

**West Point City
Planning Commission
3200 West 300 North
July 12, 2018**

Present: Jeremy Strong, Rob Ortega, Brad Lee, Jeff Macfarlane, Jake Shepherd, Troy Moyes – City Planner, Michelle Bailey - Planning Commission Secretary

Excused: Brian Vincent, Korey Kap

Visitors: Dave & Kathy Hohenshield, Jack & Joann Bean, Glenn & Linda Thomas, Michelle Parry, Josh & Heidi Allred, Julie Dixon, Matt & Rachel Thompson, Ashley Bailey

WORK SESSION

1. Discussion regarding a Major Home Occupation for Ms. Rae's Daycare, located at 2542 West 650 North, Rachel Thompson, applicant.

Troy Moyes reviewed the application. Rachel Thompson is seeking a Conditional Use Permit for a Major Home Occupation called Ms. Rae's Daycare. She is proposing to run the daycare for four children five days a week, Monday – Friday from the hours of 7:30 am – 5:30 pm. Ms. Thompson has submitted all the necessary items such as a background check, CPR training, Health & Fire Department inspections as it pertains to this application. In Dropbox, besides the application is an email from a neighbor outlining some altercations that have taken place between him and Ms. Thompson regarding the daycare that she is currently running. This neighbor and Ms. Thompson share about 20 feet worth of fence. This is the only neighbor that Staff has received any complaints from. This neighbor has an issue with the noise. The neighbor that is complaining and another neighbor came to a Planning Commission meeting a couple of months ago and expressed concern over a daycare in their neighborhood. Troy Moyes reminded the Commission that they may come up with reasonable conditions to place on this business if they feel it is necessary. Troy displayed the State Code regulations table listing how many children a person is allowed to have in their care. Discussion took place regarding how many children she could have including her own children. State Code requires care services to provide outdoor space for the children; at least 40 square feet. It does not require a certain amount of time outdoors. Jeremy Strong asked if Ms. Thompson has any playground equipment next to the fence adjoining this specific neighbor. Troy responded that she has a swing set in the middle of the backyard. The yard is completely fenced with a chain link fence. Brad Lee said he feels that as long as Ms. Thompson stays under what State Code mandates, she is fine. Brad Lee asked what would happen if any neighbor kids came over to play during business hours. Troy Moyes responded that State Code talks about Spontaneous Supervision, like when neighbor kids or relatives come over, those children would not be counted in her allowed number of children. Daycare providers are held to a high standard in order to keep their license through the State. Ms. Thompson has all of the required licensing through the State as well as the County Health Department. The Commission didn't feel that there were any reasonable conditions that needed to be placed on the business at this time.

2. Discussion on changes to the West Point City Code regarding the PRUD overlay zone.

Troy Moyes reviewed the suggested changes to the PRUD Code so far. They are proposing a name change to start with a clean slate. It would be changed from PUD to PRUD (Planned Residential Unit Development). Eliminate the Open Space requirement. Instead of open space being required, it could be added as an incentive for useable open space. There are Two Tracks they could take for development. The first is a traditional subdivision, and the second is common space developments. Returning to Prior Base Densities. The density would authorize up to 20% bonus density. The developer doesn't have to go clear to 20%, he could vary that. If he only wanted 10%, that scale would go up based on the amenities he wanted to add. It would max out at 20%. In the Development Standards, depending on the type of development being proposed, the following standards would apply. In Common Space Developments, the big thing would be the zones allowed. Common Space subdivisions would only be allowed in R-2 and R-3 zones. It would not be allowed in R-1 underlying zone. Troy Moyes asked the commission how they feel about not allowing these Common Space subdivisions in the R-1 zones. Jeremy Strong said he doesn't feel like they would be financially feasible in the R-1 because the HOA would be so costly. Jake Shepherd said he doesn't think it would be detrimental to the rest of the R-1 zone. It might not happen due to proposed changes though. He feels it would be ok to allow them in the R-1 if a developer wants that. Jake Shepherd mentioned that in the last meeting they had suggested speaking with a developer that is not doing business in West Point to see if 20% is enough given the requirements they have to meet. Troy Moyes said they have not spoken with a developer yet. Troy also said that those numbers are merely suggestions; they can be changed if the Commission feels they are too strict. Jake Shepherd said he thinks 20% seems a bit low. The Traditional Lot-Style developments are allowed in all zones. There are lot standards which are recommended but there is still flexibility for variation. The current PUD Code is forcing small lots by requiring the developer to have so much open space. The proposed Code definitely gives more flexibility.

