

Minutes of the Planning Commission meeting held on Thursday, December 7, 2023, at 6:30 p.m. in the Murray City Council Chambers, 10 East 4800 South, Council Chambers, Murray, Utah.

The public was able to view the meeting via the live stream at <http://www.murraycitylive.com> or <https://www.facebook.com/Murraycityutah/>. Anyone who wanted to make a comment on an agenda item may submit comments via email at planningcommission@murray.utah.gov.

Present: Jake Pehrson, Chair
Lisa Milkavich, Vice Chair
Ned Hacker
Travis Nay
Michael Henrie
Maren Patterson
Jeremy Lowry
Susan Nixon, Senior Planner
Zachary Smallwood, Senior Planner
Mustafa Al Janabi, Planner I
Mark Richardson, Deputy City Attorney

Members of the public per sign-in sheet

The Staff Review meeting was held from 6:00 p.m. to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording is available at the Murray City Community and Economic Development Department Office.

CALL MEETING TO ORDER

Chair Pehrson called the meeting to order at 6:30 p.m.

BUSINESS ITEMS

APPROVAL OF MINUTES

Commissioner Milkavich made a motion to approve the minutes for October 19, 2023, with administrative changes. Seconded by Commissioner Lowry. A voice vote was made with all in favor.

CONFLICT(S) OF INTEREST

There were no conflicts of interest for this meeting.

FINDINGS OF FACT

Due to some concerns, the Planning Commission did not approve the Findings of Fact for Cottonwood Security.

Commissioner Hacker moved to have the commission approve the findings of fact and conclusions for the conditional use permit for SkinCare Inc.

Seconded by Commissioner Vice Chair Milkavich. A voice vote was made, motion passed 7-0.

CONDITIONAL USE PERMIT(S) - ADMINISTRATIVE ACTION

Take 5 Murray - 696 West 5300 South - Project - #23-113

Ms. Nixon presented the application for Take 5 Murray; a drive-through quick lube & oil business proposed for the corner of Murray Boulevard and 5300 South. This is the site of a former Conoco gas station. Gas stations and lube shops are conditional uses in the C-N, commercial neighborhood zone. The 0.72-acre site currently contains part of the former gas station structure. The applicant has proposed a 1,847 square foot quick lube facility with drive-through lanes where customers would remain in their vehicles. The site plan was revised after the Planning Commission packets had already gone out. The revision shifted the drive access entrance along Murray Boulevard about 15-17 feet south to avoid conflicting with Murray City power equipment. The applicant updated the site plan, but there was not enough time to also update the landscape and civil engineering plans. So, the civil and landscaping plans will still need to be updated to match the revised site plan if approved. The building consists of a small office, shop area, drive-through lanes, and a restroom. Proposed hours are 7am-7pm Monday-Friday, 7am-6pm Saturdays, and 10am-5pm Sundays, with 2-8 employees on site. The plan meets zoning requirements for parking, setbacks, and 35-foot height limit. It also meets landscape buffer requirements including along the eastern residential boundary where a 10-foot landscape buffer and solid masonry wall are required. Two additional conditions were added - one related to water source protection for the nearby well, and one requiring the civil and landscape plans be updated to match the revised site plan. Based on conformance with zoning and meeting the approval findings, Ms. Nixon and staff recommended approval for the quick lube and oil change business conditional use at this site.

Chair Pehrson asked if there are still gas pumps on the site or if they've been removed.

Ms. Nixon said she believes they've already been taken out.

Commissioner Henrie asked if any remediation is required.

Ms. Nixon said if there is, the applicant will have to do it, but she's not aware of any. Their lender will require them to complete a test study.

Vice Chair Milkavich asked which agency or department will check that large volumes of oil are being handled properly.

Ms. Nixon said Public Works will handle that.

Chair Pehrson asked the applicant to approach the podium.

Mitch Vande Guchte from Take 5 Oil Change introduced himself. He stated that they have a few other Take 5 locations, with their main shop at 8980 South Redwood Road in West Jordan. Regarding the former gas tanks on site, Mr. Vande Guchte confirmed those have been removed and there is a "no further action" per a letter from the state. For used oil containment, he explained there are shallow pits built into each service bay with no floor drains, so any leaks would be fully contained within the concrete pits and could not reach soil or landscaping. The

used oil is collected from the pits and stored in tanks inside the building. Per state regulations, a certified disposal company then comes weekly to collect the used oil and filters for proper environmental disposal. Mr. Vande Guchte stated Rock Canyon is one company they use but there are a few approved options.

Commissioner Hacker said that the architectural drawings show three trenches, where the employees will be located and draining oil. He asked for confirmation that it's not a car lift.

