

TOOELE CITY PLANNING COMMISSION
June 13, 2007
Minutes

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

Commission Members Present:

Shawn Milne, Chair
Phil Montano
Jerald Sagers
Gary Searle
John Curwen
Councilman Scott Wardle

Commission Members Excused:

Bob Gowans
Ken Spence
Fran Garcia

City Employees Present:

Rachelle Custer, City Planner
Cary Campbell, Public Works Director
Roger Baker, City Attorney
Richard Jorgensen, Land Use Technician

Minutes prepared by Elisa Jenkins

The meeting was called to order by Chairman Milne at 7:00 p.m. Chairman Milne excused Commissioner Gowans, Commissioner Spence and Commissioner Garcia from the meeting.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Rachelle Custer.

2. **PUBLIC HEARING and Motion on a conditional use permit for a home day care to be located at 2075 North 170 West by Maria Ugarte.**

Presented by Rachelle Custer

Ms. Custer stated that the applicant is not present. The applicant has filed a conditional use permit (CUP) to operate a home day care at 2075 N 170 W. The applicant will have up to six children at a time in the home and the hours of operation will be from 6:00 a.m. to 6:00 p.m. She has not specified the days of

the week on the application. This is an allowed home occupation with a conditional use. Applicant will be required to have a building inspection, a fire inspection, and a health inspection as conditions of the business license approval. The applicant has enclosed a site plan of the home showing the rooms and yard that will be used for the business. Site plan does not specify if the yard is fenced. Ms. Custer stated that staff recommends approval of the conditional use with the condition that the back yard be fenced and there should be no more than six children at one time.

Chairman Milne stated that in the past the commission has placed a condition that hours of operation be Monday through Friday from 6:00 a.m. to 6:00 p.m.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the commission to do so. He also noted that the applicant was not present.

Mr. Joe Ruga, 2076 N 170 W, lives near the applicant. He bought a new home in the neighborhood and doesn't feel that it is right that someone can open a business in their home so close to his.

Chairman Milne stated that the law allows a home business with reasonable conditions on the applicant and as long as everything is legal and the conditions are met. It is permissible for any applicant to apply for a business license and conditional use. There are restrictions for store front businesses, and home businesses. For home businesses traffic and other items are taken into consideration.

Bryan and Debbie Plante, 2063 N. 170 W., live just south of the applicant. Mr. Plante has numerous reasons of why a business should not be run from this home. The applicant does not have a fenced in yard, nor is any of their yard landscaped. There are weeds and rocks surrounding the home which is a safety concern for children. The applicant already watches a couple of children and Mr. Plante has found one of the children in his garage taking his children's toys out of his garage on several occasions. Nothing is ever said to the children to not go into his garage. If this is happening now, how will it be with six more children at the home?

Mrs. Plante stated that her husband is working on his degree from home and it will be very distracting to have this business next door. Mrs. Plante also has a concern about a dog that is at the home on occasion. She believes it is the homeowner's daughter's dog. She strongly believes that this dog should not be allowed at the home when children are there. This dog is very aggressive. She noted that the boy that her husband referred to has put the dog in the garage a few times and has gotten in trouble for doing so. The dog is on a leash but is always coming after her children and barks at them. She believes that children would not be safe at the home with that dog present.

Jeff Combs, 2095 N 170 W, lives near the applicant. He has a concern about the children that the applicant does watch at this time. He has noticed that the applicant doesn't watch those children. They dart in the street, which is a busy street. He wonders what it will be like with six children. The yard needs a lot of work. He believes that if the applicant is allowed to watch other children the yard is a safety concern.

Commissioner Curwen moved to close the public hearing. Commissioner Sagers seconded the motion. All members present voted "Aye." The public hearing closed at 7:13 p.m.

Mr. Baker recommends that the commission make an inquiry about the dog. Is it a vicious dog as opposed to a loud dog? What evidence do the neighbors have about the demeanor of the dog?

Mrs. Plante addressed the commission again concerning the dog. She witnessed the dog on a leash, as soon as her kids came outside the dog would pull on the leash and bark at the children. The dog tried to go toward her kids whether they were in the front yard or the back yard. She felt the dog was trying to get her kids. It is a big black dog. She feels that it is very aggressive. The dog does not live there, but it has been there several times.

Commissioner Searle would suggest if the conditional use is approved that the children stay in the home because the yard is not fenced and the dog not be allowed at the home during the hours of operation.

