

November 2, 2017
Planning Commission Meeting
3005 South 1200 West Perry UT 84302
7:00 p.m.

Commissioners Present: Vice Chairman Devin Miles, Commissioner Blake Ostler, Commissioner Vicki Call, and Commissioner Stuart Grover.

Commissioners Excused: Chairman Travis Coburn and Commissioner Tresa Peterson

City Staff Present: Greg Westfall: Perry City Administrator and Susan K. Obray: City Recorder

Others Present: Bob Thurgood, Thomas Gledhill, Janice Gledhill, Bryce Gulbranson, Cindy Gulbranson, Matt Powers, Arthur Grover, Blake Thurgood, Tina Smoot, Clay Smoot, Jared Harrison, Mandi Harrison, Shellie Bryce, Ryan Stokes, Heidi Alsup, Heidi Stokes, Jodi Arzani and Eric Thatcher.

1. 7:00 p.m. - Call to Order and Opening Ceremonies

A. Invocation-

Commissioner Call gave the invocation.

B. Pledge of Allegiance to the U.S.A-

Commissioner Grover led the Pledge of Allegiance.

Vice Chairman Miles recognized the boy scouts in attendance.

C. Declare Conflict of Interest, if any-

None

D. Review and Adopt the Agenda

Commissioner Grover suggested adding the Conservation Subdivision as item 5D.

MOTION: Commissioner Grover moved to adopt the November 2, 2017 Planning Commission Meeting agenda as written with the addition of item 5D discussion on the Conservation Subdivision.

Commissioner Call seconded the motion. Roll call vote.

Commissioner Ostler, Yes

Commissioner Grover, Yes

Vice Chairman Miles, Yes

Commissioner Call, Yes

Motion Approved: 4 Yes 0 No

E. Approval of the Minutes

(a) September 21, 2017 Regular Meeting

MOTION: Commissioner Grover moved to approve the September 21, 2017 Regular Session Meeting Minutes. Commissioner Ostler seconded the motion. Roll call vote.

Commissioner Ostler, Yes

Commissioner Grover, Yes

Vice Chairman Miles, Yes

Commissioner Call, Abstain

Motion Approved: 3 Yes, 0 No, 1 Abstain

Item tabled as vote does not represent full quorum.

(b) October 5, 2017 Regular Meeting

Commissioner Grover reviewed two grammatical edits and clarified them with the Commission.

MOTION: Commissioner Call moved to approve the October 5, 2017 Regular Session Meeting Minutes with Commissioner Grover's suggested edits. Commissioner Grover seconded the motion. Roll call vote.

Commissioner Ostler, Yes

Commissioner Grover, Yes

Vice Chairman Miles, Yes

Commissioner Call, Yes

Motion Approved: 4 Yes, 0 No

F. Make Assignments for Representative to Attend City Council Meetings (November 16, 2017).

Commissioner Call stated that she would attend the November 16, 2017 meeting.

2. Public Comments and/or Public Hearings

A. Public Hearing for approval of a daycare home business. Applicant: Tina Smoot, Location: 10 West 1550 South Perry UT 84302

MOTION: Commissioner Call moved to close the regular portion of the meeting and open the public hearing portion of the meeting. Commissioner Grover seconded the motion. Roll call vote.

Commissioner Ostler, Yes

Commissioner Grover, Yes

Vice Chairman Miles, Yes

Commissioner Call, Yes

Motion Approved: 4 Yes, 0 No

Bob Thurgood stated he developed the subdivision [in which the proposed daycare home business is located], and prior to the development they paid to have restrictive covenants in place. He stated these covenants were filed with the County, and when a person builds or buys a home [within the subject subdivision] they are informed of the covenants. He stated he doesn't know the Smoots and does not wish to be unwelcoming to them. He stated they do not want a business like this in their community. He provided a copy of one page from the subject subdivision's covenants to the Commission. He said the covenants in Section 2.02 states no business or commercial uses are allowed in the development. He said there have been other people who have desired to open businesses from their home and they have been told they are not allowed. He presented letters from other neighbors who were unable to attend the meeting regarding their opposition to the daycare being in the community. He said he recognized it is not the City's place to enforce the covenants but the City is responsible for the safety of its residents, and the Smoots live by a school bus stop. He said he felt increasing the cars coming to drop off and pick up their kids while other children are getting on the bus is not safe. He asked the Commissioners to consider the neighborhood's opposition as they review this matter.

Clay Smoot stated he is the husband of the applicant and clarified the business is not a daycare center, it is an in-home daycare with a max of 16 children. He said it is a State Licensed business, and the children come and leave from 7am-6pm. He said at most there are two parents coming or leaving at the same time.

