

MINUTES OF THE DRAPER CITY PLANNING COMMISSION MEETING HELD ON THURSDAY, MAY 23, 2024 IN THE DRAPER CITY COUNCIL CHAMBERS

PARTICIPATING: Andrew Adams, Chair
Lisa Fowler, Vice-Chair
Commission Member Susan Nixon
Commission Member Mary Squire
Commission Member Gary Ogden
Alternate Commission Member Shivam Shah

EXCUSED: Commission Member Kendra Shirey
Alternate Commission Member Laura Fidler
Alternate Commission Member Christine Green

STAFF: Jennifer Jastremsky, Community Development Director
Todd Draper, Planning Manager
Mike Barker, City Attorney
Spencer DuShane, Assistant City Attorney
Brien Maxfield, Senior Engineering Manager
Todd Taylor, City Planner III
Amie Salazar, Office Manager

6:30 PM Business Meeting

Chair Andrew Adams called the meeting to order and welcomed those present.

1. Items for Commission Consideration.

- A. Approve Planning Commission Meeting Minutes for March 28, 2024.
(Administrative Action).**

Motion: Commissioner Nixon moved to APPROVE the minutes of March 28, 2024, as written.

Second: Commissioner Squire seconded the motion.

Vote: A roll call vote was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Ogden, Squire, Nixon, Shah, and Fowler voted “Yes”. The motion passed unanimously.

- B. Approve Planning Commission Meeting Minutes for April 11, 2024.
(Administrative Action).**

Motion: Commissioner Squire moved to APPROVE the minutes of April 11, 2024.

Second: Commissioner Nixon seconded the motion.

Vote: A roll call vote was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Ogden, Squire, Nixon, Shah, and Fowler voted “Yes”. The motion passed unanimously.

C. Action Item: Living Planet Aquarium Science Learning Center Plat Amendment Approval Extension (Administrative Action)

On the request of Jake Lake, representing Loveland Living Planet Aquarium, a request for a six-month extension of the May 11, 2023 approval of the Living Planet Subdivision Plat Amendment. The property is located at 12047 South Lone Peak Parkway. Application SUBD-045-2023. Staff report by Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Community Development Director, Jennifer Jastremsky, presented the Staff Report and stated that the Planning Commission approved the Plat Amendment in May of 2023 to adjust the property lines around the aquarium so that the aquarium building and the new science learning center are on one property. She pointed out that subdivision plats expire within one year if they are not recorded. The applicant is still working to record the plat but had to make changes for the utility companies, which caused a delay. An extension is needed to allow time for recording. The expiration was May 11, 2024, and the request for the six-month extension was received on May 7, 2024. It was noted that the applicant was not present.

Motion: Commissioner Ogden moved to APPROVE the Plat Amendment Extension, as requested by Jake Lake, representing Loveland Living Planet Aquarium for Living Planet Aquarium Science Learning Center, Application SUBD-045-2023, based on the finding below and the request by the applicant:

1. The applicant has shown good cause to obtain an extension and that substantial action has occurred toward recording the Subdivision Plat.

Second: Commissioner Squire.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Nixon, Squire, Ogden, Shah, and Fowler voted “Yes.” The motion passed unanimously.

D. Public Hearing: Newberry Fence Conditional Use Permit (Administrative Action)

On the request of Brian Newberry, a Request for Approval of a Conditional Use Permit to increase the Allowed Fence Height to Eight Feet in the Rear of approximately 2.13 acres of property located at 12775 South Costanza Way. Application 2024-0075-USE. Staff Contact: Todd Taylor, 801-576-6510, todd.taylor@draperutah.gov.

Due to technical difficulties, the Commission took a short break.

City Planner III, Todd Taylor presented the Staff Report and displayed a Vicinity Map showing the location of the subject property in the northeast quadrant of the City. An Aerial Map was also

presented showing the location of the subject property between the Porter Rockwell Trail and the Draper Canal Trail. The property boundary lines were shifted slightly from the aerial and the lines do not necessarily line up with the route of the Draper Canal Trail. The property is designated as Residential Low-Medium Density and zoned RA-2 Residential Agricultural. The Site Plan was presented to show where the applicant is requesting the eight-foot portion of the fence along the eastern property line and a portion of the southern property line. Photos were presented.

