

MOAB CITY PLANNING COMMISSION MINUTES
SPECIAL MEETING
March 21, 2024

The Moab City Planning Commission held a special meeting on the above date in Council chambers. Audio is archived at www.utah.gov/pmn and video is at [www.youtube.com/watch?v= vSIG5_l26k](https://www.youtube.com/watch?v=vSIG5_l26k).

Call to Order: Planning Commission Chair Kya Marienfeld called the meeting to order at 3:36 p.m. Commission Members Carolyn Conant, Machael Layton and Miles Loftin attended. City Planning Director Cory Shurtleff, Planning Administrator Anna Anglin, Assistant Planner Bryce Rogers, Community Development Director Michael Black and City Attorney Clayton Preece also attended, as well as a representative of the applicant for an action item.

Citizens to be Heard: None.

Approval of Minutes—Tabled

After discussion by Planning Director Shurtleff, Commission Chair Marienfeld moved to table the draft minutes of the March 14, 2024 Regular Planning Commission meeting. Commission Member Loftin seconded the motion. The motion to table passed unanimously.

Major Change to Level II Site Plan for Cottonwood Condominiums—Approved

Presentation and Discussion: Planning Director Shurtleff presented for consideration and possible approval **Planning Resolution 02-2024:** a planning resolution approving a major change amendment to the approved remanded Level II Site Plan for the Cottonwood Condominiums 2023, on property located at 214 South 200 East, Moab UT 84532. He noted the approval had been tabled at the March 14 meeting, to allow time for the City Attorney’s review of vesting rights pertaining to the addition of two additional balconies, amending screening, buffering and landscaping areas, and amending drainage. Attorney Preece explained the issue to be considered was whether changing one part of the application would trigger compliance with other areas of the code, including the new Active Employment Household (AEH) ordinance. Preece explained there were no analogous cases and a complex analysis was required. He said that, once a site plan is approved, it is binding, unless a formal process to amend is requested. He said that in the instance of a major change amendment, only the requested changes are reviewed. He said the focus is to be applied to the requested change only. Preece further explained that the applicant’s vested rights prevail unless there is a compelling countervailing public interest. He cited Utah Supreme Court directives on the matter and added that vesting is not consistent across the country, and in this case, the applicant must be protected from major changes to code requirements. It was explained that the situation before the Commission was unique in that the site plan was approved, then various elements of the municipal code changed, and then the applicant requested a change to one piece of the site plan. Preece cited reviews by the Utah Property Rights Ombudsman and noted the definition of “changing the structure” was not considered a traditional meaning of “structure.” Preece concluded that the proposed changes do not alter the commonly defined structure, and therefore do not trigger other elements of the code, such as the AEH requirement. Discussion ensued regarding theoretical potential triggers for compliance with other elements of the code, such as increasing the number of units. Commission Member Loftin brought up structural support for the decks and argued increasing the roof size seemed like a trigger under the common definition. Planning Director Shurtleff explained the number of dwelling units did not change so AEH is not triggered. Commission Chair Marienfeld stated there is a gray area and the Planning Commission should not act arbitrarily; she hoped the upcoming code revision would remedy the problem. Attorney Preece clarified the proposed change falls on the spectrum, and triggers landscape compliance only, not the scope of the whole building. Discussion ensued regarding whether, in a pre-existing building, if extending the roof or decks would trigger compliance across the code. Commission Chair Marienfeld asked for clarification of what rises to the level of compliance. Planning Director Shurtleff pointed out that a pre-existing condominium

development with one unit requesting a larger deck would not affect the whole condominium development. Other discussion pertained to lapsed applications and the version of the site plan that is vested. Preece cited Utah Supreme Court precedence to determine in favor of the freest use. Marienfeld also brought up the concept of Truth in Submittals, since the balconies being requested had already been constructed outside the scope of the current approved application. Planning Director Shurtleff acknowledged the matter and said the project is now trying to get back on track. Commission Member Conant recognized the conflict and pointed out a need for clarification in the upcoming code revision. Commission Member Layton pressed for clarification of the vesting timeline and Preece explained the vesting date was set when the application was complete and the applicable fees were paid. Commission Chair Marienfeld conceded she remained frustrated, yet she accepted that the AEH ordinance would not affect the approval. Commission Member Loftin said the decision was clear, yet he brought up the need for a clear definition of structural changes and major changes to ensure full code compliance. He said the project should comply with community standards and that he felt the spirit of the proposal was off. Marienfeld concurred, stating she appreciated staff and the role of the Planning Commission is clear, however disappointing the results. She said there is distasted in the community and optics matter. She said the Planning Commission comprises citizen representatives of the community. Additionally, Marienfeld pointed out errors in the application documents that were copied from applications from other cities or states.

Motion: Commission Member Loftin moved to approve **Planning Resolution 02-2024:** a planning resolution approving a major change amendment to the approved remanded Level II Site Plan for the Cottonwood Condominiums 2023, on property located at 214 South 200 East, Moab UT 84532. Commission Member Layton seconded the motion.

Discussion: Both Loftin and Layton expressed dismay. Commission Member Loftin stated that the application of the landscape ordinance would not suggest any need for amendments to the approval. Commission Chair Marienfeld stated the proposed resolution meets criteria within the vested rights of the application. Commission Member Loftin said that, without a clear definition of structural changes or how the AEH code applies, he concurred. Marienfeld added that, with the attorney's recommendations, approval makes sound sense.

Vote: The motion passed unanimously.

Applicant's attorney Christina Sloan spoke about minor versus major changes and structural alterations as they pertain to state code. She said there was significant case law regarding provisions for structural alterations and scope and scale. She mentioned the contractor felt he received mixed messages regarding the controversial change request and denied ill intent. Marienfeld stated her desire to quell similar future scenarios.

Future Agenda Items: Planning Director Shurtleff and Planning Administrator Anglin announced an upcoming annexation request, along with a possible minor subdivision.

Adjournment: Commission Chair Marienfeld adjourned the meeting at 5:06 p.m.