

TOOELE CITY PLANNING COMMISSION MINUTES
August 8, 2018

Date: Wednesday, August 8, 2018

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:

Melanie Hammer
Tony Graf
Tyson Hamilton
Shauna Bevan
Phil Montano
Chris Sloan
Bucky Whitehouse

Commission Members Excused:

Matt Robinson
Brad Clark

City Employees Present:

Jim Bolser, Community Development and Public Works Director
Roger Baker, City Attorney
Paul Hansen, City Engineer

Council Member Present:

Council Member McCall
Council Member Gochis

Minutes prepared by Amanda Graf

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Hammer

2. Roll Call

Melanie Hammer, Present
Tony Graf, Present
Tyson Hamilton, Present
Shauna Bevan, Present
Phil Montano, Present
Chris Sloan, Present
Bucky Whitehouse, Present

Since Chairman Robinson was absent, Chris Sloan, the Vice-Chairman, served as the Chairman for the meeting.

3. Public Hearing and Decision on a Subdivision Plat Amendment request for LKQ for the purpose of combining and re-subdividing existing Lots 3102, 3201, and 3202 of the Utah Industrial Depot Minor Subdivision #32 and 3301 of the Utah Industrial Depot Minor Subdivision #33 on approximately 98.41 acres located at approximately 525 North Industrial Loop Road

Presented by Jim Bolser

Mr. Bolser stated that while the public notice listed this agenda item as having a public hearing it doesn't require one; it was an error on Mr. Bolser's part when he put together the public notice for the meeting so he requested that the Commission still hold the public hearing since it was noticed that way and it would just be an extra step in the process.

Mr. Bolser explained that this is a plat amendment. There are currently four lots at the Utah Industrial Depot that will be combined into one lot, then divided again into two lots. Mr. Bolser showed what the lots would look like on a map presented at the meeting.

Chairman Sloan asked the Commission if they had any comments or concerns; there weren't any.

Chairman Sloan opened the public hearing; there weren't any comments. Chairman Sloan closed the public hearing.

Commissioner Bevan moved to forward a positive recommendation to the City Council for the LKQ—Tooele Subdivision Plat Amendment Request by Gary McEntee, representing Ninigret Depot for the purpose of combination and re-subdivision of lots 3102, 3201, and 3202 of the Utah Industrial Depot Minor Subdivision #32 and lot 3301 of the Utah Industrial Depot Minor Subdivision #33, application number P18-516, based on the findings and subject to the conditions listed in the Staff Report dated August 2, 2018. Commissioner Graf seconded the motion. The vote was as follows: Commissioner Hammer, "Aye," Commissioner Graf, "Aye," Commissioner Hamilton, "Aye," Commissioner Bevan, Commissioner Whitehouse, "Aye," Commissioner Montano, "Aye," Chairman Sloan, "Aye." The motion passed.

4. Public Hearing and Decision on a Conditional Use Permit request for LKQ for the purpose of Accessory Outside Storage in the I Industrial zoning district on approximately 72.08 acres located at approximately 525 North Industrial Loop Road

Presented by Jim Bolser

This is an application for lot one of the divided area described in agenda item number three. The intent is to approve a Conditional Use Permit for accessory outside storage. Mr. Bolser showed a map at the meeting that showed where the business would take place. LKQ is an auto parts distributor. They take in vehicles that have been damaged or totaled and they salvage all viable parts of the vehicle, including

fluids, before they leave the plant. The vehicles and parts are catalogued, reprocessed, and then sent out to repair shops and dealerships where they are needed for repairs. Renderings of the building and landscaping were shown at the meeting. They have proposed fencing of a sight-obscuring nature that will surround the property.

Chairman Sloan asked the Commission if they had any comments or concerns.

Commissioner Graf asked what material the fencing would be made of. Mr. Bolser responded that it would be made of solid metal and would be eight feet high.

Chairman Sloan asked the Commission if they had any other comments or concerns; there weren't any.

Chairman Sloan opened the public hearing; there weren't any comments. Chairman Sloan closed the public hearing.

Commissioner Hammer moved to approve the Conditional Use Permit Request by Gary McEntee, representing Ninigret Depot for Accessory Outside Storage with the establishment of a new vehicle party recycling and supply business, application number P18-515, based on the findings and subject to the conditions listed in the Staff Report dated August 2, 2018. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner Hammer, "Aye," Commissioner Graf, "Aye," Commissioner Hamilton, "Aye," Commissioner Bevan, Commissioner Whitehouse, "Aye," Commissioner Montano, "Aye," Chairman Sloan, "Aye." The motion passed.