Mr. Vande Guchte provided further details on the shallow pits used in the service bays. He explained they are not car lifts, but rather built-in contained areas that are part of the building foundation. Each pit is 3 feet deep, 3 feet wide, and 9 feet long. He clarified this is different from a typical quick lube design. The shallow depth allows employees to sit at the bottom comfortably to perform oil changes and other service underneath the vehicles. Customers are guided into position over the open pit, then turn off their engine, open the hood, before the employee gets into the pit to begin service. Mr. Vande Guchte stated this setup allows them to average a very fast oil change time of about 10 minutes. In summary, the shallow pits containing any leaks are an integral part of the building foundation and process for rapid oil change service.

Commissioner Henrie questioned the logistics of coming out of the East Bay, stating that it looks like tight radius to exit from.

Mr. Vande Guchte explained that Take 5 is a national corporate company with around 1,000 locations nationwide. Their construction arm had been consulted and always recommends having at minimum a 25-foot exit lane from the service bay to the street curb. In this case, measuring from the east bay exit point directly out to the curb, there is a 20-foot paved area, then about a 5-6 foot radius, totaling close to 26 feet. So, with the driveway shift slightly to the left, there is adequate room for vehicles to exit safely onto the street per corporate recommendations. He appreciated Commissioner Henrie's question, as it was important to him as well, in providing pleasant customer experience, without frustration.

Chair Pehrson asked if there were additional questions. He then asked the applicant if they were able to review all the conditions, including the changes that were made to condition five and the addition of number 10. He asked the applicant if he will be able to comply to the conditions.

Mr. Vande Guchte said that he would be able to comply.

Chair Pehrson opened the public comment period. Seeing no comments, he closed the public comment period.

Ms. Nixon mentioned that 33 notices were sent out, with no comments received back.

Commissioner Patterson moved to grant approval for the conditional use permit to allow the drive thru quick lube shop business at the property address 696 West 5300 South, subject to the 10 conditions with the changes as noted.

1. To meet the City Engineer requirements:

- a) Meet City storm drainage requirements, on-site detention with a reduced release rate of 0.2 cfs per acre is required.
 - b) Provide water quality treatment for stormwater discharge to City system.
 - c) Repair/replace damaged sidewalk and curb and gutter along the property frontages to Murray Blvd. and 5400 S.
 - d) Upgrade accesses to meet current standards.
 - e) Obtain a UDOT site access review and any required permits for the 5400 South access.
 - f) Develop a site erosion control plan and implement BMP's prior to beginning demolition and construction work.
 - g) Obtain a City Excavation Permit for work in the City right-of-way.
2. The applicant shall obtain a Murray City Business License prior to beginning operations at this location.
 3. To meet the Murray City Power Department requirements.
 4. To meet the Fire Department requirements.
 5. To meet the requirements of the Water & Wastewater Divisions. Care must be taken for this property to preserve the water source protection zone 4 for the 600 West Well. The city shall be notified if spills of any nature take place.
 6. The applicant shall obtain any building permits prior to construction. A demolition permit is required for demolition of any structures.
 7. A solid six-foot (6') masonry wall is required to be installed along the east boundary line.
 8. The landscape plan be updated to show the required trees within the front setback area be of 2.0" caliper and the front setback area to be planted with living ground cover to meet a minimum of fifty percent (50%) of landscape bed coverage at the time of planting. The updated plans must meet the required minimum 10% landscaping coverage for the site.
 9. The existing sign shall be removed prior to construction. Any new signage must meet sign code regulations per Section 17.48 and obtain appropriate building permits.
 10. Submit updated civil and landscape plans to match the 11/30/23 Site Plan.

Seconded by Commissioner Hacker. Roll Call Vote:

A Hacker
A Henrie
A Milkavich
A Lowry
A Nay
A Patterson
A Pehrson

Motion passed: 7-0

Rumble Boxing Murray - 5642 South 900 East, #B4 - Indoor Boxing Facility - Project #23-116

Mr. Al Janabi presented an application for a boxing gym proposed at 5642 South 900 East in the Commercial Development, C-D zone. He reviewed the floorplan with the commission, which will have membership sales on the left side, then storage, restrooms, a large open studio with a stage for classes, a washing area, and an office in the back. The proposed hours are Tuesdays & Thursdays 5am - 8pm, Saturdays & Sundays 8am - 1pm, and Mondays, Wednesdays, Fridays 6am - 8pm. They expect customers to be ages 25-40 doing 45-minute workouts. There will be about 10 employees on site. The property is next to Macey's grocery store and has 5 access points - 3 from 900 East and 2 on 5600 South. Parking requirements are 15 stalls based on the

ITE parking standards for commercial gyms of 5.7 stalls per 1000 square feet, and the unit being approximately 2,681 square feet. Mr. Al Janabi stated it is a straight-forward proposal that meets zoning requirements. Staff recommended approval for the conditional use permit.

The Planning Commission did not have additional questions regarding the application.

Chair Pehrson asked the applicant, Mr. Allison, to approach the podium. He asked Mr. Allison if he read and can comply with the conditions.

Mr. Allison said he did read them and can comply.

Chair Pehrson opened the public comment period. Seeing no comments, he closed the public comment period.