Staff was concerned about the southern end of the property where Costanza Way crosses the Draper Canal Trail and the fence makes a turn. Staff was concerned that the corner, as people drive across the trail, could potentially block the view of those traveling south down the trail. With that in mind and the shifted property lines that did not match the Draper Canal Trail, staff added two conditions in addition to the standard two that pertain to meeting all City requirements and the expiration of the Conditional Use Permit ("CUP").

Mr. Taylor confirmed that the posts are currently eight feet. Planning Manager, Todd Draper addressed whether some of the posts would have to be adjusted or repositioned and stated that the aerial photograph and the data provided by the County do not line up well. Staff recommended that it be included and stated that the fence must be on the subject property and not on property owned by Draper City. It was confirmed that it is Draper City property to the fence line, which is on the property line. Brien Maxfield, Senior Engineering Manager, stated that to staff's knowledge what is proposed meets the clear view requirements. The concern was with providing a warning to motorists that there is a trailhead. He explained that part of the clear view calculation is the speed of traffic on the trail. Because people may be walking or biking, they are not traveling at high speeds so a long distance is not needed. However, the fence is on the property line rather than a setback from the trail. The road that crosses is the driveway of the last home so traffic was expected to be minimal.

Chair Adams pointed out that the street across the trail already has a fence that sticks out. He did not envision anything worse happening here. With regard to a sign, Mr. Draper was concerned with those who may not be aware of the situation. Ms. Jastremsky offered to coordinate with the Parks Department and recommended that signs be posted on the trail. It was clarified that the owner would be responsible for placing signage on the road and the City would be responsible for signage on the trail. In response to a question raised, Mr. Taylor confirmed that the fence was requested for privacy.

The applicant, Brian Newberry identified himself as the property owner. He explained that the main reason behind the CUP request was for privacy and security. The Newberrys built their home and moved in to the home in November. There is a significant grade difference between where the home sits, the trail, and the homes behind it to the east. Mr. Newberry estimated that there is a six-foot grade difference from their home to the trail. People who pass by have a six-foot advantage so the eight-foot fence will protect them from view. They also plan to build a pool next year and want to maintain their privacy and security. They were willing to post a sign on their side encouraging people to slow down.

Chair Adams opened the public hearing.

Russ Page was acquainted with the Newberrys and stated that he and his wife walk the trail often. He had no concerns with the proposed fence. He was pleased that the City has trails and open space.

He noted that the Newberrys have done a good job of taking care of the area. He noticed when walking that he could see into the Newberry's kitchen window. He expressed his support for the fence.

There were no further public comments. The public hearing was closed.

Motion: Commissioner Fowler moved to APPROVE the Conditional Use Permit as requested by Brian Newberry, Application No. 2024-0075-USE, subject to the following:

Conditions of Approval:

1. That all requirements of the Draper City Engineering, Building, and Planning Divisions are satisfied throughout the development of the fence, including permitting.
2. Unless there is substantial action under a conditional use permit within one year from the date of its issuance, said permit shall expire and shall have no further force or effect. A written request may be submitted to the Community Development Department prior to expiration of the Conditional Use Permit for an extension of up to six (6) months, subject to approval of the Planning Commission, provided substantial action is shown toward establishing the conditional use and the requirements for extension under Section 9-5-030 of this chapter are met.
3. That the fence may not encroach on Draper City property. Any fence or retaining walls constructed on Draper City property will need to be removed and reconstructed on the subject property.
4. The applicant shall install either regulatory or warning signage on the private street west of the trail for eastbound vehicular traffic. The signage installed must have the approval of the Public Works and Parks departments, as applicable, prior to installation.

