

**Tooele City Planning Commission
Business Meeting Minutes**

Date: Wednesday, May 26, 2021

Time: 7:00 p.m.

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

Commission Members Present:

Tyson Hamilton
Dave McCall
Shaunna Bevan
Matt Robinson
Paul Smith
Chris Sloan
Nathan Thomas
Weston Jensen

Commission Members Excused:

Melanie Hammer

City Employees Present:

Andrew Aagard, City Planner
Jim Bolser, Community Development Director
Roger Baker, City Attorney

Minutes prepared by Katherin Yei

Chairman Hamilton called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Robinson.

2. Roll Call

Tyson Hamilton, Present
Dave McCall, Present
Shauna Bevan, Present
Matt Robinson, Present
Paul Smith, Present
Chris Sloan, Present
Nathan Thomas, Present
Weston Jensen, Present

Melanie Hammer, Excused

3. Public Hearing and Recommendation on the Tooele Crossing Zoning Map Amendment Request by Jeff Weeder, Representing Galloway & Company, Inc, to Reassign the Zoning for 14.3 Acres Located at Approximately 300 West 1000 North to the MR-25 Multi-Family Residential Zoning District.

Presented by: Andrew Aagard

Mr. Aagard stated the applicant is requesting the property be changed to MR25 zoning to facilitate higher residential usage with the combination of apartments and or townhomes. He stated the developer has not submitted any plans at this time. He stated a reminder that the request relates to site plan and not land use. He stated the City has no management over the right-away or the road; the developer will have to work with UDOT.

Commissioner Thomas asked if there has been an effort from the applicant to work with UDOT. Chairman Hamilton stated that the responsibility is the applicants.

Commissioner Smith asked if this is the property with the drainage issue. Mr. Aagard stated it is the next item on the agenda.

Chairman Hamilton opened for public comment.

Kathleen Harts stated her concern is about the busy traffic on the 1000 north. She stated she did send an email, which reads as follows:

PLEASE do not consider rezoning the property located at approximately 300 W 1000 N, from general commercial o multi-family residential!

Traffic along 1000 North is already out of control! The more industrial business coming into the valley, it appears a majority of that traffic uses 1000 North. With the traffic comes increased incidents, resulting in minor to critical injuries; these incidents occur, on the average 2-3 times per month. I have personally registered complaints to the police department. My home “backs up” to 1000 North. I work out of our home. It is not the “normal” traffic that is an issue. It is the “modified” cars, the semis and their air brakes. And vehicles exceeding the speed limit that becomes a hinderance. I truly would not be surprised to have a vehicle end up in my backyard one day. The speed limit needs to be reduced and law enforcement needs to enforce!

Another Concern is with a liquor establishment, (Pins & Ales), being so close. This appears to be crime just waiting to happen!

PLEASE, PLEASE, PLEASE DO NOT consider rezoning the property located at approximately 300 W 1000 North from general commercial to multi-family residential!

Thank you so much!

Mr. Baker expressed his desire to share with the Commission his perspectives of the history and context of the MR-25 zoning district. He stated the time the zoning district was proposed, it was proposed as a targeted solution in a small part of town to work for what the City needed. He

stated the zoning district is not intended to be a default as a high density or popular zoning district, it is the least used and requires the most study.

Commissioner Smith stated the parcel of land is a natural buffer from the railroad. He asked if the City goes through with this change for a residential area, where would the commercial area be moved to. He stated it is currently zoned for what it should be.

Commissioner McCall stated the developer should bring this to commission after he has brought this to UDOT.

Mr. Bolser stated UDOT has sole control of SR-36 and SR-112, meaning that applicants have to go to UDOT for any access and for improvements they would require along those frontages. He stated the applicant is basically guaranteed an access point at 300 West where it is identified in corridor access agreement. He stated that only a portion of the parcel on the back-side of the property is being asked to be rezone so it would also have access onto 200 West through the remainder of the property. He stated the property in question is not prime commercial because there is not great access from 1000 North.

Commissioner Robinson stated his concern is the parcel becoming MR-25 because of the lack of a concept plan and would like to see a discussion between the applicant and the staff.