Troy Moyes suggested that the Commission hold a public hearing at the next meeting. Troy reviewed a few of the most recent changes being proposed. Under the Density heading it states, "Developments seeking such flexibility must propose a minimum of a five percent amenity bonus as outlined in subsection (-) of this chapter. That could include doing a nicely landscaped detention pond, or an entrance feature; something that enhances the development a little. Troy reviewed the process for granting density bonus as outlined. The Planning Commission will authorize the density bonus first. The approval process will go as follows: 1. The applicant will approach Staff and together they can work out any issues. 2. The Planning Commission will discuss it and then hold a public hearing for the rezone. They will also do a conceptual plan at the same time as the rezone. 3. It would then come back for preliminary and final approvals. If the developer proposes something not listed in the Code, flexibility has been given to the Commission to consider any ideas proposed. For example, if the developer is proposing a park but the Commission doesn't feel that it is worthy of receiving the full 10% density bonus, they can choose to grant them 8% or something like that. The approval process is for the Commission to give a recommendation of the bonus amount to City Council.

Troy Moyes asked if the Commission has any suggestions of amenities or percentages to be added to the list. The Commission all agreed that they like the proposed Code now. It gives good guidelines but isn't too restrictive. It seems clear and concise and accomplishes what is desired in the different zones. Troy Moyes said he would contact a couple of developers before the next meeting to get feedback from them. Jake Shepherd commented that a developer could probably do this without an HOA and still get some increased density. Overall, the Commissioners really liked the proposed changes.

REGULAR MEETING

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Prayer:** given by Jake Shepherd
4. **Approval of Minutes from June 14, 2018 and June 28, 2018.**

Brad Lee made a motion to approve the minutes from the meetings held on June 14, 2018, and June 28, 2018, as written. Jeff Macfarlane seconded the motion. All voted aye.

5. **Public Comments:**

Dave Hohenshield – 684 North 2575 West – Dave asked, regarding agenda item number 6, what the definition is of a Conditional Use Permit? Troy Moyes responded that a Conditional Use Permit is a permitted use from a land use authority, which is the zoning ordinance that can place reasonable conditions on a particular use to mitigate any detrimental impact. For example, if you have a home business that emits a lot of light, the Commission can impose some sort of conditions to allow lights to be dimmed to a different voltage. The Code has to be specific on what conditions can be placed. It is an administrative action not a legislative action. Dave then asked if, regarding the daycare, the Conditional Use Permit is a license, a certificate, or how does that relate? Troy Moyes responded that it is a land use action. The actual business license comes after they get approval for the Conditional Use. This is for the use and not the business.

Linda Thomas – 750 North 2575 West – Ms. Thomas said, “Being in the neighborhood where she is planning on doing this service for the rest of the area, there are many of us that are thrilled to have a place that we can take our children to a licensed daycare and know that they will be in safe care throughout the day. I, myself, had a licensed daycare in my home for 20 years and I know that it provides a service to the area. I don't know of anybody else in our area that has one. There might be some that I haven't heard of. But I know Rachel and I know that she is a good person and has a nice home and a nice environment.

Joann Bean – 2547 West 725 North – “I am the backyard neighbor of the daycare proposed today. We have the largest connecting property and we are subjected to the noise from that area. I was wondering if, I know we have codes about noises, but I was