Finding:

1. Reasonable mitigation measures are placed on the conditional use to alleviate anticipated detrimental effects.

Second: Commissioner Shah.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Nixon, Squire, Shah, Ogden, and Fowler voted "Yes." The motion passed unanimously.

- E. Public Hearing: Beauty White Teeth Whitening, LLC Home Occupation Conditional Use Permit Request

(Administrative Item)

On the Request of Luis Castillo and Zuleney Ramirez, representing Beauty White Teeth Whitening LLC, a Request for a Home Occupation Conditional Use Permit to Allow for a Home-Based Personal Care Service Business that Provides Teeth Whitening Services, on an approximately 0.09-acre property located at 13948 South Rockwell View Lane. Application: 2024-0037-USE. Staff Contact: Todd A. Draper, (801) 576-6335, todd.draper@draperutah.gov.

Planning Manager, Todd Draper presented the Staff Report and stated that the request is for a Home Occupation CUP for teeth whitening services. The property was identified on Vicinity and Aerial Maps displayed. The land use is High-Density Residential and the zoning is RM-2. The site plans provided by the applicant show the location of the subject property in relation to the neighbors and the park to the south. The lot is very narrow so there is no option to add additional parking but they are proposing that clients who come to the business park in the driveway and not on the private street. The applicants plan to have customers come to the home, which will create parking concerns. If they were to have a potential future non-resident employee, that would create further parking issues. The proposed mitigation is to have customers park in the driveway. They plan to only serve one customer at a time. An additional condition was added to limit the use to prohibit non-resident employees. A photo of the site was displayed. No public comment was received on the request. A condition was added to require a floor plan to be provided to identify the location of the business in the home.

The applicants, Luis Castillo and Zuleney Ramirez were present to answer questions. There were no additional questions from the commissioners.

Chair Adams opened the public hearing. There were no public comments. The public hearing was closed.

It was reported that the teeth whitening will take place in the basement and access is through a side entrance. Mr. Draper's understanding was that the business is to take place in a single room but the size was not yet known. The street is not wide and is the one entrance into the neighborhood. He did not expect the use to have any impact on the traffic. The driveway can accommodate two cars which should not be an issue if they are only serving one customer at a time.

Motion: Commissioner Nixon moved to APPROVE the Home Occupation Conditional Use Permit, as requested by Luis Castillo and Zuleney Ramirez, representing Beauty White Teeth Whitening, LLC for personal care service, Application 2024-0037-USE, subject to the following:

Conditions of Approval:

1. That all requirements of the Draper City Engineering, Public Works, Building, Planning, and Fire Divisions are satisfied prior to issuance of a Business License.
2. Clients coming to the home shall be limited to one at a time.
3. Clients shall park in the driveway and not on the private street.

4. **No non-resident employees be permitted as part of the business.**
5. **A dimensioned and scaled floor plan for all floors of the home shall be submitted to planning staff for verification of compliance that the business operations are limited to an area in the basement not exceeding 25% of the dwelling square footage prior to issuance of a Business License.**
6. **The business hours set by the owner may not extend past 8:00 p.m. or begin before 8:00 a.m., Monday through Saturday.**

Findings:

1. **The proposal complies with the standards for approval found in DCMC Section 9-5-080(E) and potential negative impacts are mitigated through the imposition of reasonable conditions.**

Second: Commissioner Shah.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Nixon, Squire, Shah, Ogden, and Fowler voted “Yes.” The motion passed unanimously.

2. **Planning Commissioner Training: Annually Required Land Use Liability, Open Meeting, and Ethics Training for Planning Commissioners.**
Training presented by City Attorney and City Staff.

City Attorney, Mike Barker, presented the Open Meetings Act, Ethics, and Land Use as well as legislative changes that went into effect during the last Legislative Session. The prior statute defined a “meeting” and included a list of things that do not constitute a meeting, which was confusing. He listened to the Floor Debate in the House and Senate and the changes were pushed by the County Commission form of government. With a three-member Commission, the Commissioners generally have administrative authority over individual County departments. In that case, if there are three individuals in the same room there was some question as to whether it constitutes a meeting. There was testimony about Commissioners driving from Garfield County in three different cars to the Capitol because two members could not be together in a vehicle. The Legislature has since simplified the definition of a meeting. A meeting involves a public body with a quorum present that is convened by someone with the authority to do so for the express purpose of acting as a public body to receive public comment about a relevant matter, deliberate about a relevant matter, or take action on a relevant matter. Portions of the Code previously addressed social gatherings and chance meetings that have since been eliminated.

