

Minutes of the Payson City Council Meeting held Wednesday, July 16, 2014 at 6:00 p.m.

ROLL CALL: Mayor Rick Moore; City Councilmembers: Kim Hancock, Mike Hardy, Scott Phillips, and Larry Skinner; City Attorney Mark Sorenson, and City Recorder Jeanette Wineteer. Councilmember JoLynn Ford and City Manager Dave Tuckett excused.

PRAYER & PLEDGE OF ALLEGIANCE

Prayer offered by Daniel Fordiani and Pledge of Allegiance led by Anthony Fordiani, both scouts in attendance.

CONSENT AGENDA

MOTION by Councilmember Hardy to approve the Consent Agenda consisting of: Approval of July 2, 2014 City Council Minutes; A Resolution approving Revolving Loan Funds for a Fire Engine, A Resolution approving Revolving Loan Funds for Golf Course Equipment, and a Resolution approving Revolving Loan Funds for a Front Load Garbage Truck. Motion seconded by Councilmember Phillips. Voting Aye: Councilmembers: Ford, Hancock, Hardy, Phillips, and Skinner. Motion carries.

PUBLIC FORUM

Rhett Huff is a resident and business owner at 153 S 900 E and he said that the storm drain is located in a terrible place for his business. Garbage collects in it and there is standing water so with the hot temperatures, it becomes pretty swampy. He asked if it could be cleaned once in a while.

COUNCIL & STAFF REPORTS

Public Works Director Travis Jockumsen said that there are some problems with equipment at the Sewer Treatment Plant and we are in violation right now. Superintendent Hiatt is working on getting the trickling filter repaired as soon as possible.

He also reported that we are using water from the lakes and will be pulling from Big East sooner than we ever have before. Unless we get cooler temperatures and rain, we will be out of water before the end of the year.

Councilmember Hardy reiterated to enforce the illegal watering. He wanted to make sure that Karl Teemant knows that he should raise the mower heights on Peteetneet and the City Center so the grass isn't cut so short. We went through this last year also.

Golf Pro Tracy Zobell said the parks and golf course mower blades are already raised. The Cemetery system is 99% in, and would like some direction on whether or not we have water to plant grass. Discussion was held regarding holding off planting until fall. Councilmember

Phillips asked what would be the last day to plant this fall and Mr. Zobell will get this information back to the Council at the next meeting.

Mr. Zobell said there were some problems with the Scottish Festival and it seems there is an attitude that they rented the park and can do whatever they want. There were a lot of dogs in the area and also some tents left that were burning the grass.

Mayor Moore felt we should put up larger signs because there are problems with dogs at the band concerts also. Councilmember Phillips felt that the Mayor could announce the rules at the Band Concerts, but felt the problem is with enforcement. We need to be consistent with enforcing everything.

Attorney Sorenson reported that Emergency Services (8 cities) in Utah County are in the process of a having a hearing with State Agency challenging Gold Cross and what they are licensed to do, and regarding transportation issues. We are trying to protect our jurisdiction.

He also said that the attorneys for the five cities that opted out of the Macquarie/UTOPIA ventures have met. UTOPIA/UIA will hold their first presentation on Monday and Manager Tuckett will attend that.

Vicious dogs were discussed along with State Code and our City leash laws.

Planner Spencer said that she, Debbie Bushnell (Public Works Secretary), and Mark Hyland (Parks Superintendent) have applied for a grant to finish Hollow Park.

Councilmember Hancock said he attended the UTOPIA Mayors Meetings and wanted to share some things:

- There was a consensus of the Mayors that going dark is not an option.
- Fiber Optic is the best infrastructure option available.
- It is essential to the Economic Development of all cities.
- There are no opt out cities, UTOPIA is UTOPIA and there are 11 members, however there are 6 cities that chose to explore Macquarie.

Councilmember Phillips reported that city crews patched 1400 S today. He also wanted to make sure all city employees know to conserve water.

Mayor Moore said that the Scottish Festival was well attended, but is worried about the grass we just planted and the dogs in the park.

SCOUT ATTENDANCE CERTIFICATES

Councilmember Phillips presented certificates to scouts in attendance: Daniel Fordiani and Anthony Fordiani.

PUBLIC HEARING – CONDITIONAL USE PERMIT

MOTION by Councilmember Hardy to open a public hearing regarding a request for approval of a Conditional Use Permit to allow a Cellular Tower in the A-5-H, Annexation Holding Zone. Motion seconded by Councilmember Hancock. Motion carries.

Public Hearing opened at 6:44 p.m.