wondering why in the process, that there is no process for interviewing the homeowners that about this property to get permission or explain how much noise comes from that area. What can we do as homeowners to prevent this happening over and over again? There are, by the way, nine other daycares in West Point. I don't know if they have the same problem with them that we do. I'm not sure. This daycare has been operating. It isn't a new business. I was wondering if there couldn't be a legal process where the homeowners in West Point, because we are such a small community, could be protected from noisy businesses. And if it can't be in the Code, do we have to revert to it being a problem of nuisance? I just have a question about that. Does anybody know? Is it a nuisance or do we have to change the law to make that happen?" Troy Moyes responded saying that is a very gray area. This is an administrative action not legislative. Legislative requires public input and feedback so if a law doesn't make sense, or you don't like it, you've got to change the law. That would be enacted by the City Council. The law would have to be changed before it can be applied. Mrs. Bean asked, "Is that rule somewhere so we can obtain the process?" Troy Moyes responded that it is spelled out in State Code. LUDMA 10.9.A Mrs. Bean asked, "What about it just being a nuisance?" Troy responded that would be something that needs to be discussed another time.

Michelle Parry – 704 North 2575 West – "I am also a neighbor. I have never met Rachel before, and I'm not as close as the Beans, but I just want to say that I'm fairly close. There's only a couple houses between and that noise has never bothered and it's not excessive. There have been years and years of intolerance from some neighbors for just normal, household children noise and I would like that considered."

Heidi Allred – 2526 West 650 North – "I happen to live right next door to Rachel. I happen to have a bedroom that is closer than anybody's house or position in here and that is where I work from occasionally from my home. I work from home a couple of times a week to avoid a very large commute. I will tell you this last week I worked a couple of days from home and the noise never got excessive nor has it ever been excessive more than just children playing. I can tell you that I hear more noise coming from the school than I actually do from her daycare. That is excessive all day long, and I can hear it all day long but it is normal kid noise. Its kids playing. It's not a big deal. We live in a neighborhood. It's what is expected when you live in a neighborhood that has young families. I don't have young children at this time; my kids are all older now, and it's a noise that I can still tolerate and to me it's not excessive. Its kids playing and I actually am surprised that everybody is complaining about the noise. I would expect to hear more coming from her house, knowing that she does have a daycare. I actually didn't know for a really long time. There's not excessive traffic; none of that. We live in a cul-de-sac and I live right next door. It's something that does not bother me. If you want to compare noise, compare the school that is literally just right down the street from us which has quite a bit of noise. I do not have a problem with it, our family does not have a problem with it. We share our backyards, fence, everything, and it's never been a problem for us. I am very much in favor of this and it's nice to know that for those that do need something closer to home for daycare that they have a choice for a safe place for their kids.

Jack Bean - 2547 West 725 North – Mr. Bean commented directly to Rachel Thompson "I have a list of all the rules and regulations and whatnot that I got from the State. It is quite a bit of language and stuff that you are primarily going to have to adhere to. Have

you read this stuff?" Jeremy Strong told Mr. Bean that he needs to address the Planning Commission, not the applicant. He said he would take his comment back then.