Mr. Barker reported that they will typically publish a Notice of Quorum if they know the Planning Commission or City Council is going to be in one location. The intent is to alert the public. Ms. Jastremsky used the example of when the City holds Open Houses on the General Plan. Council Members often stop by to see what is being presented to the residents. In the past, staff had to make sure there were no more than two Council Members in the room at one time to avoid violating the

Act. With what is proposed, they would not be in violation because it is not a meeting and no action is to be taken.

Mr. Barker explained that if it is within the Commission's scope of authority, it is a relevant matter. Changes were made to the electronic meetings portion. Mr. Barker would work to update the rules as well as City Code. He stated that electronic meetings only took place during COVID and there has since been no reason for them. The previous verbiage required someone to be present at the anchor location. Now, the entire body can participate online in an electronic meeting. Mr. Barker explained that under certain circumstances, the City does not have to provide a public location. For example, during COVID notice was provided on the agenda indicating that the Chair determined it was a risk to gather. That is still allowed in the Code and is codified and clarified. In the future, if there is a situation where only two can be present but someone is able to participate remotely, they just need to be sure to follow State law.

Mr. Barker reported that there was a Legislative Audit regarding the San Juan County Commission. There were allegations that two of the commission members were meeting with outside counsel prior to meetings and conducting business before an official meeting. That is not allowed with the new changes. When the Commission gathers for its pre-meeting meal, they should not discuss any applications and it should serve only as a social gathering.

Mr. Barker next commented on the issue of awarding attorneys' fees to prevailing plaintiffs. He stated that if the City wins, they will not be reimbursed for attorneys' fees. If someone sues the City alleging a violation of the Open Meetings Act and they win, they may recover attorneys' fees and costs. He referenced the Ombudsman Statute where the original bill was to make attorneys' fees mandatory. Frequently, the Legislature gives plaintiffs against government action, the opportunity to recover costs if they are trying to enforce some kind of provision.

Commissioner Ogden stated that there is a definite conflict between the City when they decline an application or project. He commented that it was the result of good lobbying. Mr. Barker commented that if a member of the public claims that the Planning Commission somehow violated the Open and Public Meeting Act there is very little incentive to spend its own money to correct that in court. He considered it part of a larger trend to incentivize people to challenge governmental action and not have the risk or at least mitigate that risk. Mr. Barker commended the Commission for providing proper notice, following the agenda, and preparing accurate minutes.

Mr. Barker next addressed ethics changes that went into effect this year. He commented that some Commission Members, due to the nature of their employment, assist third parties in transactions involving the City. It is necessary to file a sworn statement with the Mayor. Annually, the City does the Conflict of Interest Disclosure but asked that Commissioners be aware that as their circumstances change the form should be updated.

Chair Adams commented that in his work in real estate, he realizes this would apply in the event of a transaction with the City. It was confirmed that working with the Planning and Zoning Department would also be considered a transaction with the City and should be disclosed. It was noted that this applies in the event a Commission Member receives compensation. Mr. Barker stated that some timing issues apply.

For someone with a City Business License, if a Commission Member's interest in the entity increases significantly, the Conflict of Interest Disclosure should be updated. The threshold value for initial disclosure also increased from \$2,500 to \$5,000. Mr. Barker suggested that the Commission consult with him when there is an issue and give him plenty of lead time. He reported that the State's Municipal Ethics Law does not require recusal but rather disclosure. The Code does not effectively address conflicts of interest. Chair Adams commented that ethics is not law but involves being forthright.