Planner Spencer presented the following staff report:

The applicant is seeking approval from the City Council to construct and maintain an unmanned communications facility (cellular tower) consisting of antennas mounted to a new monopole and associated ground equipment located within an enclosed shelter. The facility is proposed on Utah County parcel #30-065-0011 located at 1655 West 1130 South. The parcel is owned by Joseph and Margie Bradbury and recently annexed into the municipal boundaries of Payson with a zoning designation of A-5-H, Annexation Holding Zone. The parcel consists of a single family dwelling, several accessory structures and agricultural uses, including a tree farm. There is also an existing wireless communication facility on the site that will be removed to accommodate the new facility.

As indicated in Appendix A of the Payson City Zoning Ordinance, cellular and low power towers are allowed in the A-5, Agriculture Zone provided the applicable requirements of Chapter 19.17 are satisfied. Section 19.17.5 of the Zoning Ordinance classifies monopole towers as a conditional use in the agricultural zones; therefore, approval of a Conditional Use Permit must be granted by the City Council to construct and operate the communication facility. As with any proposed conditional use, it is the applicant's responsibility to demonstrate to the City Council that any potential negative impacts of the proposed use will be mitigated. To that end, the City Council may impose reasonable conditions to ensure negative impacts are eliminated or mitigated to the extent possible.

In order to obtain a Conditional Use Permit, the applicant will need to appear before both the Planning Commission and the City Council to discuss the proposed Conditional Use Permit. The Planning Commission considered the request on June 11, 2014 and their recommendation is included in the recommendation portion of this staff report. A public hearing must be conducted before the City Council makes a final decision on the request. The public hearing has been properly noticed and courtesy notices have been provided to surrounding property owners that indicates the time and location of the City Council meeting.

Analysis

Uses designated as conditional uses require special consideration from the Planning Commission and City Council. These uses may or may not be appropriate in particular locations or without the applicant mitigating potential negative impacts. The Planning Commission and the City Council must evaluate the appropriateness of designated conditional uses on a case by case basis. The conditional use procedure allows the City Council to approve, deny, or conditionally approve any request for a Conditional Use Permit based on the criteria found in Chapter 19.13 of the Zoning Ordinance.

The Planning Commission and City Council will need to review the proposed conditional use considering the criteria and factors set forth in Chapter 19.13.6. The validity of the permit will be conditioned upon strict compliance with applicable City ordinances, the approved project plan, and any additional conditions or requirements imposed by the City Council. The City Council shall be the final authority for all applications for Conditional Use Permits. The following factors shall be weighed and considered when determining whether a Conditional Use Permit application should be approved, approved with conditions or denied:

1. Harmony of the request with the general objectives of the General Plan, Zoning Ordinance, Subdivision Ordinance, any other City ordinance and the particular zone in which the request is located.
2. Harmony of the request with existing uses in the neighborhood.
3. Development or lack of development adjacent to the site.
4. Whether or not the request may be injurious to potential development in the vicinity.
5. Present and future requirements for transportation, traffic, water, sewer, and other utilities.
6. Suitability of the specific property for the proposed use.
7. Number of other similar conditional uses in the area and the public need for the conditional use.
8. Economic impact on the neighborhood.
9. Aesthetic impact on the neighborhood.
10. Safeguards to prevent noxious or offensive omissions such as noise, glare, dust, pollutants and odor.
11. Attempts by the applicant to minimize other adverse effects on people and property in the area.
12. Impact of the proposed use on the health, safety and welfare of the City, the area, and persons owning or leasing property in the area.

The applicant has provided an Impact Statement and project drawings for review by staff, Planning Commission and City Council. The information is intended to address the requirements of the development ordinances, and specifically the criteria listed above. The City Council will need to determine if the information provided is sufficient to address any potential negative impacts on surrounding properties or the community.

Following review of the application for consistency with the development ordinances of Payson City and in consideration of the criteria and factors set forth in Chapter 19.13.6 and the requirements of Chapter 19.17, staff would suggest that the following conditions of approval be considered by the City Council.

1. A title report has been submitted for the project site which indicates several encumbrances (i.e. deeds, easements, tax considerations) for the property. All easements, right-of-ways and other dedications must be indicated on the site plan and any obligations satisfied. Furthermore, the property owner will need to work with Utah County to ensure that the greenbelt status of the property will not be altered with the installation of the facilities.
2. Section 19.17.4(4)(c) restricts the height of the tower to sixty (60) feet unless the tower is designed for co-location. The height of the new monopole structure is proposed to be one

hundred (100) feet, the maximum height allowed by ordinance. Moreover, the height increase would suggest that at least two (2) co-locations will be provided on the structure. The application does not indicate any immediate plans for co-location although the maximum height is requested. Staff understands it would be more cost effective to construct the one hundred (100) foot facility and accommodate co-location in the future, but there is no guarantee that co-location will occur in the future. Therefore, staff would suggest that either:

- a. The height of the tower be limited to sixty (60) feet until co-location is requested at which time the height of the tower could be increased in twenty (20) foot increments; or
 - b. A written agreement be created that ensures the allowance of future co-location at verified market current rates. This will allow Payson City to deny the construction of additional facilities if fair market rate facilities exist in a location that satisfies the applicable Federal Communication Commission regulations.
3. The applicant will need to provide a letter to Payson City indicating if technology renders the tower obsolete or the tower is vacated that the applicant will remove the tower and all associated equipment within ninety (90) days of the vacation of the tower. The owner of the parcel (Bradbury) must also agree to the conditions of approval and the removal of a vacated facility.
 4. The ground equipment must be enclosed by a sight obscuring fence. The plans indicate the installation of a chain link fence with barbed wire strands, but the fence is not sight obscuring. The Planning Commission recommended the installation of a masonry fence to screen the ground facilities from Interstate 15 and any future development on the property. The City Council will need to determine the appropriate screening materials for the project.
 5. The cell tower is proposed in an agricultural area adjacent to Interstate 15 and will be quite visible because the lack of buildings in the immediate vicinity. The applicant is proposing the installation of lo-gloss galvanized steel pole to take away the glare of the facility. The City Council may require the tower to be a specific color in an attempt to have the tower and ground facilities better blend into the background.
 6. The parcel was recently annexed into Payson and the new electrical service will be provided by Payson Power. The applicant will need to work with staff in the layout of electrical facilities to provide underground power to the site. The anticipated electrical load, including voltage and amperage levels, will need to be provided to the Payson Power Department so that appropriate sizing of electrical facilities will occur. Easements may be required for the placement of electrical facilities. Payment of all fees associated with labor and materials provided by Payson Power are the responsibility of the applicant and will need to be submitted prior to the issuance of a building permit to construct the facility.
 7. Although the existing Qwest tower was served by South Utah Valley Electric Service District (dba SESD), the new facility will be served by Payson Power. Therefore, any reference to SESD or Rocky Mountain Power will need to be removed from the application materials and project drawings.
 8. The Payson City Fire Chief is reviewing the information provided regarding battery back-up systems and any proposed chemical storage. If public safety access is required to the site, the access must be consistent with the regulations of the Payson Fire Department, including hard surface construction and turn around.
 9. The City Council may require additional conditions to ensure the proposed facility is properly secured, has adequate access, serves the intended purpose both geographically and technologically, and will not be detrimental to surrounding property owners.

10. Following approval of a Conditional Use Permit and satisfaction of any conditions of approval, the applicant will need to apply for and obtain a building permit from the Development Services Department. The building plans will be reviewed by the Building Inspector and the Fire Chief for compliance with the adopted building and fire codes. The applicant will need to coordinate with the appropriate officials to complete the proper inspections and submit payment for any required review fees.
11. A business license will need to be obtained for the operation of the cell tower. A business license application will need to be prepared and submitted to the Business License Specialist for review for compliance with the regulations of Title 4, Business License Ordinance.

These items represent the issues staff has identified following a review of the applicable ordinances and resolutions of Payson City and the Conditional Use Criteria established in Chapter 19.13 of the Zoning Ordinance. If the items above are satisfied, staff would suggest that the site will be improved in a manner consistent with the regulations of Payson City.

Recommendation

Staff would suggest that if the applicant can satisfy the proposed conditions of staff and any conditions deemed necessary by the City Council to mitigate any potential negative impacts on surrounding uses, the proposed cellular tower may be appropriate in the proposed location. On June 11, 2014, the Planning Commission reviewed the request and recommended the City Council approve the conditional use permit contingent upon the satisfaction of staff conditions, construction of a masonry fence, and any requirements of the fire chief regarding access to the site. The vote was not unanimous: four affirmative and one opposition.

The City Council will need to determine if the proposed conditional use is an appropriate use in this location and consistent with the development goals of the City. Following a public hearing, the City Council may:

1. Remand the proposed conditional use request back to staff or the Planning Commission for further review. This action should be taken if it is determined that there is not enough information provided by the applicant in order for the City Council to make a well-informed decision.
2. Approve the conditional use request as proposed. If the City Council chooses to approve the conditional use as proposed staff would suggest that an opportunity to require the applicant to satisfy the requirements of the development ordinances of Payson City and mitigate any potential negative impacts will be missed.
3. Approve the conditional use request with the conditions proposed by staff or more or fewer conditions. Staff would suggest that if with satisfaction of appropriate conditions, the requirements of the development ordinances of Payson City can be satisfied and the proposed use may be acceptable in the proposed location.
4. Deny the proposed conditional use request. This action should be taken if the City Council determines the adverse impacts of the proposed conditional use cannot be mitigated by the applicant.

Discussion was held regarding co-locating of towers.

Dakota Hawks, Verizon Wireless introduced himself and reiterated that they have Master License Agreements with other carriers and co-location is almost automatic. The co-locator would have to talk with the landowner and it is most likely that they would agree because the rent they receive would be increased.