Commissioner Montano stated that he believes the back yards should be fenced.

Commissioner Searle would recommend that the front and back yard be fenced. Since it is not fenced at this time the children would not be allowed outside at all. Once the backyard is finished then the children could be allowed outside.

Chairman Milne concurred with Commissioner Searle. He asked if this was enough information to deny the CUP.

Mr. Baker stated due to the safety concerns identified by the neighbors and the Commission, the backyard play area should be landscaped.

Ms. Custer stated that they always put a condition on the conditional use permit for day cares that the backyard play area be fenced.

Commissioner Searle asked Ms. Custer the square footage of the house. Ms. Custer stated that it was not stated on the application. Commissioner Searle asked what square footage the home needed to be to run a day care.

Mr. Campbell stated that for a home occupation the square footage must be 385 square foot for everyone.

Mr. Baker stated in answer to Chairman Milne's question if the commission had sufficient grounds to deny the applicant a CUP. The answer is "no". Mr. Baker stated that first the commission has to identify the adverse impacts and then identify reasonable conditions that would mitigate those impacts.

- 1) Threat of the children's safety because there is not a fence.
- 2) Potentially vicious animal.
- 3) Lack of landscaping. Is it a threat to children's safety?

Mr. Baker stated it would be appropriate to impose conditions to address all three of those concerns.

Chairman Milne stated that the applicant is not here. Based on the testimony of the applicant's neighbors the children she watches now are unsupervised. There is a safety concern of the fence, no landscaping and the dog. The children would need to stay in her property line.

Mr. Baker stated that a condition could be that the children remain on the applicant's property. It is difficult to say whether they are good parents or grandparents, by the supervising of the children. You can not place conditions on that (i.e. parenting). You could have a condition that the play area be enclosed.

Councilman Wardle stated that the applicant needs to be aware that if the CUP is violated that they understand the consequences. Chairman Milne replied that the CUP can not be taken away, but a business license can.

Mr. Baker stated that a business license can be revoked. The commission can vote on what they have before them. They are entitled to act on the evidence they have.

Commissioner Curwen stated that there is a safety concern with six to eleven people in the house. He knows she won't keep them inside all the time.

Chairman Milne commented that his big concern is the applicant is not here to comment. It is his opinion that when the applicant is not here is shows a lack of concern on their part. He would like to deny the CUP. He believes that what the neighbors have commented on that a day care would not be in the best interest of the children. It would cause a nuisance for the neighbors.

Mr. Baker stated that the commission can find conditions to mitigate the impacts.

Commissioner Montano commented that six children are allowed for a day care. The commission can't control how many people live in the home. He feels that the front and back yard should be landscaped and fenced. He also feels that the dog should not be allowed at the home during operating hours. This is as far as the commission can go.

Councilman Wardle would like to add that the city reserves the right set conditions on an applicant and make sure those conditions are met before a business license is issued.

Chairman Milne stated that the city cannot violate the CC&R's.

Commissioner Montano said that anyone in Tooele can apply for a home occupation license. He suggested that the home be inspected before a Business License is issued.

Mr. Sagers asked if the six children allowed include the children that live there. If the applicants have 14 grandkids living with them they can still have a day care.

Ms. Custer stated that family members are not included. The city cannot stipulate how many family members live in the home.

Commissioner Searle also stated that the city cannot stipulate the kind of fence the applicant can put up, they can not violate the CC&R's of the neighborhood.

Ms. Custer stated that in the past the city has only required a backyard play area be fenced in.

Commissioner Montano noted on the map that it shows a front yard and side yards. Ms. Custer stated that only the backyard would be used for the play area.

Chairman Milne commented that whoever makes the motion that he suggests putting in the motion that the backyard should be fully fenced in.

Ms. Custer stated that the city can't enforce CC&R's they can only enforce city code.

Mr. Searle moved to approve a conditional use permit for a home day care to be located at 2075 N 170 W with the following conditions met before a business license is issued:

- 1) Hours of operation are 6:00 a.m. to 6:00 p.m., Monday through Friday.**
- 2) No signage on the home.**
- 3) The play area is fenced and landscaped.**
- 4) Children are not allowed in the front yard.**

5) Ms. Ugarte's daughter's big black dog is not allowed at the home during hours of operation.

