or some way to allow for the animals. Her concern is maintenance of a unique property such as this without the presence of animals.

Robb Munns agreed and further expressed concern over how they could allow grandfathering when clearly the time has passed without setting a precedent that they do not want to set.

Joan Peterson agreed that without proper handling of the situation there could be misunderstanding by residents in other parts of town.

Reed Hancey stated that the property is unique. He said that an overlay would be the best option.

Larry Jensen discussed the surrounding developments and the direction that was most likely intended when this property was zoned residential. These areas are intended to

eventually move towards residential use – away from agricultural.

Barbara Poelman discussed the unique nature of this request and property. Could there be a time limit placed on an property that is grandfathered? Lynda Berry wondered if this was something that the Appeal Authority could address.

Mr. Bradley explained the Appeal Authority cannot give a use variance. It would have to come from a legislative body such as the City Council. He explained the parameters that the Appeal Authority works within. A change would have to come through a rezone or overlay that would allow for the use.

Lynda Berry stated that with all this in mind it is unreasonable to not do something to work with the property owners to allow for the appropriate care and use of this property.

Barbara Poelman suggested that an overlay is the best option.

The specifics of an overlay were discussed including special provisions, consequences of an overlay and other options related to an overlay. Mr. Bradley explained that an overlay is very specific to certain properties.

Eve Jones stated that she would like to see the planning commission do something to accommodate this property owner.

Specifics were discussed related to the consequences of an overlay.

There was discussion of the different options available to the commission. The commissioners agreed that the best option is to forward the application to the City Council with recommendation to deny and suggest that the owners come back and submit an application for special overlay.

Motion: A motion was made by Larry Jensen to forward the application with recommendation for denial. The motion was seconded by Robb Munns and passed unanimously.

**Public Hearing / Application # 3384 / Planned Unit Development (P.U.D.)
Subdivision / Francis Townhomes P.U.D. / 253 & 261 North 100 West / Dallan
Stephens**

The Application was presented by Mr. Bradley. A brief history of the development was presented. The owner would like to create separate parcels for each unit to accommodate financing and ownership of individual units. Each lot would be slightly smaller than what is normally allowed for a subdivision thus requiring the P.U.D.

There was discussion related to this conditional use and specific reasons for the application. Other similar applications were discussed.

Mr. Bradley discussed that there is a concern with the approach of the P.U.D. application where they are unable to provide amenities and have a lesser lot size. If a

request to subdivide the twin home units with separate parcels took place first, a different standard would have been required. There needs to be discussion regarding how the City desires to handle these applications in the future.

Dallan Stevens came forward and explained the history of the property and the application process that the developer went through with the city before development of the property. He discussed details related to financing including appraisal requirements.

There was discussion about the utility costs which the developer paid as though it were a larger development similar to Kotter Canyon or Cottonwood Grove.

Mr. Stevens gave details of the unit size and configuration etc.

Mr. Bradley discussed the history of the property and development.

Motion: A motion was made by Joan Peterson to open the public hearing. The motion was seconded by Lynda Berry and passed unanimously.

The Public Hearing was opened by Barbara Poelman

There was no public comment.

Motion: A motion was made by Larry Jensen to close the public hearing. The motion was seconded by Lynn Duce and passed unanimously.

The Public Hearing was closed by Barbara Poelman

There was discussion regarding lot size and the development in general.

There was discussion regarding the impact of approval of this request on future applications.

Lynn Duce discussed the possibility of requiring stipulations with regard to common area requirements for the applicant's additional development.

Reed Hancey requested clarification of the utility provisions on the plat. Mr. Bradley clarified that the power is underground in the rear of the properties. There will be CC&R's included as part of the P.U.D.