Tina Smoot reiterated she tends for 7 families and they all drop and pick up their kids off at different times. She said there will not be any extra traffic when the school bus comes to

pick up their kids. She said she understands everyone's concerns but wished to clarify there will not be a large amount of traffic.

Clay Smoot stated Tina has been doing this for 20 years and in the 3 years of that 20 years spent in Brigham they did not have any complaints regarding traffic.

Blake Thurgood stated regardless of the traffic issue he does not want any businesses within the neighborhood, as it states in the covenants. He said he feels it is a waste of time to contest something that is known by all parties who purchase or develop homes within the neighborhood.

Eric Thatcher agreed with the statements given from Bob and Blake Thurgood.

Bryce Gulbranson agreed with Mr. Thatcher and the Mr. Thurgood's.

Jared Harrison said he lives across the street from the Smoot home and stated his wife stopped doing her home-based business when they moved in, due to the knowledge of the covenants. He said he knows the Smoot's and welcomes them and hopes they know the neighborhood welcomes them whether or not they have a daycare.

Ryan Stokes said he lives two houses down from the Smoots and said he was part of the committee which helps enforce the covenants. He explained there have been other people who have come to the committee asking to run their home business and have been denied. He said he feels it would be wrong to change that set precedent for this or any other person. He also desired to welcome them to the neighborhood.

MOTION: Commissioner Grover moved to close the public hearing portion of the meeting and re-open the regular portion of the meeting for public comment. Commissioner Call seconded the motion. Roll call vote.

Commissioner Ostler, Yes

Commissioner Grover, Yes

Vice Chairman Miles, Yes

Commissioner Call, Yes

Motion Approved: 4 Yes, 0 No

B. Public Comments

Clay Smoot inquired when he was supposed to have learned about the covenants spoken of.

City Administrator, Greg Westfall stated this is not a City matter, and said generally when an individual closes on their home covenants are reviewed during that process.

Mrs. Smoot indicated to her husband that she had received the covenants.

3. Land Use Applications

A. Approval and Recommendation for a day care home business. Applicant: Tina Smoot, Location: 10 West 1550 South Perry UT 84302

Greg Westfall stated from a City Ordinance standpoint the application could be approved. He explained he has contacted three separate City attorney's regarding this application and reviewed the response he received from them, which are as follows: generally speaking

Perry City is not concerned with restrictive covenants as those are private and civil matters. He said he did not personally hear anything which went against City Ordinances to disallow this daycare home business application, unless the Commission feels there is a safety issue, which would fall under its jurisdiction.

Commissioner Call inquired if there is a place to park.

Tina Smoot stated her customers would park in her driveway and that there is room for two cars drop off at the same time if necessary.

Commissioner Call inquired about the permits Mrs. Smoot has acquired for this application.

Mrs. Smoot stated she has a fire inspection permit, a kitchen inspection permit, and State inspection permit, which have all been approved.

Commissioner Call inquired about the lighting around her home for the times parents come to drop off/pick up when it is dark.

Mrs. Smoot stated the front porch and driveway are both well lit.

Commissioner Call inquired if the front entry is the only entry which will be used for the drop off/pick up.

Mrs. Smoot affirmed this.

Commissioner Call inquired if she would be serving food in her home.

Mrs. Smoot affirmed this.

Commissioner Ostler inquired how many kids will be coming.

Mrs. Smoot stated she was previously approved by the State for her daycare in Brigham City to have 16 children, but the State is waiting on the Perry City business license application to be approved before stating how many children she can have in this home in Perry. She said she currently has around 14 kids and that number is from seven families.

Commissioner Call inquired if those children are currently coming to her home.

Mrs. Smoot affirmed this as of yesterday and said the State approved this due to her Perry City business license application being submitted. She said it would not continue if the Perry City business license application is denied.

Clay Smoot stated if they do not receive the approval for the business license they will be selling the home.

Commissioner Grover inquired if there would be any signage for advertisement.

Mrs. Smoot stated there would not.

Commissioner Grover asked if there would be added noise from this business.

Mrs. Smoot stated she spoke with the surrounding neighbors before they purchased the home and they stated there were many children in the neighborhood, so it wouldn't add any additional noise to the neighborhood. She stated the children are not allowed outside before 10am.

Commissioner Grover inquired if anyone else lived in the home besides her and her husband.

Mrs. Smoot stated her daughter also lived there.

Mr. Westfall stated he just got off the phone with one of the attorney's and this attorney recommended the Commission wait to take action until City Attorney, Craig Hall could research the matter further.

Mr. Westfall stated these types of uses are allowed in Perry City and applications of a similar kind have been approved by the Commission, and the contract [regarding restrictive covenants] between the neighbors is a civil matter. He stated for the Commission's liability the recommendation is to wait for the City Attorney's counsel on the matter before any action is taken.