If the conditions are violated the business license may be revoked. Mr.

Sagers seconded the motion. The vote was as follows:

Shawn Milne, yes

Phil Montano, yes

Jerald Sagers, yes

Gary Searle, yes

John Curwen, yes

3. PUBLIC HEARING and Recommendation to consider a rezone from General Commercial to R1-7 with PUD overlay for property located in the Copper Canon PUD from approximately 150 West to 500 W and approximately 950 North to 1000 North by Tooele City.

Presented by Rachelle Custer

It has been brought to the city's attention that part of the Copper Canyon PUD property is still zoned GC. The original developer requested a small section of GC in the development agreement (DA). The property has since been sold to another developer and the DA has been amended. The amended agreement does not call for any GC zoning. The layout has R1-7 PUD zoning being used on the whole site. It is important that the GC zoning be changed to R1-7 PUD zoning to be consistent with the surrounding development and to be in compliance of the DA. Staff recommends approval of this rezone.

Commissioner Searle remembers specifically discussing 1000 North at a meeting several years ago. The city wanted to stop seeing development especially on Main Street and encourage commercial development from East to West. On 1000 North the General Commercial Zone was done. Now five or six years later 1000 North will all be homes. The strip mall on Main Street keeps developing. This goes right against what was discussed several years ago. Now there will be homes with a fence on the back side and a weed patch on 1000 North. If it were commercial there would be landscaping requirements. Now there will be a R1-7 zone which will be home lots on 1000 North. There will be a lot of little home lots. He remembers talking about making East-West development an issue in the city. The city is taking a prime street for commercial development and taking a little corner for a gas station and the rest will be homes.

Ms. Custer stated that the PUD overlay that has already been approved and it states there will be homes.

Commissioner Searle stated that the PUD has been amended. The first developer stated it would be commercial property.

Mr. Baker stated that he does not have the original DA agreement in front of him so he can not specify what it says.

Commissioner Searle stated that he knows exactly what this brand new street will look like. There will be weeds, with a fence in the back and homes. That is what the city is creating.

Ms. Custer stated phase one in Copper Canyon PUD is final.

Chairman Milne stated that the portion of road that is being referred to is in the next phase of development. Tooele Boulevard will run parallel to the south. There is a significant slope by the underpass. The embankment is quite steep. Commercial development would just as likely create a weed patch up the embankment.

Commissioner Searle stated it could be landscaped. Right now there will be fences up and whatever happens on the other side of the fence no one cares.

Chairman Milne stated that Tooele Boulevard will be south of this development and there will be a park strip and a sidewalk.

Ms. Custer stated that Fieldstone is keeping a lot of open space.

Councilman Wardle stated that there is a special service district working on the double frontage lots issue.

Commissioner Searle stated that Tooele is taking prime commercial property and continuing homes. This is an issue that needs to be looked at and something needs to be done to encourage less north to south and more west to east development.

Chairman Milne's concern is that there is a PUD that is in existence. Tooele should start looking to encourage the ability on the north side to develop commercial.

Councilman Wardle stated that this development is north of the railroad tracks.

Ms. Custer stated that not all will be residential only about the middle third. There is a large detention area on one side.

Mr. Baker showed the commission a map and referred to Resolution 2006-05.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the commission to do so.

No one came forward to address the issue.

Commissioner Sagers moved to close the public hearing. Commissioner Searle seconded the motion. All members present voted “Aye.” The public hearing closed at 7:50 p.m.

Commissioner Searle commented that the city is going to be spending a lot of money for this new road and this is the primary way that people will be coming into the city from the west. What does the city want them to see? The Gateway Overlay should be more than curb, sidewalk and a fence. This can be addressed further when developers come forward with plat approvals.

Chairman Milne stated that he concurs with Commissioner Searle.

Councilman Wardle stated that this discussion has been part of the PUD. Fieldstone needs to be more than just space; the city needs to require landscaping not a weed patch.

Councilman Searle stated that he is glad to hear that there is a special service district looking at the double frontage lots, and that the city council is aware of this issue. He asked if Councilman Wardle will take the concerns discussed in this meeting back to the city council. The city is spending a lot of money on this road and these concerns should be addressed. This road is how others will see the city of Tooele from the west.

Chairman Milne stated that they have worked very hard with Fieldstone since they took over Hamlet’s original development.