Mr. Bolser stated there has not been a discussion with the applicant yet, though the General Plan does identify the long range use of the area as multi-family residential, the Planning Commission does not have an obligation to change it.

Commissioner Thomas asked Commissioner Robinson if he would be more comfortable if the applicant asked for MR16 instead of MR25. Commissioner Robinson stated he would be more comfortable, but with the lack of detail and a full understanding, is it the right time and right zoning?

Commissioner Smith stated the applicant might want to change zoning to get it as high as it can be, then re-sell it. He stated he does not want to vote for it because the applicant is not there to answer questions.

Commissioner Sloan stated rooftops come before commercial. He stated the road is a state highway, which means with growth comes transit and walking communities. He stated without homes to put their employees in, the commercial won't come.

Mr. Bolser stated the Planning Commission does not have to make a recommendation on the amendment during the meeting but can choose to table it and wait for the applicant to be at the meeting to answer their questions.

Commissioner Sloan stated he would be comfortable tabling it.

Commissioner Sloan moved to table the Tooele Crossing Zoning Map Amendment until the developer can be present. Commissioner McCall seconded the motion. The vote was as

follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Sloan, “Aye”, Commissioner Thomas, “Aye,”, and Commissioner Smith, “Aye”, Chairman Hamilton, “Aye”.

4. Public Hearing and Decision on a Conditional Use Permit Request by Haasen Tara to Authorize the Use of “Warehouse” and “Accessory Outside Storage” for Approximately 54 Acres Located at Approximately 1188 West Utah Avenue in the Light Industrial Zoning District.

Presented by: Andrew Aagard

Mr. Aagard stated the property is currently light industrial; the applicant would like to use it as a warehouse and storage on the property. He stated it is a public hearing, but no comments or concerns have been registered. He stated there is a storm drain issue on the property, but has little knowledge about it.

Mr. Baker stated a recommendation for the letter to be entered in the minutes and as part of the public hearing record. He stated the purpose of the letter is not to object to the project but to have a clear record of the asserting its prescriptive storm water easements on the property. He stated there is a need for storm drainage to be re-established.

Commissioner Robinson stated the letter was from 2019 and asked if the applicant was aware of the drainage issue. Mr. Baker stated the letter was sent to then-current owner in 2019, the current applicant has not been notified of the letter by Mr. Baker.

Commissioner Sloan stated it has to be disclosed to all potential buyers.

Commissioner Jensen asked if this was the ditch that goes through settlement canyon.

Mr. Baker stated there are storm water channels on both North and South sides of Utah Avenue, each of which cross the railroad through culverts, with the current application being for the North side.

Commissioner Jensen stated the proposed turning area is not strike. He asked if it is the city or developer who is responsible.

Mr. Hansen stated the site plan is under review and consideration with a request on a traffic study, striking is not there today but it will be apart of the site plan and approval.

Commissioner Sloan moved to add the letter to the minutes. Commissioner Thomas seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Sloan, “Aye”, Commissioner Thomas, “Aye,”, Commissioner Smith, “Aye”, and Chairman Hamilton, “Aye”.

Chairman Hamilton opened to the public comment.

Commissioner Smith stated he would like the applicant to be here to answer any questions.

Commissioner Sloan moved to approve the conditional use permit for warehouse and accessory outside storage with the emphasis it is not to be used as a truck route and the conditions in the letter regarding the drainage be met. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Sloan, “Aye”, Commissioner Thomas, “Aye,”, Commissioner Smith, “Naye”, and Chairman Hamilton, “Aye”.

5. Recommendation on the Gateway Business Park Phase 1, 2nd Amendment, Subdivision Plat Amendment Request by Randy Hunt to Amend Lot 2 of the Existing Gateway Business Park Phase 1 Subdivision Plat Located at Approximately 2400 North 470 East in the IS Industrial Service Zoning District on Approximately 2.1 acres.

Presented by: Andrew Aagard

Mr. Aagard stated the applicant proposes to divide the parcel by taking lot two and splitting it into four half acres lots, with basic conditions listed in the Planning Commission’s report.

Commissioner Bevan moved to forward a positive recommendation to the City Council. Commissioner McCall seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Sloan, “Aye”, Commissioner Thomas, “Aye,” and Chairman Hamilton, “Aye”.

