

TOOELE CITY PLANNING COMMISSION MINUTES
February 10, 2010

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

Commission Members Present:

Ken Spence, Chair
Phil Montano
Steve Dale
John Curwen

Commission Members Excused:

Jerald Sagers
Gary Searle
Fran Garcia
Bob Gowans

City Employees Present:

Rachelle Custer, City Planner
Roger Baker, City Attorney
Paul Hansen, City Engineer
Cary Campbell, Community Development Director
Councilman Shawn Milne

Others Present:

Tim Gillie, Tooele Transcript

Minutes prepared by Elisa Jenkins

Chairman Spence called the meeting to order at 7:00 p.m. Chairman Spence welcomed Boy Scout Troop 1354 who were working on their Communications Merit Badge.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Dale.

2. PUBLIC HEARING and RECOMMENDATION on an ordinance of the Tooele City Council enacting revision to Tooele City Code 7-12, sensitive area overlay zoning regulations.

Presented by Roger Baker

Mr. Baker explained that Chapter 7-12 of Tooele City Code is a series of regulations that govern how the sensitive lands in Tooele can be developed. When we think of sensitive lands, we often refer to as steep slopes, and when steep slopes are dug into it creates

instabilities above and below the dig. There are also other sensitive lands such as rock slides, earthquake zones, vegetation zones, and wildlife zones. Equally important are the views. The court recognizes views as a legitimate public interest. Mr. Baker indicated that Exhibit B of the ordinance is a summary of the proposed revisions to Sensitive Area Overlay Zoning Regulations, he reviewed this with the Commission and a copy will be included in the minutes as Exhibit B.

Mr. Baker stated that the most important thing, in his opinion, in working on this ordinance was to strengthen the purpose section of this ordinance. He also wanted to make the ordinance more defensible in court if challenged. He wanted to make sure the purposes are clear, articulated and defensible. The ordinance contains many definitions and they need to be clear and as understandable as possible. They also wanted to eliminate ambiguity for developers. Mr. Baker also noted that one revision was to build in procedures for the various stages of approval for development on sensitive lands and to clarify the vested rights that do or do not accompany the approvals. Once preliminary approval is given the staff finalizes the approval. It is very important for developers to know what they are getting when they obtain approval and this ordinance makes it very clear. The concept approval indicates that the developer has completed the necessary requirements to move to preliminary. Up to now public roads could have a road slope of 12%, they feel that is too steep and changed it to 10%. A road with an angle steeper than 10% creates challenges for snow plows, emergency vehicles, and other vehicles. The current ordinance has various reporting sections, in the revised ordinance they have all been pulled together into one section. The City wants to make sure that a lot is buildable for the person buying the land. He also indicated that this was a team effort with Rachelle Custer, Paul Hansen and Cary Campbell. He feels that this ordinance is much clearer and more defensible.

Chairman Spence noted that their copy of the ordinance did not include redlines.

Mr. Baker stated that he gave the Commissioners the final copy of the ordinance.

Chairman Spence indicated that he attended a training session for Planning Commissioners last year and during that training it was stressed how important it is to have clarity in the ordinances.

Mr. Baker stated that no matter what the intentions are in an ordinance, if it is vague the court will throw it out.

Commissioner Dale agreed with changing the public road slope from 12% to 10%; however he believes that developers might not agree with it, because that is not what others are doing.

Mr. Baker stated that one thing they tried to accomplish was to protect home buyers and lot purchasers by requiring that the application of this ordinance be a notation on the plat which will then be part of the title record that will show an exception on the title report. If a buyer is doing due diligence they will know there are some restrictions.

Chairman Spence asked what are the slopes of some of the existing streets in Tooele?

Mr. Baker stated that outside the sensitive overlay area they do not allow over a 10% grade for streets.

Mr. Hansen stated that Mr. Baker was correct and indicated that there are three or four streets in Tooele that are 12%. He also stated that each of those streets have a guard rail at the bottom to keep cars from going into neighboring homes. He stated that on 7th Street the guard rails are on the side of the road in front of the sidewalk. He feels that the change in the revised ordinance is a public safety measure.

Chairman Spence asked if Benchview Drive and 7th Street are both a 12% slope?

Mr. Hansen stated “yes”.

Commissioner Dale noted on page 9 of the ordinance that a retaining wall is not to exceed 4' in height. He asked if there are any exceptions to that rule such as an engineered wall.

Mr. Baker stated no. He indicated that the subdivider is required to create a 5,000 sq ft pad that will not need a retaining wall higher than 4'. They are concerned about the effect of larger cuts into the steep slopes. There is some flexibility with cuts and fills, but not retaining walls.

Mr. Hansen indicated that the ordinance states that the terrain may not be altered more than 4' at any given point. The cumulative cut and fill can not exceed 6'. It does allow for a larger slope.

Commissioner Dale was concerned with the maximum of a 10% road slope that there may be a situation where there are some larger cut and fill slopes that may want to be mitigated with a larger retaining wall if properly engineered.

Mr. Hansen indicated that they will look at that. If modifications need to be made they can come back and seek adjustments.

Chairman Spence asked if a conditional use permit was issued for a church building in a residential area if a retaining wall would be required.