5. Public Hearing and Decision on a Conditional Use Permit request for Mannebach Cellars for the purpose of Food and Beverage Processing in the I Industrial zoning district on approximately 3.12 acres located at 10 Garnet Street, Building 669, Suite 3

Presented by Jim Bolser

The building already has multiple suites contained therein. The applicant is requesting to go into one of the suites for food and beverage processing. The applicant is a wine maker. They import grapes from out of state, process everything on site, box, package, and ship their items elsewhere for sale.

Commissioner Graf asked if there was any anticipation of an odor coming from the facility into the adjacent suites with the fermenting process that will happen on site. Mr. Bolser responded that they have proper ventilation established with the building so that shouldn't be a problem.

Chairman Sloan asked the Commission if they had any comments or concerns; there weren't any.

Chairman Sloan opened the public hearing; there weren't any comments. Chairman Sloan closed the public hearing.

Commissioner Hamilton moved to approve the Conditional Use Permit Request by Steve Mannebach, representing Mannebach Cellars, LLC, for the establishment of a Food and Beverage Processing business, application number P18-485, based on the findings and subject to the conditions listed in the Staff Report dated August 2, 2018. Commissioner Whitehouse seconded the motion. The vote was

as follows: Commissioner Hammer, “Aye,” Commissioner Graf, “Aye,” Commissioner Hamilton, “Aye,” Commissioner Bevan, Commissioner Whitehouse, “Aye,” Commissioner Montano, “Aye,” Chairman Sloan, “Aye.” The motion passed.

6. Public Hearing and Recommendation on Ordinance 2018-13, an ordinance of the Tooele City Council amending Tooele City Code Provisions relating to the Mixed Use-Broadway Zoning District.

Presented by Jim Bolser

Mr. Bolser showed a map at the meeting that showed the area regarding the proposed ordinance. This is an application to amend a number of provisions in the City Code that would apply specifically to the development within the Mixed Use Broadway Zoning District. It addresses a number of factors including density, parking, setbacks, building height requirements, unit sizes, garbage locations for garbage enclosures, etc. The Council has reviewed the original analysis memo attached to the staff report and has requested it come before the Commission for their consideration.

Chairman Sloan asked the Commission if they had any comments or concerns.

Commissioner Montano disclosed that he owns several pieces of property around the property in discussion. He is not against the project, however, he is concerned that the City needs more information before moving forward. He asked Mr. Bolser how many units would be going into the three-story building. The request and recommendation is to not limit the number of units by a density number, but to limit the number of units based on their size. There is an established minimum dwelling size. The developer would be allowed to put in as many units that fit the required minimum size under the code with fire access and other required features with the construction of the building. Outside of the building a specific density requirement that aligns with city code would be in effect.

Commissioner Montano asked how many parking stalls would be required for the number of units that go into the building. Mr. Bolser responded that the original request from the applicant was to have one parking stall per one-bedroom unit, and one and a half for two bedroom units. Mr. Bolser stated that no amendment is proposed to address this point because the Code already has a provision that states that, “No minimum off-street parking requirements are established. It is the policy of the City to maintain existing uses which do not meet the off-street parking requirements of the City to encourage additional uses and activities within the District.” That reduction is already built into the Zone.

Commissioner Montano expressed his concern about the potential lack of parking with the number of units that could go into the three-story building, as well as any potential units in buildings that might be built on adjacent properties. Mr. Bolser read from the amendment that states that, “The number of required off-street parking spaces shall be determined and approved by the Planning Commission following recommendation by city staff recognizing the nature and location of proposed use and activity.” Mr. Bolser stated that when an application comes forward the Commission has the ability to review the design and site plan.

Commissioner Montano expressed his concern that if there's not enough parking for the units that the parking will flow onto the streets. His understanding is that parking on the street is disallowed from September 15-March 15 to allow for snow plows. He would love to see the building get fixed but is concerned about the impact on adjacent businesses and residents in the area with potential parking issues.

