

TOOELE CITY PLANNING COMMISSION MINUTES

Date: Wednesday, September 11, 2019

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

Commission Members Present:

Shauna Bevan
Melanie Hammer
Tony Graf
Ray Smart
Chris Sloan

Commission Members Excused:

Phil Montano
Matt Robinson
Bucky Whitehouse
Tyson Hamilton

City Employees Present:

Andrew Aagard, City Planner
Matt Johnson, Assistant City Attorney
Jim Bolser, Community Development Director
Paul Hansen, City Engineer

City Employees Excused:

Roger Baker, City Attorney

Council Members Present:

Council Member McCall

Council Members Excused:

Council Member Gochis

Minutes prepared by Kelly Odermott

Chairman Graf called the meeting to order at 7:00 pm.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Smart.

2. Roll Call

Chris Sloan, Present
Melanie Hammer, Present

Shauna Bevan, Present
Ray Smart, Present
Tony Graf, Present

Mr. Bolser reminded the Commissioners that even though the Commission does not have a full body present, by their bylaws all actions still need a four member sustaining vote to carrying any motions.

3. Recommendation on Oristusts Minor Subdivision Plat by Bear All, LLC, located at 2400 North 600 East, 1 Lot 8.8 acres in the General Commercial zoning district.

Presented by Andrew Aagard

Mr. Aagard stated that the property that is proposed for the subdivision is located directly north of 2400 North and the fish food plant. It is also directly east of 600 East. The property is zoned General Commercial. To the north is research and development and to the east is unincorporated Tooele County with some light industrial zoning and land uses to the south. This subdivision is only for one lot. The owners are taking an existing lot of record and creating a legally platted subdivision parcel. There is no splitting of lots or creating of new lots, it is just the plat of the lot. It is a large parcel of 8.8 acres. There are no issues with lot size or current configuration. The frontage improvements and right-of-way designations have been concluded. The lot meets all the standards for the general commercial zone and staff is recommending approval with the basic housekeeping items listed in the Staff Report.

Chairman Graf asked if there were any comments or questions from the Commission, there were none.

Commissioner Sloan motioned to forward a positive recommendation to the City Council for the Oristuts Minor Subdivision Request by Bear All, LLC for the purpose of creating 1 lot at 2400 North 600 East, application number P19-533, based on the findings and subject to the conditions listed in the Staff Report dated September 5, 2019. Commissioner Bevan seconded the motion. The vote as follows: Commissioner Hammer, "Aye," Commissioner Bevan, "Aye," Commissioner Sloan, "Aye," Commissioner Smart, "Aye," Chairman Graf, "Aye." The motion passes.

4. Public Hearing and Recommendation on a City Code Text Amendment proposed by Tooele City to Chapters 7-1-5; Definitions and 7-2-19; Home Occupations related to home based day cares and pre-school businesses.

Presented by Andrew Aagard

Mr. Aagard stated that it has been brought to the City administrations attention that there is a considerable lack of licensed daycares in Tooele City. There are a lot of kids that still go to daycare, but do not attend licensed daycares. Some of the feedback to the City is that Tooele City's codes for daycares do not permit for adequate in home daycares. The City staff has been looking at amendments in the City Code to address these concerns. The amendments take

place in two ordinances, 7-1-5 and 7-2-19. Mr. Aagard showed a few slides to show the differences of the current City code and the proposed changes.

The existing code limits daycares and preschools to a maximum of eight children with an approved Conditional Use Permit. The code does not differentiate between a daycare or a preschool. The current code also prohibits employees that do not live in the home and limits the number of vehicle trips per day with a maximum of 20 trips per 24 hours. The proposed language in the code proposes an increased limit of children up to 16 within one daycare. A daycare with 17 or more children is required to locate to a commercial location. Seven children or less would be a permitted use and would not require a Conditional Use Permit. A Conditional Use Permit is required with 8-16 children and would require a public hearing and neighbor notification. The ordinance changes also permit home-based daycares or preschools to allow one employee that does not live in the home. All other types of home occupation businesses will be prohibited from having a nonresident employee. The ordinance amendments require a traffic and parking plan for the City to review how the business will deal with customer parking and traffic. The proposed amendments limit preschools to two sessions per day. The proposed changes also limit daycares within 300 feet of each other. This is to provide separation between the businesses to ensure there are not too many on one block or in a cul-de-sac. The last amendment states that the licensee's children while under the care of the home occupation, shall be counted towards the 16 children allowed.

Chairman Graf asked the Commission if there were any questions or comments.

Commissioner Bevan asked how a session is defined? Mr. Aagard stated that the difference between the daycare and a preschool is in a daycare people drop their children off on their way to work and come back at the end of the work day. In a preschool, classes can be two hours long and have multiple sessions. Drop off and pick up could happen four times a day. It would come down to classes. Commissioner Bevan asked if a licensee could still have four sessions if they had two classes running concurrently? Mr. Bolser stated yes. Commissioner Bevan asked if the providers are already doing it that way, will they be able to continue doing it that way? Mr. Aagard stated yes.