Commissioner Nay move to grant approval for a conditional use permit to allow rumble boxing gym at the property address 6242 South 900 East unit B6 subject to the following four conditions:

1. The applicant shall obtain a Murray City Business License prior to beginning operations at this location.
2. The project shall comply with all applicable building and fire code standards.
3. The project shall comply with all power department requirements.
4. The applicant shall obtain permits for any new attached or detached signs proposed for the business.

Seconded by Commissioner Lowry. Roll Call Vote:

<u>A</u>	Hacker
<u>A</u>	Henrie
<u>A</u>	Milkavich
<u>A</u>	Lowry
<u>A</u>	Nay
<u>A</u>	Patterson
<u>A</u>	Pehrson

Motion passed: 7-0

LAND USE TEXT ORDINANCE AMENDMENT(S)

Title 16 Subdivision Ordinance Text Amendment - Updating Subdivision Ordinance to comply with State regulated changes - Project #23-114

Mr. Smallwood presented a text amendment drafted by the planning staff and city attorney's office. The amendment was to Title 16, Subdivision Ordinance to bring it into compliance with Senate Bill 174, which changed many elements of subdivision regulations. He provided some background, explaining that many cities along the Wasatch Front and throughout Utah had previously required subdivision applications to go through up to four public hearings - two at the Planning Commission (one for preliminary and one for final approval) and then two at the City Council (also preliminary and final). Murray's subdivision code designates the Planning Commission as the land use authority for the city with responsibility for approving subdivisions outright, without the extra step of City Council approval. Murray's process moves more quickly

than other cities. The state was concerned about delays in housing construction and approval, which SB 174 was intended to address. It mandates that subdivisions be reviewed by an administrative land use body rather than city councils. It also sets out specific timeframes - once planning staff accepts a subdivision application as complete, they have 15 business days to bring it before the Planning Commission for review and approval. Additionally, only a maximum of four reviews are allowed between the city and the applicant. Mr. Smallwood noted that while the intention was to speed up subdivision approvals for many cities, it may slow Murray's process somewhat. Previously, they could accept an application and bring it straight to the next scheduled Planning Commission meeting. Now, in order to meet the 15-day timeline, planning staff has to implement a new application acceptance process. This involves taking up to 15 days to review the application for completeness before officially accepting it. Only then would they schedule it for the next available Planning Commission meeting. This could lead to longer lag times upfront. He reiterated that the 15-day countdown would only begin once planning staff deemed an application complete and all necessary information was in order. The goal was to avoid any issues or delays once an application reached the Planning Commission review stage. Finally, Mr. Smallwood confirmed that state code did allow the Planning Commission to have one public hearing for preliminary subdivision approval, citing Section 10-9a-604.1, subsection 7. This states that "with respect to a preliminary subdivision application, an administrative land use authority may: (a) receive public comment; and (b) hold no more than one public hearing."

Vice Chair Milkavich asked if the four reviews are only for preliminary and if they want to have four additional reviews for the final, they could. Mr. Smallwood clarified that under the new state regulations from Senate Bill 174, final subdivision applications would no longer be reviewed and approved by the Planning Commission, but instead would now be handled as a staff level approval by the city staff.

Mr. Smallwood continued by reviewing the current process for subdivision applications and stated that Murray requires a concept review by staff as an initial internal step for most subdivision applications, though the Community and Economic Development (CED) Director can waive this requirement if deemed unnecessary. The concept review involves circulating the proposal to all relevant city departments for feedback, which is then compiled into a letter back to the applicant. The applicant can then amend their plans based on the feedback before submitting for preliminary subdivision approval. He continued, that once an application for preliminary is received, state law requires public notice to be mailed out within 10 business days of the Planning Commission meeting. The application is reviewed by staff, a staff report is prepared, and the Planning Commission holds a public hearing before taking action to approve, deny or provide additional feedback on the preliminary plat. After addressing any Planning Commission feedback, the applicant works with city engineering staff to prepare a final subdivision plat for approval. This process of back-and-forth edits and reviews internally can take some time before it is deemed ready for the final Planning Commission approval. Once ready, staff prepare an updated report, the Planning Commission reviews the final plat and holds another public hearing, before granting final approval. Additional minor edits may still occur before the final mylar plat is signed and recorded with the county.

Mr. Smallwood stated that under the new SB 174 regulations, the preliminary review is able to come before the Planning Commission however the final subdivision review step would now be handled by city staff only rather than going to the Planning Commission. The concept review

could still be suggested by staff but could no longer be a requirement per state law. Mr. Smallwood said he already began making this step optional over recent months and found that most applicants opted to go through it since it provided helpful clarity upfront, resulting in fewer comments in subsequent reviews.

Commissioner Nay stated that this change is quite substantial, especially when it comes to the MCCD, and asked if they could talk more about the impact.

Mr. Smallwood said that this only applies to a subdivision project. It doesn't affect things like design reviews or conditional use permits.

Commissioner Nay asked if he were to do a condominium, he would be doing a subdivision in the MCCD, and in that instance he would be impacted.