Dave Hohenshield - 684 North 2575 West – "Just me again. I'd just like to say, since others have stated, that my backyard also shares the Thompson's backyard. I am probably the reason why we are all here. I am the one that turned in the initial complaint on the 1st of May, and it was chaos that day. It wasn't just the Thompson's children. There were other children there and that's when I called Michelle Bailey and I asked a simple question. 'Does Rachel have a business license to operate a daycare in West Point?' And Michelle told me no and advised me to contact Bruce Dopp, the Code Enforcement Officer to go out and talk to Rachel about operating the daycare. So this is where this all started. And like the Allred girl said, my backyard is just as close as hers. Our family room is basically in their backyard and that's why we are here. I understand that there is going to be noise from kids; that isn't the issue here. The issue I had, and I hope everybody understands this, is operating an unlicensed business in a residential area. I was seeking some information and to be educated on how that process goes about. I did speak with Bruce, and I did speak, on a couple of occasions with Kyle and Boyd, and they did explain to me that there are multiple business in West Point but all businesses require a license. It doesn't matter if it's a major business or a minor business. They all have to be licensed. My definition of major is because it has an impact on the neighbors, am I correct?" Jeff Macfarlane responded that it is more than just that. Mr. Hohenshield said, "Ok, but is that part of it? Because that's why I'm here. That's why I made the initial complaint. Not to --- anybody off, but I felt like if they're not operating a business then it either has to be stopped or go through the proper protocol to accomplish this license. Because that license now becomes a contract between the provider of the daycare and the City. In that contract, there's rules and regulations within the boundary of that contract. It's just not an open door policy; it's just not an open check where once you get a certificate, that you're allowed to just open up the front door, open up the back door and they just come scootin through. That's why I made the initial call to West Point City. Because I, as a longtime resident, was concerned that there was a business operating. If I operated a like business within the City boundaries, and I found out that there was another like business operating without a license, I'd be very P.O.'d. I would be down on the City Manager's desk talking about why should I pay for a license and what is associated with having that license to operate when another business or another like business that doesn't have a license can get away with it. So I just want to clarify that I am the one that brought us all here. I made the initial call. I just want to make sure that if Ms. Rae's Daycare is going to operate a daycare center in my backyard, and I can only speak for myself, that it is done within the requirements whether it's the State, the County or the City. That is my main concern. I understand that we all live in Suburbia and we have to deal with certain things, but it is a shock after 33 years and all of a sudden you have a daycare. And I was asked, 'Why didn't I go to the person instead of calling West Point and asking do you have a license?' It wasn't my responsibility. In my opinion, if I move into an area and I'm bringing a daycare with me, in this case, I think the courteous thing for that new neighbor would be to go and touch bases with all of the affected neighbors and say 'We are new to the neighborhood. I'm going to operate a daycare and I just wanted to let you know.' My response would have been 'As long as you've got a license, I guess I can't do anything about it. But we weren't even given that consideration. I wasn't even given the consideration once the applicant went and applied

for the certificate or license, to be notified. She was very selective of the neighbors that were identified. Two neighbors on each side work most of the day, at least the Clarks do. We are retired. I've been retired now for four years and so I'm home. If we're not travelling then we are home every day and I'm an outside person. That was my main reason was to expose a business, not even a business, a small someone trying to operate a business within the City limits without a license. Thank you for your time."

6. Conditional Use Permit for a Major Home Occupation, Ms. Rae's Daycare, located at 2542 West 650 North, Rachel Thompson, applicant.

Rachel Thompson was present to answer questions. Troy Moyes reviewed the application. Rachel Thompson is seeking a Conditional Use Permit for a Major Home Occupation called Ms. Rae's Daycare. She is proposing to run the daycare for four children five days a week, Monday – Friday, from the hours of 7:30 am – 5:30 pm. Ms. Thompson has submitted all the necessary items such as a background check, CPR training, Health and Fire Department inspections as it pertains to this application. Bruce Dopp, the Code Enforcement Officer, has met with Ms. Thompson and conducted all the necessary inspections on the home to make sure it has a fenced yard and no other safety issues. Ms. Thompson has satisfied that portion of the application as well.

Jeremy Strong asked if she was required to go to the County to obtain some permits. Troy Moyes responded saying the State of Utah controls care centers. There are certain requirements of how many kids you have at home versus how many more you may take care of. In West Point City Code, there is a short section about care centers. We default to the State for its guidelines. The Health Department is also involved because the children are fed in the home. Thus sanitary conditions must be maintained. There is a lot of paperwork to deal with when you're involved in daycare. State Code states that if you have children of your own under four years of age, they count in the number of children you are allowed to have. You may have up to eight children per one caregiver including your own children four years and younger. If you have older children, that number is reduced. Ms. Thompson is proposing to have four children so she is well under the requirement for State Code. Ms. Thompson said she has one child of her own under the age of four, so she could have up to seven other children. Ms. Thompson said, "I have a question. That was before I talked to the State. She has licensed me to have up to 16 children if my husband is at home with me because he will be CPR/First Aid trained also. The max amount, if I could change it on my application, would be eight kids. Or do I need to reapply?" Jeremy Strong asked for clarification if she is wanting to have up to eight children. Ms. Thompson said yes, just eight, including her child under four years of age. Ms. Thompson got licensed for up to 16 children because she and her husband have large families and she didn't want to have any problems if family stops by. Troy Moyes said that was discussed in the Work Session. There is a portion in the State Code that address spontaneous childcare. It addresses if the neighbors or extended family members come to play, those children are not counted in her number. What counts is the children she is physically in charge of at the time when running her business which is her immediate family and children that are paying to be cared for there. Jeff Macfarlane asked for clarification purposes if she would like to change the number of children on her application from four to eight. Ms. Thompson said yes, she would like to apply to have up to eight children.