Commission Graf stated that in the packet they were given regarding this ordinance it stated that, "The number of off-street parking spaces required shall be as follows: two parking spaces for each dwelling unit unless otherwise specified in chapter 16 of this title." He asked Mr. Bolser to clarify that requirement with what is being proposed with this ordinance. Mr. Bolser stated that applies to all parking spaces for dwelling units city-wide. However, the provisions of the Mixed Use Zone are established in Chapter 7-16, which is the additional reference in the base requirement. There is already a provision regarding parking that the Planning Commission has jurisdiction over. Where that provision already exists there's no need to address that reduction. The proposed ordinance states that unless otherwise specified in the City code, this Mixed Use Zone would have the reduction in parking spaces to the satisfaction of the Planning Commission.

Chairman Sloan asked the Commission if they had any other comments or concerns; there weren't any.

Chairman Sloan opened the public hearing.

Soren Simonsen came forward. He represents the owners of the property. They have been trying to develop the property for many years but have found it near impossible under the current zoning regulations. They can't change the configuration of the lots. In addition, the current height limitations and density restrictions have made it difficult to develop the property unless some flexibility is given. He stated that the intent is to provide parking at or above what the market bears. The intent is to market the units as market rate and work force housing units using some conventional and other types of affordable housing financing programs. They have looked very carefully at the parking that is currently available for Tooele City. The intent is to develop the entire historic building with one bedroom and studio apartments. Those types of units don't typically attract large families that could have an adverse effect on the parking. They are hoping to revitalize this building that has had a negative impact on the neighborhood.

Chairman Sloan asked the Commission if they had any questions for Mr. Simonson; there weren't any.

Chairman Sloan asked if there were any other comments or concerns from the public; there weren't any. Chairman Sloan closed the public hearing.

Commissioner Montano stated that this area has struggled for several years which is partly due to this building that has been in disrepair for several years. Several years ago he met with Mr. Simonsen and requested that they clean up around the building as it has been very unsightly. At that time Mr. Simonsen stated that they might send someone from their office to take care of it. Commissioner Montano stated that nobody ever came to clean up the premises. They have let the building deteriorate. The building has been in disrepair since it burned in 1991. He requested that the developer clean up the building.

Commission Montano stated that he lives on the corner and was born and raised in the area. About three weeks ago someone was sent out by the developer to clean the weeds and prune the trees. They stacked the debris on the other side of the building. Two days ago Commissioner Montano cleaned up one of the buildings that he owns in the area. He feels that it is his duty to take care of his property. He is frustrated that the owner hasn't taken care of their building.

Mr. Baker stated that he was one of the first individuals to see the proposal for this project in February 2004. This project has gone through several market corrections that have made funding difficult. He is pleased to see the project come to this stage. He stated that Mr. Bolser has done an excellent job in creating amendments to the zoning ordinance that will allow the project to occur. At the same time, the proposed amendments don't go further than necessary to allow for the project to occur. The proposed ordinance only allows for the necessary flexibility to allow for this project to go forward as a unique, historic part of the community that has experienced a decline. Hopefully with the fruition of this project the decline will be reversed.

Commissioner Montano stated that he purchased a building five years ago in that area. It's very difficult to get financing to complete projects. He has used his own money every year to maintain his building. He commended the developer for their project. He wants to see the project move forward.

Chairman Sloan asked the Commission if they had any other comments or concerns; there weren't any.

Commissioner Graf moved to forward a positive recommendation to the City Council for the Mixed Use—Broadway Zoning Text Amendment City Code Text Amendment Request by Kevin Peterson, representing AmericaWest Investments, LLC, for the purpose of revising certain provisions related to development and redevelopment of properties, application number P18-298, based on the findings listed in the Staff Report dated August 2, 2018. Commissioner Whitehouse seconded the motion. The vote was as follows: Commissioner Hammer, "Aye," Commissioner Graf, "Aye," Commissioner Hamilton, "Aye," Commissioner Bevan, Commissioner Whitehouse, "Aye," Commissioner Montano, "Aye," Chairman Sloan, "Aye." The motion passed.