Mr. Hansen noted that this is only in the sensitive area zone. The need for a retaining wall is for the delicate geological nature. A retaining wall is used to hold the slope back.

Chairman Spence stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Commissioner Curwen moved to close the public hearing. Commissioner Dale seconded the motion. All members present voted “Aye”. The public hearing closed at 7:20 p.m.

Commissioner Dale moved to make a positive recommendation to City Council on an ordinance enacting revision to Tooele City Code 7-12, sensitive area overlay zoning regulations. Chairman Spence seconded the motion. All members present voted “Aye”, except for Commissioner Montano who voted “Nay”.

Commissioner Montano felt that each area should be looked at and addressed individually. He feels that this ordinance is too generic. He feels that they are overstepping the rights of private land owners. If someone finds this too restrictive they can challenge this in court.

Mr. Baker stated that anyone can challenge anything in court. As long as the ordinance defends a public purpose and doesn't deprive the owner of all economic use of the property, is non-discriminatory or arbitrary, it will be upheld.

Commissioner Montano feels that each area should be looked at individually.

3. **PUBLIC HEARING and MOTION on conditional use permit for an in home daycare to be located at 1488 Clemente Way by Emily Bonnette.**

Presented by Rachelle Custer

Ms. Custer explained that Ms. Bonnette is requesting a conditional use permit for an in-home day care to be located in her home at 1488 Clemente Way. Day care is allowed as a home occupation with a conditional use permit. Included in the Commissioners packet is a layout of her home. Staff recommends approval of the conditional use permit with the following conditions:

1. No more than 8 children at one time.
2. Hours of operation to be between 6:00 a.m. and 6:30 p.m. Monday thru Friday.
3. Fenced rear yard be provided for the children.
4. State Residential Child Care Certificate be obtained.
5. Tooele County Health Department Inspection approval.
6. Building Inspection approval.
7. Fire Inspection approval.

Chairman Spence stated that this is a public hearing if anyone would like to come forward and address the Commission. No one came forward.

Commissioner Curwen moved to close the public hearing. Commissioner Montano seconded the motion. All members present voted “Aye”. The public hearing closed at 7:26 p.m.

Commissioner Curwen moved to approve the conditional use permit for an in-home day care to be located at 1488 Clemente Way with the following conditions:

- 1. No more than 8 children at one time.**
- 2. Hours of operation to be between 6:00 a.m. and 6:30 p.m. Monday thru Friday.**
- 3. Fenced rear yard be provided for the children.**
- 4. State Residential Child Care Certificate be obtained.**
- 5. Tooele County Health Department Inspection approval.**
- 6. Building Inspection approval.**
- 7. Fire Inspection approval.**

Commissioner Montano seconded the motion. All members present voted “Aye”.

4. **PUBLIC HEARING and MOTION on conditional use permit for an in home daycare to be located at 723 W 700 S by Sunshine Randall.**

Presented by Rachelle Custer

Ms. Custer stated that Ms. Randall is requesting a conditional use permit for an in-home day care to be located in her home at 723 W 700 S. Day care is allowed as a home occupation with a conditional use permit. Included in the Commissioners packet is a layout of her home and yard. Staff recommends approval of the conditional use permit with the following conditions:

1. No more than 8 children at one time.
2. Hours of operation to be between 6:00 a.m. and 6:30 p.m. Monday thru Friday.
3. Fenced rear yard be provided for the children.
4. State Residential Child Care Certificate be obtained.
5. Tooele County Health Department Inspection approval.
6. Building Inspection approval.
7. Fire Inspection approval.

Chairman Spence asked if the fenced yard is provided.

Ms. Custer indicated that when a building inspection is done if the fenced yard is not provided, the applicant must fence the yard and then call the City and they will go back and re-inspect to verify the fence is there. The State requires the yard to be fenced as well.

Chairman Spence stated that this is a public hearing if anyone would like to come forward and address the Commission. No one came forward.

Commissioner Dale moved to close the public hearing. Commissioner Curwen seconded the motion. All members present voted “Aye”. The public hearing closed at 7:29 p.m.

Chairman Spence moved to approve the conditional use permit for an in-home day care to be located at 723 W 700 S with the following conditions:

- 1. No more than 8 children at one time.**
- 2. Hours of operation to be between 6:00 a.m. and 6:30 p.m. Monday thru Friday.**
- 3. Fenced rear yard be provided for the children.**
- 4. State Residential Child Care Certificate be obtained.**
- 5. Tooele County Health Department Inspection approval.**
- 6. Building Inspection approval.**
- 7. Fire Inspection approval.**

Commissioner Dale seconded the motion. All members present voted “Aye”.

5. **Review and Approval of Planning Commission minutes for meeting held January 27, 2010.**

Commissioner Dale moved to approve the minutes from the January 27, 2010 Planning Commission meeting as presented. Chairman Spence seconded the motion. All members present voted “Aye”. Commissioner Curwen abstained because he was not present at the meeting.

6. **Adjourn**

Commissioner Dale moved to adjourn the meeting. Commissioner Curwen seconded the motion. All members present voted “Aye”. The meeting adjourned at 7:31 p.m.

Approved this 10th day of March 2010

Chairman Spence