Bob Thurgood stated if one of the parents dropping off a child backs over a child going to the school bus the City will be liable because it's a public safety issue.

Mr. Westfall stated he respectfully disagrees and is willing to explain this at a later time with the public member if he so desires.

Commissioner Call agreed the Commission needed to receive feedback from the City Attorney of the Commission's responsibility for this instance and for future similar instances.

Commissioner Ostler agreed with Commissioner Call and stated that Perry City Code allows the Commission to delay taking action on an item from the same night as the public hearing [PMC 15.29.030.7].

Commissioner Grover also agreed that this sounds like a civil matter and feels good about waiting to receive legal counsel from the City Attorney. He inquired if there were any other comments or questions from the Commission.

Commissioner Call stated she had none and that according to the City Ordinances it is an allowed business. She said for her it is a matter of what the Commission's responsibility is in interfacing with private covenants.

Vice Chairman Miles clarified for the public that the Commission's responsibility is to make decisions based off of the City Ordinances, and it is these ordinances which tell the Commission what they can and cannot do. He explained the public hearing is for this exact reason of receiving public input, and that the Commission will not take action on this item

tonight because there are concerns. He stated the Commission will withhold taking action until those concerns are resolved. He explained having the public hearing allows for the public to express these concerns which the Commission would have had no knowledge of otherwise. He explained if no public had commented in the public hearing, the application would've been approved tonight because it meets Perry City Ordinances. He stated he appreciates the public for showing up on both sides of the situation to enlighten the Commission on this matter.

Mr. Westfall stated it is required in Perry City to operate with a business license, therefore the applicant needs to desist from running her daycare until she acquires one.

Vice Chairman Miles tabled the item until the next meeting (December 7th).

4. Land Use Ordinances, Zoning, Design Guidelines, General Plan, Etc. -Recommendation to the City Council.

A. Discussion/ Action and Recommendation on certain sections of PMC Chapter 15.03 Planning Commission Rules of Procedure

Commissioner Ostler explained this item regards what constitutes a quorum for the Commission. He said the Commission previously discussed this matter and he took the feedback received from the Commission to create this updated document, which addresses and defines what constitutes a quorum for the Commission.

He noted the suggested edits he received from Commissioner Peterson and desired to comment on some of the comments and edits she suggested.

Commissioner Call inquired if there is a specification of a minimum number of members in the Commission. She asked if the document needs to specify a minimum number of Commission Members.

Commissioner Ostler stated he felt that because the quorum is set at 4 and it states no meeting can be held without a full quorum, logically, there would need to be a minimum of 4 Commission Members.

The Commission discussed whether or not to clarify this minimum number of Commission Members further in the document.

Commissioner Grover reviewed with the Commission his suggested edits on the proposed document page by page. The Commission discussed and clarified these suggested edits (grammatical, language usage, adjusting the length of a Commissioner's term, and required trainings for the Commission).

The Commission discussed and reviewed Commissioner Peterson's comments and suggested edits (grammatical, clarification on language usage, and defining adjourning a meeting).

The Commission discussed the process of the City Attorney in writing an ordinance, and if this proposed ordinance was ready to be sent to him to be written as an ordinance.

5. Discussion

A. **Discussion on Agricultural Zone**

Commissioner Grover inquired if the Commission could receive a copy of the document without the added comments.

Commissioner Ostler stated the reason he left those in the copy is because he would like to receive feedback regarding them. He explained the comments regard areas he is uncertain of and would like feedback from the Commission regarding.

Commissioner Call stated in her opinion the hardest decision the Commission needs to make is how to handle conditional uses. She inquired if the Commission can remove this from every ordinance at once or if they must do it one section at a time.

Mr. Westfall stated the only way to remove all conditional uses from the ordinances would be to state in an ordinance that all conditional uses are prohibited.

She stated if this was the case it is probably better to do it one section at a time, even though it will be a long process to do so.

Commissioner Ostler clarified he felt the purpose of this process of modifying the Perry City codes related to zoning regulations is to design a new format for Land Use Ordinances to simplify the process of approving applications, and to review the uses in each zone throughout the City.

Commissioner Ostler stated in the presentation he and Commissioner Grover gave to the City Council regarding the Conservation Subdivision, the Council's main concern was that there were a few conditional uses in that proposed document. He said the Mayor said in her research she had been told that the City cannot defend conditional uses; therefore, there needs to be only prohibited or permitted uses.

Commissioner Call stated she agreed with this direction of removing conditional uses, and the Commission needs to remove conditional uses and design reviews from anything they recommend to the Council for approval.