Rob Ortega made a motion to approve the Conditional Use Permit for a Major Home Occupation, Ms. Rae's Daycare, located at 2542 West 650 North, Rachel Thompson, applicant, with the conditions that she may take care of up to eight children during the hours of 7:30 am – 5:30 pm. Rachel Thompson asked if she could change her hours of operation from 7:30 am to start at 6:30 am instead. Jeremy Strong asked if any conditions would need to be placed on that if her hours of business begin at 6:30 to mitigate noise that early in the morning. Jake Shepherd said he is allowed to be outside building a home at 6:00 am so he doesn't see that we can imply conditions like that. Rob Ortega asked if there is anything in City Code that talks about times businesses are allowed to start. Jake Shepherd said he believes its either State of City Code that states you are permitted to work in residential zones from 6:00 am – 10:00 pm. Rob Ortega said he feels that 6:30 is a reasonable time. Rachel Thompson submitted a copy of her schedule for the daycare. The schedule states that outdoor playtime begins at 11:00. Troy Moyes said it would be difficult to place conditions like not allowing children outside before 8:00 am because Ms. Thompson has children of her own that would be allowed to be outside earlier than that. It just opens her up to a lot of complaints. Dave Hohenshield commented that if the City Noise Ordinance says 6:00 am – 10:00 pm then she should have to follow that. If she has kids and they want to go out at 6:00 am, that is reasonable because that is what the Sheriff would have to comply with. Jeff Macfarlane said he agrees with Rob, he doesn't feel like there needs to be any restrictions before 6:00. Brad Lee said he is fine with her proposed time change. Jake Shepherd said, "I think 6:00 in the morning is the best time to be out. I think this is an interesting thing that this is a residential zone and this is the temporary residence for these children for that day. I think that is normal life for children. If they want to be outside at 6:00, I don't have a problem with it. A lot of education happens when you're outside." Jeremy Strong said he is under the same opinion. Jeremy Strong reiterated the application changes that are being requested. She would like eight children, five days a week, Monday through Friday, from 6:30 am – 5:30 pm. Rob Ortega amended his motion to approve the Conditional Use Permit for a Major Home Occupation, Ms. Rae's Daycare, located at 2542 West 650 North, Rachel Thompson, applicant. Jeff Macfarlane seconded the motion. Jake Shepherd reminded Rachel Thompson to stay current on all of her licensing. All voted aye.

7. Planning Commission Comments

Jake Shepherd thanked the public that came to the meeting and made comments. If there are things wrong in the City, speaking up is a wonderful thing to do. Many of these comments can also go to City Council. If you'd like to voice opinions on laws within the City, then get involved and voice your opinions there.

Brad Lee expressed appreciation to Staff for the good work they do. Hats off to the public that is here participating tonight. Shout out to everyone that participated in the 4th of July celebration last week!! It's nice to live in a community where people can come together and celebrate. We honor those that have served, those that have served with brothers and sisters that didn't get to come home. That's why we are here. Also, appreciation to our Sheriff's Department and Fire Department; we owe a debt of gratitude to all of them.

Jeff Macfarlane brought to the public's attention that Brad Lee and his wife are over the parade for the City Celebration. They do a tremendous amount of work to make that

happen. Jeff also thanked the Staff for the work they did to make the party such a success. People come from a long way to watch West Point City's fireworks. Jeff also thanked the public for being there and participating.

Rob Ortega echoed the comments already given. He thanked Staff for the work done on the PRUD ordinance. He also thanked the public for coming and the civil way things were discussed. The comments made helped them make a decision.


Jeremy Strong thanked the public for coming and expressing their opinions.

8. Staff Update

There was no update given

9. Adjournment

Jake Shepherd made a motion to adjourn at 7:46 p.m. Brad Lee seconded the motion. All voted aye.


Chairperson – Brian Vincent


Secretary – Michelle Bailey