6. City Council Reports

Council Member Hansen stated the City Council tabled ordinance 2021-16, adopted ordinance 2021-17, and approved ordinance 2021-18. He stated they also talked about the budget and upcoming street projects.

7. Review and Approval of Planning Commission Minutes for Meeting held on May 12, 2021.

Chairman Hamilton asked for any changes or additions in the minutes for May 12.

Commissioner Robinson moved to approve May 12, 2021 minutes. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Sloan, “Aye”, Commissioner Thomas, “Aye,”, Commissioner Smith, “Aye” and Chairman Hamilton, “Aye”.

8. Adjourn

Chairman Hamilton adjourned the meeting at 8:03 p.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 9th day of June, 2021

Tyson Hamilton, Tooele City Planning Commission Chair



City Attorney's Office
Roger Evans Baker, City Attorney

October 8, 2019

2005 Jack Braton Tomlin Trust
Attention: Robert Dean Smart, Successor Trustee
P.O. Box 778
Tooele, UT 84074

RE: Prescriptive Storm Water Easement

Dear Mr. Smart:

I am writing to you regarding a prescriptive storm water easement that Tooele City (and possibly Tooele County and Settlement Canyon Irrigation Company) has enjoyed for many decades upon property owned by the Tomlin Family Trust, including, Tooele County tax parcels 2-87-2, 2-87-4, 2-87-9, 2-87-30, and 2-87-31 (the Property). Storm and flood waters (the Water) from Settlement Canyon and other areas historically have flowed in a northwesterly direction in gutters, pipes, and ditches. This Water finds its way to culverts crossing the Union Pacific railroad right-of-way, one of which culverts (the Culvert) channels some of the Water onto the Property. A historic ditch (the Ditch) on the Property carries the Water parallel to Utah Avenue, underneath an earthen drive entrance on the Property, whereupon the Water turns northward on the Property adjacent and to the east of a historic railroad bed. The Water eventually leaves the Property to flow to the north and northwest.

Recently, many truckloads of earthen fill (the Fill) have been placed on the Property, have filled the Ditch on the Property, and have impeded the flow of the Water. The Fill has created the risk of flooding on the Property and on other properties. Tooele City requests that you reestablish the Ditch. In the alternative, please coordinate with Steve Evans, Tooele City Public Works Director, and Paul Hansen, City Engineer, to construct a new ditch in a different location and to specifications mutually acceptable to Tooele City and to you, which location will become the new storm water easement.

As a reminder, all properties possesses the obligation to continue to route through them historic storm water flows. Should you or your successors in interest submit a land use application for development of the Property, the obligation to safely route the Water will continue and will be a condition of application approval.

Numerous Utah court cases have established the law of prescriptive easements. The general rule of law is that a prescriptive easement will be found to exist where one's use of another's property has been open, continuous, and adverse for a period of 20 years. (See: *Valcarce v. Fitzgerald*, 961 P.2d 305 (Utah 1998); *Savage v. Nielsen*, 197 P.2d 117 (Utah 1948).)

Open. The Ditch has been open for many decades, and for at least 22 years, as documented by Google Earth aerial photographs.

Continuous. The Ditch carries the Water on those occasions when the Water is generated by nature. The frequency of the Ditch carrying Water is inconsequential. Utah case law provides that a use can be continuous even if not constant. What is important is that the Ditch has been present when sufficient Water has flowed. “. . . [H]ow frequently is immaterial. . . .” (Anderson v. Barrow, 2004 UT App. 146 (2004))

Adverse. Utah case law provides that when a use has been open and continuous for a period of 20 years, even peacefully and without interference, the law presumes the use to have been adverse for the purpose of establishing a prescriptive easement. (See: Pitts v. Roberts, 562 P.2d 2231 (UT 1977); Valcarce at 311.)

Scope. “The general rule is that the extent of a prescriptive easement is measured and limited by its historic use during the prescriptive period.” (Valcarce at 312.)

In sum, Tooele City requests that you reestablish the historic prescriptive easement Ditch or that you coordinate with Tooele City representatives for your construction of an alternative storm water easement in a location and to specifications acceptable to both the City and to you.

Sincerely,

Roger Evans Baker
Tooele City Attorney