7. Public Hearing and Recommendation on Ordinance 2018-08, an Ordinance of the Tooele City Council amending Tooele City Code Section 7-1-5 relating to the definition of Tobacco Specialty Stores

Presented by Roger Baker

Several years ago Representative Paul Ray presented legislation at the Utah Legislature that created a new type of land-use called a retail tobacco specialty business and provided that municipalities could regulate those businesses in terms of location, number of businesses allowed, what they can sell, etc. Tooele City was one of the first cities to enact a regulation under the enabling power of that new law. The difficulty has been not in regulating the businesses but in defining them. State law provided a two-pronged definition. One of the prongs defines it as a business that derived gross receipts from the sale of tobacco products that exceeded 35% of their total gross receipts. The definition of tobacco products included any tobacco-related product, including vaping products, hookah, e-cigarettes, etc. The second prong for the definition of a tobacco product is that the business had to derive less than 45% of their gross receipts from non-tobacco products, including food and gasoline.

Using this definition, a store like 7-11 could be classified as a tobacco specialty business if more than 35% of their gross sales came from tobacco-related products and if less than 45% of their gross sales came from non-tobacco related products. It's easy to see that in light of this definition, 7-11 is not a tobacco specialty business because tobacco products are a relatively small aspect of their overall business.

In 2012 Tooele City had four tobacco specialty stores; they came into the City before the State passed this law regarding tobacco specialty businesses. Three of these businesses were caught by the Police selling an illegal substance called Spice. This is a dry leafy material laced with cannabinoids that are manufactured to mimic the chemical THC in Marijuana. Based on the police evidence the City revoked the licenses of those three businesses and shut them down. It took a lot of resources and time to revoke these licenses and shut the businesses down.

Very shortly after that effort was successful all of these businesses reopened with an application as a convenience store. For example, LA Smoke Shop removed the word "Smoke" from their store name and reopened as "LA Shop." Even though their business model didn't change they were still selling vast quantities of tobacco-related products relative to the total amount of products they were selling.

The challenge has been how Tooele City can verify that the gross receipt sales meet the criteria as outlined in State law defining it as a tobacco-related business. The only verification method Tooele had was to ask the business what their gross sales receipts were and rely on their word regarding this issue. The City has no recourse if the business is being dishonest in the reporting of their gross sales. There is no state agency that tracks data regarding the sales of tobacco products as a percentage of all products in a store. It was no surprise that all the convenience stores reported less than 35% of their gross receipts being derived from tobacco products.

Mr. Baker wrote a letter to Representative Paul Ray expressing his frustration that the law was unenforceable. A bill was passed in the 2018 Utah Legislative Session that changed the definition of a tobacco specialty store. The opportunity still exists to define a tobacco specialty store by the gross receipts in relation to the sale of tobacco-related products. The new law has removed the provision that requires that 45% or less of a business' gross receipts come from non-tobacco related products. If the City can show that tobacco products are 35% or more of a store's gross sales then the business can be defined as a tobacco specialty business.

In addition, the State has added three additional ways to define a tobacco specialty business. If 20% or more of the retail floor space is allocated to the display of tobacco products then it falls under the definition of a tobacco specialty business. In addition, if 20% or more of the shelf space is allocated to the display or sale of tobacco products it will fall under the definition. Lastly, if the store has a vending machine with tobacco products it will fall under that definition of a tobacco specialty business.

If a store meets the definition of a tobacco specialty business then the City can regulate the location of those businesses. A tobacco specialty business cannot be located within 1500 feet of a residential area, a public park, a church, a library, or a government building. If one of those businesses that is currently licensed as a convenience store falls under one of the new definitions of tobacco specialty store, then it cannot be located near one of the outlined locations and will have to move their business.

The City Council has indicated that this is a policy priority of theirs over the past six years. This proposed ordinance mirrors the State law definition of a tobacco specialty business. Mr. Baker indicated that Hilary Makris, who represents the Tooele County Health Department, was in attendance at the meeting. The County Health Department is in support of this proposed ordinance.

Chairman Sloan asked the Commission if they had any comments or concerns.

Commissioner Graf asked Mr. Baker if subsections two, three, and four that define a tobacco specialty business were “or’s” not “and’s;” Mr. Baker responded in the affirmative. He stated that it was indicated in the redline version of the document. Commissioner Graf asked if they could strike the comma after “or” in subsection three and in subsection four add a period after the word “products.” Mr. Baker responded that he would add a period after the word “products” in subsection four.