Commissioner Ostler stated due to the feedback from the Council regarding the removal of all conditional uses, he and Commissioner Grover re-categorized every conditional use in the Conservation Subdivision Ordinance as permitted uses. He stated he realized from this process conditional uses allow for more flexibility; whereas, without them, the document must have explicitly specific standards and requirements for each and every use that is permitted. He said the three open space uses the Council said they felt should be permitted in a Conservation Subdivisions are: trails, parks, and orchards.

The Commission discussed the obstacles of removing every conditional use and/or design review, and replacing them with explicitly specific permitted and prohibited uses.

Mr. Westfall stated he spoke with the City Attorney who told him that the issue with Tina Smoot's daycare application regarding restrictive covenants is a civil matter and has nothing to do with City ordinances.

Commissioner Ostler inquired if the elected officials do not want conditional uses, as well as the City Attorney.

Mr. Westfall stated he felt this was the general sentiment because it is the direction the State is moving.

Commissioner Ostler stated that the setting up of the standards is going to take a great amount of conversation and work, because the City will be creating standards and requirements that currently do not exist.

Commissioner Call recommended the Commission use this Agricultural Zone as its start to strive to eliminate the conditional uses and design reviews and replace them with prohibited and permitted uses.

The Commission discussed whether or not to reference State law in their ordinance for permitted and prohibited uses.

The Commission discussed the purpose of having a small amount of conditional uses and how they allow them not to govern the residents too meticulously.

Vice Chairman Miles recommended the Commissioners review this document and come prepared with their comments and suggested edits to discuss at their next meeting on December 7th.

Commissioner Ostler inquired about the conditional uses permits which have already been granted throughout the City.

Mr. Westfall said the Commission can discuss how they would like to handle them, but most likely these permit holders would need to be grandfathered into the ordinances.

B. Discussion on the Business License Process

Vice Chairman Miles apologized that he had not been able to meet with Commissioner Ostler to work on this document. He stated he would be doing so in the near future.

Commissioner Ostler explained there are many flaws in the current business license process and reviewed these flaws with the Commission (using the daycare application from this evening as an example).

Vice Chairman Miles stated the Commission approved approximately four months ago a footzoning business in the same subdivision in which the daycare application (discussed earlier in this meeting) is located.

Mr. Westfall stated that the State has also made many changes to its Business License Process which need to be incorporated into the City's ordinances.

The Commission discussed the option of putting an application on hold while the City rewrites its ordinances regarding Business Licenses.

Commissioner Grover recommended focusing on getting the Conservation Subdivision Ordinance before the Council for action and the Agricultural Zone rewritten before working on the Business License Process. He felt like doing so would allow for the documents to be completed thoroughly, whereas, if the Commission tries to also do the Business License Process it will be spread too thin.

Commissioner Call agreed with Commissioner Grover.

Commissioner Ostler stated he agreed with this statement as well, and explained he brought these other matters to the Commission to make them aware of other matters which need to be revised. He agreed that the Conservation Subdivision and Agricultural Zone are the higher priority of the Commission at this time.

C. Discussion on the Subdivision Ordinance: Final Land Use Authority/ Final Approval Process Tabled.

D. Conservation Subdivision Ordinance

Mr. Westfall stated Council Member Montgomery worked with Commissioner Ostler on her concerns and suggested edits on the proposed ordinance. He stated the Council did not take action to send this item back to the Commission, they simply discussed it and decided to review it further before taking action.

Mr. Westfall stated the two options that the Commission has moving forward is to bring it back to the Commission, revise the document with the comments from the Council in mind, and send it back for recommendation of approval to the Council, or, have Commissioners Ostler and Grover work on it in an administrative fashion for the Council and then have the Council take action on it.

Commissioner Grover stated he felt the Commission ought to be able to have its input on any changes made in the document.

Mr. Westfall said it is the Commissions choice what direction to go.

Commissioner Grover recommended having a work session, incorporating the comments and suggested edits from Council Member Montgomery in the document.

Commissioner Ostler reiterated having the Commission join for a work session so that they can all be involved in the changes made in the proposed ordinance.

The Commission decided to hold the work session for the Conservation Ordinance on November 7th at 6pm and invite Council Member Montgomery to attend, if possible.

6. Training

- A. None

7. Review Next Agenda and Adjourn

- Agricultural Zone Discussion Item

- Business License Process Discussion Item
- Pheasant Hollow Subdivision
- Discussion/ Action on sections of PMC Chapter 15.03 Planning Commission Rules of Procedure
- Land Use Application: Daycare Application, applicant: Tina Smoot

A. Motion to Adjourn

MOTION: Commissioner Call moved to adjourn.

Motion Approved: All Commissioners were in favor.