The Land Use Development Management Act ("LUDMA") HP-476 addresses the process to be followed when an application is received or when a subdivision is reviewed and approved. Applications must be accepted and processed as they come in. Ms. Jastremsky explained that on occasion applications are received that run concurrently. There are sometimes questions when a rezone is requested followed by a subdivision or site plan and both are applied for at the same time. In that case, they cannot proceed because without zoning the site plan or subdivision cannot be reviewed because it would involve review against the existing zoning. She stressed that if an application is submitted it needs to be processed.

With regard to Development Agreements, over the past few years, there have been bills that address them. Mr. Barker explained that the purposes of LUDMA are very broad. The Legislature has allowed the use of Development Agreements to address those broad purposes. He explained that Development Agreements are a tool to provide flexibility. Last year the Legislature added a provision that if in a Development Agreement, the developer is foregoing an established right, the City has to advise them of that right. Many city attorneys claimed that they were not their clients and refused to advise them on the law. As a result, some cities stopped allowing Development Agreements. He was concerned that many bills get rushed through the Legislature without being given much thought. Mr. Barker explained that Development Agreements may be required for certain things. For example, if a developer wants to change setback standards or for a zone change. They cannot, however, require a Development Agreement if the development complies with the Code.

Mr. Barker next addressed the recording of documents and explained that they cannot record certain documents. They cannot preemptively encumber property and impose development requirements that are not agreed upon. As part of the Water Wise Landscaping, the City can pass an ordinance that requires the seller of new construction to inform the first buyer of the City's landscaping standards. Mr. Draper stated that there is already something in the ordinance that would inform the first buyer of the Street Tree requirement. It was clarified that a property would not have to be brought up to Code by a second buyer. Ms. Jastremsky stated that the developer must inform the first buyer of the City's Water Wise Landscaping Ordinance to meet the standard. Whoever puts in the landscaping will have to follow the standards. This is one way to make sure that the homebuyer is aware of it. This would not apply to someone who purchases an established property that is already landscaped.

Ms. Jastremsky reported that the City has Water Wise Landscaping Standards and if someone were to redo their yard, they would have to comply with those standards. Ideally, they would contact the City to find out what regulations exist but there is no requirement that a homeowner notify subsequent homeowners of City Code.

Mr. Barker next addressed residential setbacks. Ms. Jastremsky explained how setbacks are measured and stated that if a deck or porch is attached to the home or is over three feet in height, it must comply with the minimum setbacks of the home. This Code section specifies that regardless of the rear setback, a home can have a walk-out landing of 32 square feet. This would allow someone to build a home directly up to the rear setback line and still have an exit landing for the back door. Mr. Barker noted that the landing or walkout porch must be uncovered in calculating that setback. Mr. Draper stated that this change may also allow someone to now add 32 feet to their existing deck.

Mr. Barker reported that last year subdivision reviews were modified and definitions were changed to clarify the gaps that remained in the Code from the previous year. There are three cycles for preliminary and final plat review. One of the questions was at what point do engineering drawings come into play and how many times can they be referred to. The change specifies that they can either require it to be submitted with the preliminary or final plat application, but not both.

Sidewalks and residential landscaping standards were next addressed. Ms. Jastremsky reported that State law changed and sidewalks can no longer be required to be put in prior to issuing a Building Permit. Currently, a developer has to install all public improvements, including sidewalks, prior to Building Permit issuance. The new Code allows the developer to post a bond for that section of sidewalk prior to issuance of the Building Permit. The sidewalk would need to be installed prior to occupancy of the home. Each section of sidewalk will go in as each home is built rather than the entire sidewalk network going in at once. Mr. Barker commented that that seems inefficient. Commissioner Shah commented that the advantage is that during the winter months, a developer can obtain a Certificate of Occupancy (“CO”) earlier. Mr. Barker pointed out that a developer must be given at least 18 months to get the sidewalks in before the City can pull the bond.

3. Adjournment.

Motion: Commissioner Shah moved to ADJOURN.

Vote: The motion passed with the unanimous consent of the Commission.

The meeting adjourned at 7:53 PM.