Motion: A motion was made by Lynn Duce to accept application 3384 based on the findings of fact that such land use transaction with the noted conditions and stipulations should not under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. That the Planned Unit Development Subdivision provides for the ability of separate homeownership of the units. And that with the following stipulations that it applicant complies with staff comments and that it be subject to

Declaration of Covenants, Conditions and Restrictions reviewed by City attorney and found acceptable and forward the application for review and approval by the land use authority. The motion was seconded by Lynda Berry and passed unanimously.

Application # 3383 / Conditional Use Permit / Francis Townhomes P.U.D. / 253 & 261 North 100 West / Dallan Stephens

Mr. Bradley presented details of the Conditional Use Permit request. Landscape details were discussed. Mr. Stephens explained the intent and expressed the desire of the developer to comply with whatever recommendations that the city might have. The fencing was discussed. The driveway configuration was discussed.

Motion: A motion was made by Eve Jones to approve application number 3383 with stipulations that the applicant comply with staff comments and that they comply with Section 29.12.120 (C), Landscaping requirements and that the front tree size will comply with the landscape standards and is subject to the land use authority approval of the Planned Unit Development Plat and is subject to Declaration of Covenants Conditions and Restrictions reviewed by City attorney and found acceptable. With the findings of fact that a Planned Unit Development in the Residential Districts requires a Conditional Use Permit and that such use with the noted conditions and stipulations should not under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. The motion was seconded by Rob Munns and passed unanimously.

Application # 3385 / Conditional Use Permit / Industrial (testing, design, and fabrication of cylinders) and Onsite Residential Dwelling / 470 East 1000 South / Bill Kann

Mr. Bradley explained the application and provided site plan including google images. Adjacent property owners were notified and there was one response by a neighbor in support of the application.

Bill Kann came forward. He explained that they would be doing cylinder testing onsite and no natural gas or propane cylinder testing would be done. The cylinders will be empty. They will test oxygen cylinders used by fire fighters etc. They will clean the cylinders. They use water in the pressure testing process. It is a very clean process and the gray water will be used to hydrate their property.

Larry Jensen asked for clarification of the explosion hazard. Mr. Kann explained the process and that the only hazard is to the ceiling. Cylinders are tested in a sleeve that is filled full of water and then pressurized. They use a USDOT certified process and they will be going through that certification process.

The configuration of the building was discussed. They will initially hire 4 employees.

They will be hiring additional employees in 6 months. They are planning on a June 1 opening.

Robb Munns asked for clarification from Jared Johnson regarding the requirements of separation between the residential and testing occupancies. Jared Johnson came forward and explained his discussions with Mr. Kann regarding the operations etc. and clarified the restrictions that will be placed on the operation.

Motion: A motion was made by Larry Jensen to approve the application that the planning commission as acting as the land use authority for this application with the stipulations that the applicant comply with the current and future staff comments. With the findings of fact per Utah Code a Conditional Use Permit shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards Section 10-9a9507(2)(a). Such use with noted conditions and stipulations should not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity. The motion was seconded by Eve Jones and passed unanimously.

Application # 3382 / Permitted Use Permit / Design Review for Fencing / 1100 South Main / R.C. Brothers

Mark Bradley presented the application including a brief history of the property. A photo overview of the property and site plan was displayed. Mr. Bradley explained that access, circulation and aesthetics need to be considered in the design review process.

Chuck Vesco came forward and was asked by Lynda Berry what circumstances have changed that are causing them to bring forth this application. Mr. Vesco explained that there is a large liability regarding the use of the property. He explained the history of the lease by the State of the property and the desire of the State to discontinue the lease. The State is no longer leasing the property. He explained the area of the proposed fencing and that their intent is to control the area and the manner in which others are using it for parking. He explained that there would continue to be access off of 1100 S however the fence would be placed on the south side of the property to reduce the access to parking.

Mr. Vesco was asked for clarification regarding current negotiations with the State. Mr. Vesco stated that the offer for the State to continue to lease the property is still on the table. His understanding is that the State is not interested in leasing the property for a reasonable price.

Barbara Poelman asked if they were aware of the requirements regarding aesthetics etc. for a fence in the area. Mr. Vesco stated that there are other chain link fences in the area similar to what they have proposed.