Mr. Smallwood said that is correct. He would be impacted at the point of subdivision. He said a concept review would not be required. They could just move forward to a preliminary subdivision. Often times projects are very complex and require multiple applications. Design reviews are taken to the MCCD review committee. They review the building, the aesthetics and the site, to make sure it will be a good fit in the MCCD. They're not necessarily looking at the same level of detail that the Planning Commission is looking at with regards to utilities and property lines that is typically required during a subdivision review.

Vice Chair Milkavich said if there isn't a concept review required, then the Planning Commission will be leaning on their knowledge base to catch those details. Because this will be the first look. In the past, the planning staff has cleaned those things up prior to bringing it to the Planning Commission.

Mr. Smallwood said that staff reports might become more substantial and bit messier. They will get reviewed by the city departments still, but they will probably have more comments that haven't been addressed ahead of time.

Commissioner Hacker asked if the process has also been modified for City Council.

Mr. Smallwood said, no, because City Council doesn't review subdivisions and they will not be allowed to review subdivisions.

Mr. Lowry asked if this will be a faster process than before.

Mr. Smallwood said, no, most likely not, purely because the city must extend the review processing period.

Chair Pehrson asked to talk more about Commissioner Nay's question. He said if someone's building in the MCCD zone, it still will go before the MCCD committee. That step isn't being skipped if they're subdividing.

Mr. Smallwood said that is correct. He said an applicant could have one project with multiple applications. He used The Wyatt as an example to illustrate his point. This was a condominium

project that the Planning Commission heard in June 2022. There were about 26 condominiums units. It is technically two applications. It had a design review application and a subdivision application. What the MCCD Review Committee reviewed was the design review application. They did not review the subdivision application. Then, the Planning Commission reviewed both. If the proposal for The Wyatt was all multifamily, and they weren't subdividing, then it would have only gone to the MCCD Review Committee, and then to the Planning Commission just like a conditional use permit or a site plan review.

Commissioner Patterson asked for clarification. Because the concept review is now optional, it feels like if applicants skip that, they are going to come to the preliminary and it's going to be a much more intensive process between preliminary and final for them, because they might be coming and getting brand new information.

Commissioner Henrie asked if that's where the process will slow down.

Mr. Smallwood said that applicants must start by submitting a complete application. Planning staff have to be very detailed in the application for what's required. Then staff will review the submittal against that application. Staff will have to be very clear on what is required, and hopefully catch the missing items during the submittal process.

Vice Chair Milkavich said that's assuming that they're missing items with application. If they're missing something from the ordinance, like they give you an application that's 70 feet tall in a zone that's only allowed 35 feet or something like that, technically, the application is complete.

Mr. Smallwood said that would not be considered a complete application because it doesn't meet the ordinance. The applicant would be told their application won't be accepted.

Chair Pehrson asked that if an application doesn't meet an ordinance, and the application has to be sent back to the applicant, does that count as part of their 15-day window and then does it restart once a new submittal is received.

Mr. Smallwood said that's correct and that he doesn't anticipate that will happen very often. He said Ms. Nixon arranges a meeting every Wednesday to review applications on the calendar to use the time, if needed. This should provide them with time to review applications for adequate completeness.

Vice Chair Milkavich said this sounds great and it makes sense. She stated that it makes her a little uncomfortable that they're leaning on an application that doesn't exist yet, stating that if they have it in front of them, they can clearly see if everything is covered.

Commissioner Henrie said that is something that makes them uncomfortable, that they won't get to review it beforehand.

Mr. Smallwood stated the reason is that once it is listed in the ordinance, staff can't ask for anything other than what is listed in the ordinance. For example, if staff said if they missed asking for a traffic study during the application process, they can't require it because it wasn't in the ordinance.

Chair Pehrson asked why can't staff say, for example, that a traffic study is required for a given application. He said that at one point, the Planning Commission wrote the application and codified it, because they felt it was important. He doesn't like that now they are turning it over to a group of four staff members, who may or may not live in Murray, and may and may not care, or at least that someday there may be new staff who may not care. He doesn't like that they may have the authority to change the application as they wish.

Mr. Smallwood said it would take more than that to change the application. An entire department would have to sign off on that.

Chair Pehrson said you would only have to have a department head make the changes.

Mr. Smallwood said that's not necessarily true. The application would need to go through reviewing departments. For example, they'd need to be reviewed by the engineering department to make sure everything is covered for engineering.

Chair Pehrson said there's nothing in the Murray code that says the application for a subdivision approval cannot be changed by the department head.

Mr. Smallwood said that's correct, however, there's a flipside of that. The city's conditional uses don't reference applications. The city's site plans don't reference applications. The city's design reviews don't reference applications.

Chair Pehrson said that's true, but they also have requirements and code.

Mr. Smallwood said they do not. It doesn't state for a conditional use that an applicant must supply a site plan or a landscape plan, or a parking plan.

Chair Pehrson says he's fine with how the application is written. He does think the Planning Commission has recourse to make changes as needed.