Commissioner Sloan asked if it is 16 children per session or is it 16 total per day? Mr. Aagard stated that the ordinance does not differentiate between them. Commissioner Sloan asked about the residential daycares and preschools up to eight children require a Conditional Use Permit, but there is seven children and below is legal. How is that determined? Mr. Aagard stated that up to eight is how the code is currently written. Under the new code, one to seven children will be legal and eight children to 16 children will be allowable with a Conditional Use Permit.

Commissioner Hammer asked with the 300 feet between businesses, will there be any allowances for back door neighbors that are on opposite streets? Mr. Aagard stated that when the code was written the vision is a 300 square foot bubble for no other similar businesses. That would be for traffic purposes, but could also be for noise. Mr. Aagard stated that he would recommend to hold to the offset of 300 feet.

Chairman Graf stated that if there is an allowance for the furthest point of property line or nearest point of property line. Mr. Aagard stated that it is limited to the closest property line.

Chairman Graf asked if there were any further comments or questions, there were none.

Chairman Graf opened the public hearing.

Ms. Terry Farnwoth stated that she has been involved in childcare for over 30 years in both private and public care. She stated that there has been a lot of concern about the amount of younger age children in need of care. There are a lot of calls to watch younger children, infants and toddlers. She stated that she does not take infants because of her transportation of older children to school. Having the second person, who does not live in the house, would allow her to keep the families she cares for now as they increase their families. Having one caregiver and adding another caregiver gives an extra security measure for the children and allows for more care of the children. She wanted to comment about the 300 foot bubble between businesses. She stated that she has run a daycare next door to another daycare for several years. There have been no issues with traffic.

Commissioner Hammer asked with Ms. Farnwoth's experience; is there a certain limit for infants and toddlers in each operation? Ms. Farnwoth stated that the State regulates the number. Daycares are only allowed two children under the age of two for one caregiver. Even with 16 that would be four under the age of two.

Ms. Randi Gardiner stated she has run an in-home daycare for three years. She stated that she would love to have a second caregiver, but she would need to have more kids to supplement the income. She gave some examples of times a second caregiver would be helpful. The second caregiver would help with the safety of the children. She stated that she is a mother of five and would like to see if the kids that are over ten years old and self-sufficient could be excluded from the ratios. She has children that are 10 and 13 and are not part of the daycare, but are in the home while she operates business. In the state ratios children four and under count in the ratios. She also mentioned that the drop offs and pickups rarely overlap. She rarely has two sets of parents at her home at one time.

Commissioner Sloan asked if Ms. Gardiner knows what the ratios are for other municipalities in regards to business owners own children. Ms. Gardiner stated that Tooele County follows the State ratios.

Chairman Graf closed the public hearing.

Chairman Graf asked the Commission if there were any comments or questions, there were none.

Mr. Aagard stated that the ordinance is written in a way that may be interpreted so that the licensee's own children that are not in need of childcare may be excluded. The ordinance is written that if the child is participating with the daycare, then they would count. It is not

specifically written that way, but could be interpreted in the licensees favor. Mr. Bolser stated that he was involved in the last time the ordinance was amended. The interpretation presented by Mr. Aagard was the intent of the language at the time it was written.

Commissioner Sloan stated interpretation could be scary from a legal standpoint, is there not a way to tighten up the language to not need the interpretation. Mr. Aagard stated that one of the duties of having an ordinance that is slightly vague is to the ability for interpretation. Mr. Bolser stated that Mr. Aagard is on the right track with the comments he has made. State law has established through case law that anytime there is an ambiguity in an ordinance, it must be interpreted in favor of the applicant. From a legal standpoint if an interpretation has to be made, the City would need to interpret just as it has been outlined. If the ordinance was to be more specific the Planning Commission would have to make a recommendation for a specific age. An example he gave was any children under age "X" do count. In doing that, it puts limitations on children who may not be prepared to be left alone or a younger child who may be prepared to be left alone.

Commissioner Hammer asked how the ordinance differs from the state. Mr. Aagard stated that the ordinance is based on state ratios, six to eight children per caregiver. That is what is written in the code. Commissioner Hammer stated she still has questions about the 300 feet. There are different scenarios that come into play. Mr. Aagard stated that he did take the language from another jurisdiction. It is just to make sure there is space between daycares. Commissioner Hammer stated that in a preschool situation, she can see where there are traffic issues. In a daycare situation, rarely are parents there at the same time.