Mr. Baker stated that there needs to be a comma after the word “or.” He explained that in any list following a hyphen the listed items are separated by a semicolon; the last two items are separated by the word “and” or “or” with a comma. Commissioner Graf stated that as an example of comma placement the “Enforcement” section 7-1-6(1)(a)(I) has no comma after the word “or.” He stated that his understanding of the statute is that commas don’t belong after the word “or” that are not followed by a period. Mr. Baker stated that English grammar requires a comma after the word “or.” He stated that in section 6 there is no comma after the word “or;” he didn’t go through the entire chapter to correct past grammatical errors as it was codified in 1991. In the redlines if there’s a period after the word “or” it should be a comma, and the period after “products” should be inserted.

Commissioner Hammer expressed her frustration that there was no response from Representative Ray after Mr. Baker sent him the letter in 2016 requesting assistance with the statute as written. Mr. Baker responded that the legislation passed in 2018 came from a different representative.

Chairman Sloan opened the public hearing.

Hilary Makris with the Tooele County Health Department came forward. She works on tobacco prevention for the County. She read a letter of support for the proposed ordinance from Jeff Coombs, the Executive Director of the Tooele County Health Department. It read as follows:

“Dear Tooele City:

I am writing on behalf of [the] Tooele County Health Department in support of the Zoning Text Amendment, Tooele City Code Section 7-1-15, related to the definition of Tobacco Specialty Stores. [The] Tooele County Health Department appreciates the support of Tooele City in helping to reduce smoking related health disparities in Tooele. We strongly support this amendment. We look forward to working with you in eliminating health disparities in our community and achieving health equity.”

Ms. Makris stated that Tooele County has the highest smoking rate in the State. The support of Tooele City with this ordinance will assist in tobacco prevention related efforts. Smoking kills 480,000 people every year.

Chairman Sloan asked if there were any other comments or concerns from the Public; there weren’t any. Chairman Sloan closed the public hearing.

Commissioner Graf asked why the enforcement was being changed from an annual basis to a quarterly basis. Mr. Baker stated that the change mirrors the state law regarding this issue. For example, if a business sold 36% of tobacco-related products for 11.5 months of the year, but for the last .5 month they sold 15% of tobacco-related products, their annual average would possibly be below 35%. If a business has to meet those requirements on a quarterly basis they can't play games as much with the numbers for the gross receipts.

Chairman Sloan asked if the shelf requirement is for the number of shelves or total shelf area. Mr. Baker responded that it would require taking the total area of shelf space and determining whether more than 20% of that is devoted to tobacco-related products.

Commissioner Montano stated that he believes in the rights of individuals to develop their personal properties. He feels this ordinance goes too far. He started smoking when he was 14. He later met someone who helped him quit smoking. The addiction is very powerful, however it's an individual's choice to smoke. He feels this ordinance infringes in individuals' personal preferences.

Commissioner Graf is an attorney. He appreciates the change to the code to make it more specific. If a code is too vague it makes it difficult to enforce. He feels this ordinance is very appropriate.

Commissioner Hamilton stated that as a business owner he hates to see a business have to move, but he feels that these businesses do need to be held accountable. He has an uncle who smokes and has lung cancer so this ordinance hits home.

Mr. Baker states that it helps the businesses as this ordinance helps them know the specific rules and how to follow them.

Chairman Sloan asked the Commission if they had any other comments or concerns; there weren't any.

Commissioner Graf moved to forward the proposed changes to the City Council. Commissioner Hammer seconded the motion. The vote was as follows: Commissioner Hammer, "Aye," Commissioner Graf, "Aye," Commissioner Hamilton, "Aye," Commissioner Bevan, Commissioner Whitehouse, "Aye," Commissioner Montano, "No," Chairman Sloan, "Aye." The motion passed.

8. Review and Approval of the Planning Commission minutes for the meeting held July 11, 2018.

Commissioner Hammer moved to approve the minutes from the meeting held July 11, 2018. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner Hammer, "Aye," Commissioner Graf, "Aye," Commissioner Hamilton, "Aye," Commissioner Bevan, Commissioner Whitehouse, "Aye," Commissioner Montano, "Aye," Chairman Sloan, "Aye." The motion passed.

9. Adjourn

Chairman Sloan moved to adjourn the meeting. The meeting adjourned at 8:00 p.m.

Mr. Bolser expressed his appreciation to the Commission for their work. He also expressed his appreciation to the Commission for passing the tobacco-related ordinance. As a former tobacco user he sees the benefits in the changes that have been made. Tobacco-related illnesses have plagued his family.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this _____ day of _____, 2018

Chris Sloan, Chairman, Tooele City Planning Commission