Lynn Duce asked if paid parking had been considered. Mr. Vesco indicated that they are considering development of the property and paid parking has not been considered.

The options of eminent domain were discussed.

Wayne Christensen from the Utah State Department of Facilities Construction Management came to the table. He is the Facilities Manager. He provided a map of the property. He explained the State's perspective of the situation. Boyer company bought the property in 1977 and 1978. They set up a 55 year lease with Vesco Brothers when they developed the shopping center. The State inherited the lease of the land when they purchased the property. He provided the history of negotiations to sell the property to a developer. Mr. Christensen discussed the history of rent payments. He stated that the State is of the opinion that they have overpaid for the use of the property. He acknowledges that they have students parking on the property as of this date. He referred to the overhead projection and indicated the areas in which existing parking could be utilized on the State property. He acknowledged that the students etc. prefer to park in closer proximity to the front doors of the building.

Eve Jones asked Mr. Christensen if the State owns an easement to go through the Vesco property. Mr. Christensen responded no. Vesco's have been given an easement by the State to enter their property from the west side through the State property.

Mr. Christensen stated that Vesco's now want to put up a fence to attempt to keep the students from parking on the property. The State of Utah strongly opposes the fence.

The State suggests signage marking Vesco's property, The State is willing to pay Vesco's for a portion of the property or all of the property including the corner or an easement to cross the Vesco property from 1100 S.

Specific figures representing appraised values and suggested purchase prices for the property were discussed. An offer was made by Mr. Christensen for the State to purchase the property for various terms.

There was discussion about the parking configurations etc.

The history of purchase negotiations between Vesco's and the State were discussed. The discussion included an offer to purchase the corner parcel.

Mr. Christensen stated that the state has the right for eminent domain but it is not on the table yet. That is not the intent or preference of the State.

Mr. Vesco explained the history of the corner development. He feels that this is not the venue for negotiations etc. related to purchase of the property.

There was discussion related to the lease and other offers that Vesco's have on the property including the possibility of other development of the property.

Joan Peterson stated that at the meeting of the Joint Advisory Board the parties were to get together and resolve the issue. She suggested that the parties get together, negotiate and settle the issue.

Eve Jones stated that the City has concerns regarding the flow of traffic through the parking lot if there is a fence.

Mr. Vesco stated that the 1100 S access is really not an access for the school. It is an access for their property. The fence is intended to secure their property and control the liability that arises from the public using the property.

There was discussion between Mr. Vesco and Mr. Christensen related to offers that have been made back and forth etc.

Larry Jensen said that he believes that Vesco's have a right to construct a fence on the property. Mr. Jensen does not believe that it is in the best interest of everyone concerned because of aesthetics etc. He believes that through negotiation much better things can happen. Mr. Jensen would propose that the item be continued until the next meeting where the appropriate design of the fence etc. could be discussed. The Planning Commission should not be involved in forcing one side or the other of the negotiations between the parties

The parties agreed that they would get together and try to negotiate the issue.

Motion: A motion was made by Larry Jensen to continue the application to the next meeting. The motion was seconded by Lynn Duce and passed unanimously.

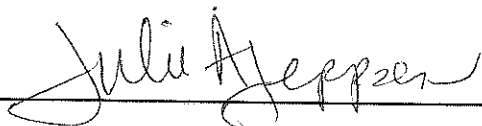
DISCUSSION

There was discussion related to the requirements of applicants to obtain a fence and the responsibilities of the planning commission in that regard.

MOTION TO ADJOURN

Motion: A motion was made by Eve Jones to adjourn. The motion was seconded by Joan Peterson and the meeting was adjourned at 8:40 p.m.

This certifies that the regular meeting minutes of April 17, 2012 are a true and accurate copy as approved by the Planning Commission on May 1, 2012.

Signed: 

Julie A. Jeppsen, Administrative Assistant