Commissioner Sloan stated that the 300 foot rule could place a home daycare at least two blocks from each other in his previous neighborhood. Potentially there would be four blocks without another daycare. He stated he is not sure of the solution and he is struggling with the 300 feet. Mr. Aagard stated that there could be other ways to write that, 200 linear feet on the same street. Mr. Bolser added that findings from courts in terms of measurements that those stated are minimums from closest to closest. That is a very safe practice to follow. The reason that it is typical to see a bubble distance as opposed to a street distance is that there could be roads that are horseshoes. A daycare could be directly adjacent on two different streets. Mr. Bolser recommended that the Commission stick to a universal standard of measurement and the City Code follow the bubble distance.

Chairman Graf asked if this passes City Council and put into code; if there are two applicants that apply within a 300 foot bubble, who would receive the permit? Is it based on first in time? Mr. Bolser stated that case law has determined it is first in time.

Mr. Bolser stated that there was a comment made about the proposal going to City Council. It is tentatively scheduled for the next work session meeting. In three weeks, the proposal may be going to City Council for a public hearing and potential decision, but Mr. Bolser encouraged the public to watch the agendas for a specific date of the hearing.

Commissioner Sloan stated that he has concerns about the bubble and the code maybe limited opportunities. He stated that the overriding amendments is that the health and safety and the additional caregiver in the business.

Chairman Graf stated that he agreed that there is a need for daycares and a benefit to the City.

Commissioner Sloan motioned to forward a positive recommendation to the City Council for the Home Based Day Care and Pre-School City Code Text Amendment Request by Tooele City Corporation, application number P19-670, based on the findings and conditions that the amendment satisfies the findings of fact in the Staff Report September 4, 2019, specifically the amendment positively affects the health and safety of the public and adds benefit to the public.

Commissioner Bevan seconded the motion. The vote as follows: Commissioner Hammer, "Aye," Commissioner Bevan, "Aye," Commissioner Sloan, "Aye," Commissioner Smart, "Aye," Chairman Graf, "Aye." The motion passes.

5. Public Hearing and Recommendation on a City Code Text Amendment proposed by Tooele City to Chapters 7-14 Residential Zoning Districts related to property frontage requirements in the In-Fill Zoning Overlay District.

Mr. Bolser stated that the City has taken efforts to promote and encourage growth from within. The City is taking steps to deal with some of the more historic lots that lay out a little differently than newer developments. The City has historical lots that are long and narrow, particularly near the core area of the community, which present difficulties in the zoning classifications and subdividing the lots. The idea was brought to staff last spring to look at an allowance for reduced frontage requirements in the In-Fill area. This is an overlay to the zone.

Mr. Bolser showed an analysis presentation of what the change in the text amendment would do for the In-Fill area. In the In-Fill there are 2911 total parcels. The majority are residential and 98% of those are zoned R1-7 Residential. The text amendment only applies to the residential lots. The City looked at percentages to determine at what percentage of adjustment to the frontage requirements that the majority of lots that do not fall within current requirements would meet frontage requirements. Based on analysis, if the City drops to 80% of the current lot requirements in In-Fill Area A, the City will allow up to 93% of the currently undevelopable lots, to be developed in accordance with frontage requirements. Similarly, if the City drops to 90% of the current lot requirements in In-Fill Area B, the City will allow more than 82% of the currently undevelopable lots to be developed. Knowing we cannot fix every situation; this creates a quantity of properties that are addressed that the staff believes this proposal adequately addresses the issue.

Commissioner Smart stated that this change makes sense.

Chairman Graf opened the public hearing, there were no comments. Chairman Graf closed the public hearing.

Commissioner Bevan motioned to forward a positive recommendation to the City Council for the In-Fill Property Frontage Requirements City Code Text Amendment Request by Tooele City

regarding property frontage requirements in the Infill Zoning Overlay district, application number P19-659, based on the following findings, that the text amendment will be in the benefit of the master plan and general plan and health and safety to the public.

Commissioner Smart seconded the motion. The vote as follows: Commissioner Hammer, "Aye," Commissioner Bevan, "Aye," Commissioner Sloan, "Aye," Commissioner Smart, "Aye," Chairman Graf, "Aye." The motion passes.

6. **Review and Approval of Planning Commission minutes for meeting held August 28, 2019.**

Chairman Graf asked the Commission if there were any comments or questions.

Commissioner Hammer moved to approve minutes from the meeting held on August 28, 2019 as amended. Commissioner Sloan seconded the motion. The vote as follows: Commissioner Hammer, "Aye," Commissioner Bevan, "Aye," Commissioner Sloan, "Aye," Commissioner Smart, "Aye," Chairman Graf, "Aye." The motion passes.

7. **Adjourn**

Commissioner Bevan adjourned. The meeting adjourned at 8:01p.m.

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 25th day of September, 2019

Tony Graf, Chairman, Tooele City Planning Commission