Mr. Smallwood said that the Planning Commission can request information from staff about the application and question details of the application.

Vice Chair Milkavich says she understands that the Planning Commission won't have the authority to approve the application but feels it's putting a lot of weight on whoever has to create this application because they have to make sure they don't forget anything. She feels it's strange that the city is putting all this weight on one person.

Mr. Smallwood said he agrees it's a lot, but it certainly isn't on one person alone. He said the League of Cities and Towns recommended using Lehi's subdivision application. They indicated it is a complete and thorough application. It is a team effort to make sure that everything is addressed in applications. There are multiple departments reviewing the applications.

Commissioner Hacker asked when they approve a preliminary subdivision, can they require the applicant to do a traffic study.

Vice Chair Milkavich said that if something is forgotten on the application, they could probably cover it in conditions.

Chair Pehrson says they could, but they'll never see it again.

Commissioner Hacker said they are not done with this issue yet. He asked, through this whole process, the Planning Commission gets to see an application one time, in the preliminary subdivision approval.

Mr. Smallwood said that is correct.

Commissioner Hacker then asked why they can't see it again, in the process of approval by the staff. Instead of the staff approving, why cannot the Planning Commission approve without a public hearing.

Ms. Nixon said that Mr. Smallwood would look that up. She wanted to go back to the topic of the concept review, as some of the commissioners were questioning why they can't require it. She said that when staff explain it to applicants, most are willing to do the concept review. She said it's the biggest bang for their buck they'll ever get because it's only \$75. It is a wealth of information that they get back that really helps them then modify or fine tune their project. She says that whenever they've suggested it, they've never had an applicant turn it down.

Commissioner Hacker said his concern is still that they only get to see an application one time, and the public gets to see it one time. If the staff is approving it, I don't know why the Planning Commission can't see it again and approve it as well, for the sake of their constituents.

Vice Chair Milkavich says she doesn't feel as strongly as Mr. Hacker. It might be because she feels like the city and staff have done a wonderful job. She feels most of the applicants are very civil and very willing to produce good products. She does understand Mr. Hacker's concerns though, and possibly the concerns of constituents. She feels this is a time in which there's very little trust in government, and there's the large divide, and whenever something is taken away from the public, there's suspicion.

Mr. Smallwood found the verbiage in the Utah State code regarding section 10-9a-604.1 subsection 9. He put the text up on the screen. A discussion took place amongst staff and the commissioners as to how to interpret the text, with varying understanding of the text.

Deputy City Attorney, Mark Richardson, intervened with legal guidance. He agreed with the Commission's comments that the state code is poorly written. He interpreted section 10-9a-604.1, subsection 9, that the words "may not" could be read as "shall not" require Planning Commission or City Council approval.

Chair Pehrson read the text from the screen that said, "may permit concurrent processing of the final subdivision plat application with the preliminary subdivision plat application." He interprets that as "you can" do those at the same time – it's not saying they have to do them at the same

time. Then, reading section 9 (b) he interprets it to mean “may not require” Planning Commission or City Council approval to mean “you can” pass it without their approval.

Mr. Smallwood said that what this is referring to is the way some cities, Murray included, did preliminary and final subdivision together when they were less than 10 lots. This is how Murray currently does the process. If it's a subdivision that's less than 10 lots, they can do a preliminary and final as one meeting. This is taking an additional step out. This is taking the second review from the Planning Commission out of the process. If the process is for a 15-lot subdivision, the Planning Commission can approve the preliminary and final in one meeting, but that then prohibits staff from reviewing it at another level.

Commissioner Hacker said don't do them together.

Mr. Smallwood said they aren't planning to do them together.

Commissioner Lowry said he's wondering if section 9 (b) is present only when 9 (a) is present as a condition.

Mr. Smallwood said that's a good point. He noted that Mr. Richardson nodded his head, yes.

Mr. Lowry said he would make the point that he thinks 9 (b) may only be in effect when 9 (a) is in effect.

Chair Pehrson confirmed that the ordinance needs to be enacted by February 1, 2024.

Commissioner Henrie said it looks like there's more opportunity for oversight or for missing things in this flowchart than in the other one.

Commissioner Lowry said he thinks the onus on the developer.

Mr. Smallwood said that's the point. This is one of the benefits that came out of the league's legislation is that when staff does a review, they send comments to the applicant with issues that need to be addressed. There are times when staff will do rounds of comments and the applicant will not address any of the comments or issues. The language in the new ordinance states that those comments must be addressed. Every comment made by the city must now be addressed. If not, it's not considered a complete review and will be sent back to the developer to address everything. At this point, the clock stops on the 15 days.

Mr. Lowry predicts this ordinance will change within a couple of years, because developers will complain because they're not going to be able to get their applications through staff.

Chair Pehrson asked what they have looked for in the final subdivision approval process and were those items to verify they were complete.

Ms. Nixon said things like fencing or open space that was required at the preliminary review.