Commissioner Sagers moved to recommend with a favorable recommendation to the City Council; to consider a rezone from General Commercial to R1-7 with PUD overlay for property located in the Copper Canyon PUD from approximately 150 W to 500 W and approximately 950 North to 1000 North with the concerns of double frontage lots and landscaping, discussed at this meeting be forwarded to City Council by Councilman Wardle and Mr. Baker. Commissioner Searle seconded the motion. All members present voted “Aye.” The vote was as follows:

Shawn Milne, yes
Phil Montano, yes
Jerald Sagers, yes
Gary Searle, yes
John Curwen, yes

4. **PUBLIC HEARING and Recommendation to consider a rezone from Medium Density Residential to Rural Residential on 108 acres located from approximately Commander Boulevard to the Southern City limits and from SR 36 to the Western City limits.**

Presented by Rachelle Custer

Ms. Custer reported that Mr. Arbshay has requested a rezone from OS to RR-1. Mr. Arbshay would like to develop an equestrian subdivision on this property. In order to be allowed livestock the minimum zoning is RR1. He is proposing a community where there will be housing lots and then a large arena for stables and horses. The livestock will not be kept on the housing lots they will be kept in a central location. The community will have bridal paths and open space for the equestrian community.

Ms. Custer also reported that a general plan change from MDR to RR was approved by City Council on May 16, 2007. There are some water, sewer and road issues that will need to be addressed before any developing will occur. Staff recommends the zone change.

Commissioner Searle stated that this is a great location for this development. This is an appropriate application for this use.

Chairman Milne stated this is a public hearing.

No one came forward to address the issue.

Commissioner Searle moved to close the public hearing. Commissioner Sagers seconded the motion. All members present voted "Aye". The public hearing closed at 8:01 p.m.

Commissioner Searle moved to recommend with a favorable recommendation to the City Council to consider a rezone from OS to RR-1 on 108 acres located from approximately Commander Boulevard to the Southern City limits and from SR 36 to the Western City limits by Mathew Arbshay. Commissioner Sagers seconded the motion. All members present voted "Aye". The vote was as follows:

Shawn Milne, yes
Phil Montano, yes
Jerald Sagers, yes
Gary Searle, yes
John Curwen, yes

5. **Motion on a request for 20 ft setback at 1280 North 60 East by Sky Properties.**

Presented by Rachelle Custer

Ms. Custer reported that a letter is enclosed in the commissioner's packet from Sky Properties requesting a 20 ft setback on a proposed development at 1280 North 60 East. The zone requires a 30 ft setback or a 20 ft setback with

planning commission approval. The developer would like to arrange the building to allow for landscaping against the street. In order to provide for parking in the rear of the building and still fit the building on the property the developer is asking for a 20 ft setback on building A. Staff recommends approval of the setback.

Commissioner Searle asked where the property is located. Ms. Custer replied that it is directly south of Leatherby's, behind the car wash.

Chairman Milne stated that his only concern would be to make sure that the landscaping is kept down for the visibility of cars, especially as trees start to mature.

Commissioner Searle stated that this lot is located east of Main Street, this is a busy intersection. He hopes that the landscaping will be maintained. He also mentioned that this will be tenant leased space.

Ms. Custer stated that this is a general commercial zone around light industrial. She also stated that the setback only refers to Building A.

Commissioner Montano asked Ms. Custer if they could get more orientation on maps that are given to them. He mentioned that sometimes it is hard to pinpoint the exact location.

Commissioner Searle also stated that he has a hard time reading the maps and asked if they could be more specific.

Commissioner Searle moved to approve the request for 20 ft setback at 1280 North 60 East by Sky Properties to allow for parking off street and landscaping. Commissioner Curwen seconded the motion. All members present voted "Aye." The vote was as follows:

The vote was as follows:

Shawn Milne, yes

Phil Montano, yes

Jerald Sagers, yes

Gary Searle, yes

John Curwen, yes

6. **Review and Approval of Planning Commission minutes for meeting held May 23, 2007.**

Commissioner Searle moved to approve the minutes of the Planning Commission Meeting held May 23, 2007. Commissioner Sagers seconded the motion. All members present voted "Aye."

Commissioner Montano moved to adjourn the meeting. Commissioner Sagers seconded the motion. All members present voted “Aye.” The meeting adjourned at 8:13 p.m.

Approved this 27th day of June 2007.

Shawn Milne, Chairman