Chair Pehrson asked what they should do when an applicant comes before the planning commission with a central amenity that doesn't meet the requirements, would the planning commission have to vote "no" on the preliminary and have them come back, or would they just specify what they want them to be. It's hard to specify what they want to see in the final approval.

Mr. Smallwood said they continue it to the next meeting saying this does not meet the requirements.

Commissioner Nay asked if they could just take the application.

Chair Pehrson said If they feel they did not meet the requirements that are laid out in the code and made the finding, and voted "no," they'd have to specify why not.

Commissioner Nay said also they can't be arbitrary and capricious in making our decisions.

Chair Pehrson said he thinks going forward, if this is approved, they need staff to make sure it meets all the requirements. Because if it doesn't, the Planning Commission will either need to not approve it or to continue it. If they continue an item, then they need to tell the applicant this doesn't meet the requirements, so they'll have to go back and change the application.

Mr. Smallwood said that's precisely what the Planning Commission should be doing. Whenever an item is continued, the applicant needs clear direction as to why you're continuing it and what you expect to see back. Planning staff must sever certain things. For example, a planned unit development is, in essence, a conditional use permit attached to a subdivision. It's modifying the regulations of a subdivision with a conditional use permit. Staff need to do a better job in severing those, because the state law states that you can go back and put a hold on the conditional use permit and say this needs to be addressed as part of the conditional use permit.

He continued by stating that sometimes when there is a general plan amendment and a zone map amendment, staff presents them together, but they are two separate votes, they might have to start doing that. The Planning Commission would approve the planned unit development, then approve the subdivision.

Commissioner Patterson asked if they could make changes to the planned unit, like to the conditional use permits.

Mr. Smallwood said that's correct, pointing out that the process is more flexible than before.

Vice Chair Milkavich said she feels that sometimes, in the past, they'd get an application that won't have something finalized yet, and planning staff will say not to worry about it because the business has to get it before they get their license. She is assuming that will happen less, because from now on, they would have to turn it down because it doesn't meet the requirements.

Mr. Smallwood said that's correct. He anticipates getting higher quality applications in the future because of the new process.

Vice Chair Milkavich said it makes it more likely that the Planning Commission would simply reject an application than continue it, given that information.

Chair Pehrson agreed, feeling concerned about the timeline, because continuing an item would add two more weeks to the process, since they only meet every two weeks. He wondered if the City is then out of compliance with the regulation.

Ms. Nixon said probably. Plus, the developer may not have time to turn around and redo their plans.

Vice Chair Milkavich added that they could be out of compliance if they have to cancel a meeting as well.

Ms. Nixon said planning staff will have to work with developers to ask if they can redo plans and be ready for a meeting by a certain date.

Mr. Smallwood said he's most concerned about the developers who are chronically difficult to deal with, who say they won't redo things. He acknowledges that they'll have to be really clear in communicating with them.

Mr. Lowry said they just need to be clear to communicate that this is working application, not a complete one, and the Planning Commission won't touch it.

Mr. Smallwood is hoping that because they'll have more time to review them in depth, they'll catch everything.

Commissioner Patterson asked if it's possible to add a final presentation to the Planning Commission.

Mr. Smallwood said he'd prefer not to codify it, but staff can start doing that.

Commissioner Patterson feels like subdivisions are more controversial, especially to their neighbors. She feels that offering for the public to see the final approval is important. She feels it's a way to be front facing to the public and allow them the opportunity to state their concerns.

Mr. Smallwood said he can see the merit in what she wants to do but doesn't see the point because they would not be taking any action on it. He doesn't know that it's helpful.

Commissioner Hacker said it's helped constituents.

Ms. Nixon asked whether the commission thinks the public would have a certain expectation if they came to a meeting that they can provide public comment.

Commissioner Nay said the public will feel disappointed and that their public officials have let them down.

Vice Chair Milkavich responded that would be an opportunity for commissioners to say, as a city we respect constituents. Unfortunately, the state has tied our hands with this new process.

Commissioner Hacker said that still doesn't mean that we can't vote on it. He said they just went over the language. It said "may" which does not mean "you will."

Mr. Smallwood said if the commissioners want to make that change, they may request it.

Mr. Lowry asked a question if they as a city do several continuances, how much legal risk do we create, if the commission isn't specific or narrow enough.

Mr. Smallwood said that the commission will have to be more specific.

Commissioner Lowry said if they force a continuance with changes, what's to keep the developer from simply going to their attorney and cite the code and say they already did that. He feels it opens the Planning Commission up for bullying.

Commissioner Nay said they will be at the peril of the depths of developers' pockets.

Mr. Smallwood acknowledged that risk. Because the state is requiring that, cities as a whole become less discretionary and less subjective in decision making.

Commissioner Lowry strongly agrees with the commissioners that they should actively pursue an understanding of the language. If there is an ability for a second go-around with the Planning Commission. He really wants more clarification on that.

Mr. Smallwood said he's attended every single training that the state has put on, and it was made clear by state land use attorneys this is a mandate and not a recommendation.

Mr. Lowry said it puts the Planning Commission in a really tough position.

Chair Pehrson said that most of the time, when they had a final subdivision approval, they were just quickly going through to make sure everything was done. He feels they could be more specific in the preliminary on what needs to be done. If the applicant is compliant, then the Planning Commission must approve it. If they aren't, then they should not approve it.

Mr. Smallwood said Chair Pehrson is making the exact point that the state legislature is making.

Commissioner Hacker asked if the Planning Commission is the land use authority.

Mr. Smallwood said it is for the preliminary reviews.

Commissioner Hacker maintains that the Planning Commission is relinquishing their land use authority to the staff.

Mr. Smallwood said that what the state is saying and that the commissioners may make an amendment if they wish to do so.

Commissioner Patterson feels that because the application process is going to be more thorough, that's almost like the preliminary review process. She feels like the same steps are happening -- it's just the preliminary review will now be happening through the entire application process. When it's coming to the Planning Commission at that point, it's already been vetted throughout the entire process.

Mr. Lowry asked to read sections 9 and 10 of the ordinances.

Mr. Smallwood stated he will read sections 8, 9 and 10, because section 8 is applicable. Section 8 said that if preliminary subdivision application complies with the applicable municipal ordinances and the requirements of the section the administrative land use authority shall approve the preliminary subdivision application.

Mr. Lowry recapped that if a preliminary subdivision complies, and there are no exceptions, you shall approve, meaning the administrative land use authority.

Mr. Smallwood continued on with section 9, stating a municipality shall review and approve or deny a final subdivision plat application in accordance with the provisions of this section, and municipal ordinances which (a) may permit concurrent processing of the final Subdivision plat application; and (b) may not require Planning Commission or City Council approval. Number 10, if a final subdivision application complies with the requirements of this section, the applicable municipal ordinances and the preliminary subdivision approval granted under section 9 (a), a municipality shall approve the final subdivision application. He highlighted that it does not say the administrative land use authority.

Commissioner Lowry confirmed his understanding of section 8, stating that the preliminary subdivision, if it complies, the Planning Commission shall approve. A municipality shall review, and approve or deny, this final subdivision plat. It may or may not require Planning Commission or City Council approval. He views this as at their discretion. If it meets the ordinances, they shall approve, in number 10. Correct. He thinks that there's discretion in section 9.

Commissioner Hacker said that he just wants our constituents to know that they're looking out for them.

Vice Chair Milkavich said they can see what other cities are doing, too. They can talk to lawyers from other cities, who can tell them their opinion.

Commissioner Hacker said he thinks it gives them another opportunity to look at an item that our constituents might be concerned about and give them reassurance that we're looking at it again.

Chair Pehrson asked Commissioner Hacker if he reads the ordinance differently and that they can approve the final.

Commissioner Hacker says he reads it that way. He said "may" does not mean "you will."

Mr. Lowry said he agrees with having discretion. He thinks the city municipalities have discretion in Section 9 to define how that's done. He thinks the discretion could be staff or the Planning Commission. It could also be City Council, based on 9 (b). The point is, if the preliminary and final meet all the requirements, whoever is the approving body, must approve it.

Chair Pehrson asked Commissioner Hacker if he'd be comfortable if the Murray City legal counsel decided that's how it was written, then would he agree with that.

Commissioner Hacker is aware already that legal counsel will decide one way or another. He thinks they can give them a better recommendation than having the planning staff doing final approvals. He thinks that's relinquishing their land use authority, which he is not in favor of.

Commissioner Nay said it's a delegated authority, that is theirs to relinquish.

Mr. Pehrson said it's going to go to City Council for a vote and that someone could make a motion that they forward a recommendation, with the desired changes.

Commissioner Henrie said if they bring it back before a public forum, without the opportunity for public input, or for the commission approval, it's just going to be a lightning rod for trouble.

Chair Pehrson said he doesn't think anybody would show up, since they are just reviewing what already was approved, but he's not against them doing it.

Commissioner Lowry asked how the Planning Commission would feel about a recommendation that was subject to Murray City legal review, stating that they would prefer that the Murray City Planning Commission continues to do the final subdivision approval.

Mr. Smallwood stated they would need to specify in the redlined ordinance what you want amended.

Chair Pehrson said he's okay with how it's written because he thinks what it's saying is that they could vote to forward a recommendation for them not to approve this, and the reason why is that they don't agree with it, then we don't have to rewrite anything.

Mr. Smallwood said the Planning Commission could add what they want to change the ordinance to, but they have to change it in the motion, and then the commissioners can vote on it.

Chair Pehrson opened the public comment period. Seeing no comments, he closed the period. He asked commissioners if they wanted to make a motion to approve it as it is or continue with the discussion to suggest changes to the ordinance.

Commissioner Hacker still felt that it's unclear in the ordinance who is responsible to approve final reviews.

Ms. Nixon asked if they could make a motion to send it to the City Council and in the meantime, work on getting a definite answer from legal counsel as to who performs final review approvals.

Chair Pehrson said they could change it and make a motion in 16.12.080, 16.12.090 and 16.12.100 to strike the text “planning staff” and replace it with “Planning Commission.” Then it could be presented to City Council. He also said if they took a vote, and if they didn't approve it as written, they could take another vote. Stating that once the vote is approved, then the item is done.

Commissioner Henrie asked if anyone felt this ordinance would pass as it is.

Chair Pehrson said he doesn't feel that it would. It's clear that it's poorly written.

Ms. Nixon said that legal will review it and see the suggested change, and they will let City Council know if the suggested changes are viable or not.

Mr. Smallwood reminded the Planning Commission that, as the presiding land use authority, City Council is relying on them to review these topics and make the appropriate decision, and they rely on the commissioners' recommendation.

Chair Pehrson said they should also communicate to the City Council that they think the wording of the ordinance is ambiguous.

Commissioner Lowry said that his interpretation of section 8 was that if a preliminary subdivision application complies with the municipal ordinances, the land use authority shall or must approve the preliminary subdivision. Section 9 states that the municipality shall review and approve or deny a final subdivision plat in accordance with this section and municipal ordinances, which may permit concurrent processing of preliminary and final plats. This means that the Planning Commission or City Council approval may not be required when a city chooses to combine preliminary and final subdivision approval. So, subsection 9 (b) only applies specifically to section 9 and does not apply to sections 8 or 10. Section 10 states that if a final subdivision application complies with the ordinances, then the municipality must or shall grant final subdivision approval, but it does not specify who within the municipality must do so. He believed the language was ambiguous as to whether staff, Planning Commission, City Council or another duly appointed authority within the city would be responsible for this final approval.

Mr. Richardson agreed the ambiguity is the problem with the ordinance. He said the redlined version that Mr. Smallwood presented is how they both interpreted the ordinance.

Vice Chair Milkavich asked what other cities are doing regarding the ordinance.

Mr. Smallwood said that all the cities are dealing with the same topic this week, so looking to them isn't something they can do right now.

Commissioner Hacker look up the use of the word “may” in legal terms. Stating that It's an expression of possibility, a permissive choice to act or not, which implies some degree of discretion.

Commissioner Lowry said it's not an issue of whether they're going to approve it. If it meets the ordinance, they're going to approve it. For him it's more of an issue of process and wanting the citizens to feel like there's transparency in the process.

Commissioner Patterson asked for clarification on the voting process. Stating that if someone made a motion to approve the redline copy as written, without adding in the Planning Commission changes to section 080, the Planning Commission could vote on it, and they would vote "no" if they wanted those changes.

Mr. Smallwood said they could vote "no."

Chair Pehrson said that voting "no" doesn't mean you want the changes, voting "no" means you don't want the ordinance as written. Then we could vote again after that.

Commissioner Lowry made a motion that the Planning Commission forward a recommendation of approval to the City Council for the proposed amendments to Title 16 Subdivision Ordinances, as read in the staff report, with the change in section 16.12.080, the part of the section that has been changed to "staff" be changed back to "commission," and in 16.12.100, the same change be made that staff change to the commission.

Commissioner Hacker seconded. Roll Call Vote:

<u>A</u>	Hacker
<u>N</u>	Henrie
<u>A</u>	Lowry
<u>A</u>	Milkavich
<u>N</u>	Nay
<u>A</u>	Patterson
<u>A</u>	Pehrson

Motion passed: 5-2

Commissioner Nay explained his dissent by stating that he's willing to support changes without a wholesale review, based on the recommendations. He thinks they're taking bad language from the state and potentially make the situation worse with unintended consequences.

Vice Chair Milkavich stated she doesn't know what the legal ramifications are if they change the ordinance so that they are not in compliance with the state.

Vice Chair Milkavich agrees with Commissioner Nay that the language is ambiguous. She said because of that, she doesn't think you could win a legal argument in either direction.

Commissioner Nay says he thinks the state language is poorly written. He sees both sides of the argument. He feels the language is something the state will remedy in their next round of cleanup. He said the Planning Commission is making changes to the redline copy without having a chance to really scrutinize it and see how all the different sections reference each other.

Commissioners Henrie, Pehrson and Nay felt that more discussion should have taken place before the motion. Specifically, Commissioner Henrie felt the Planning Commission did not correctly handle the amendment.

Chair Pehrson stated that he agreed. He did remind them that all they did was forward the recommendation.

ANNOUNCEMENTS AND QUESTIONS

The next scheduled meeting will be held on Thursday, January 4, 2024, at 6:30 p.m. in the Murray City Council Chambers, 10 East 4800 South, Murray, Utah.

In honor of Commissioner Nay's service, the Planning Commission will have a dinner before the start of the meeting, at 5:30 p.m.

ADJOURNMENT

Commissioner Pehrson made a motion to adjourn the meeting at 8:36 pm. Seconded by Commissioner Nay. A voice vote was taken, with all in favor of adjournment.



Philip J. Markham, Director
Community & Economic Development Department