Receiving no further input MOTION by Councilmember Phillips to close the public hearing. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing closed at 7:00 p.m.

MOTION by Councilmember Hancock to approve the Conditional Use Permit to allow a Cellular Tower in the A-5-H, Annexation Holding Zone with the 100 ft. tower, including all staff conditions and a masonry site obscuring fence, finding that the request will improve services within the city and such facilities are already located on that property and wouldn't create much greater impact. Motion seconded by Councilmember Hardy. Voting aye: Councilmembers: Hancock, Hardy, and Skinner. Voting nay: Councilmember Phillips. Motion carries.

PUBLIC HEARING – TITLE 19 AND 20 ORDINANCE AMENDMENTS

MOTION by Councilmember Skinner to open a public hearing regarding Ordinance Amendments for Title 19 and 20. Motion seconded by Councilmember Phillips. Motion carries.

Public hearing opened at 7:07 p.m.

Planner Spencer presented the following staff report:

On occasion, changes in development practices, new land use goals of the City Council, or other appropriate circumstances result in the need to update or revise the development ordinances of the City. Staff generally compiles several potential amendments until a pressing issue arises at which time the proposed amendments are prepared for review by the Planning Commission and City Council. In this instance, the proposed ordinance amendments include suggestions by members of the City Council and staff to clarify various requirements of the land use ordinances. The public hearing notice included a request to amend Title 19, Zoning Ordinance and Title 20, Subdivision Ordinance; however, the amendments included in this packet are limited to the Zoning Ordinance.

Any modification of the land use ordinances requires a recommendation of the Planning Commission, following a public hearing, and approval by the City Council, again following a public hearing. Prior to forwarding a recommendation to the City Council, the Planning Commission held a public hearing to receive input from the public in relation to the proposed amendments. Their recommendation is included in the analysis portion of this staff report. Because an amendment to Title 19, Zoning Ordinance could affect many parcels throughout the community, mailing notice to all property owners that may be impacted by the amendment is impractical. However, in accordance with State statute, notice of the public hearing has been

posted in appropriate locations and the public hearing was advertised in the newspaper for a minimum of fourteen (14) days.

Analysis

The authority for municipalities to adopt ordinances to guide development can be found in §10-9a Utah Code Annotated. Development ordinances are also influenced by federal laws and case law. It is the role of staff to ensure that any proposed amendments are consistent with the provisions of state and federal statute and all levels of case law. That said, despite the many laws and provisions that guide the creation of development ordinances, the City Council is granted a great deal of deference to enact development regulations tailored specifically for our community. The following list of ordinance amendments is proposed for consideration by the City Council.

Title 19, Zoning Ordinance

1. Section 19.2.4, Page 4 – Proposed amendments to the organization of the Planning Commission that would facilitate the appointment of an alternate member and modifications to the appointment of the Chair and Vice Chair.

Planning Commission Action – Recommended denial of the proposed amendment related to an alternate member.

2. Section 19.3.1, Page 8 – Proposed amendment to the distance requirements for installation of curb, gutter, and sidewalk for construction projects.

Planning Commission Action – Recommended approval, as amended to change distance from 1000 feet to 300 feet and include general coordinates of the townsite survey boundaries.

3. Section 19.6.11.5, Page 48 – Proposed amendment to the RMO-A, Accessory Living Unit Overlay Zone to specify that any modification to an existing structure must be consistent with the adopted building and fire codes.

Planning Commission Action – Recommended approval as proposed.

4. Section 19.9.13, Page 152 – Proposed amendment to the fencing requirements for placement of fences around electric meters and utility boxes.

Planning Commission Action – Recommended approval contingent upon review and approval by Payson Power.

5. Section 19.13.5, Page 166 – Proposed amendment to the courtesy notice requirements utility transmission facilities.

Planning Commission Action – Recommended approval, as amended to require a total distance requirement of 600 feet (300 feet on either side of the utility line).

Title 20, Subdivision Ordinance

Staff is not proposing any changes to Title 20, Subdivision Ordinance at this time.

Recommendation

The City Council, following a public hearing to receive public input, will need to determine if the proposed amendments are consistent with the land use goals and objectives of Payson City. The City Council will need to approve, amend and approve, or deny the proposed amendments to the development ordinances of the Payson City Municipal Code.

Amendments to the development ordinances are legislative matters and the City Council is not obligated to approve any amendment. Any decision of the City Council should include findings that indicate reasonable conclusions for the decision. If the City Council chooses to amend the development ordinances, the amendment shall be completed by ordinance.

Councilmember Skinner wondered why there was a proposed change for the alternate member of Planning Commission and Planner Spencer explained that during the interview process it was mentioned that an alternate might be beneficial.

Receiving no public input MOTION by Councilmember Hancock to close the public hearing. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing closed at 7:15 p.m.

MOTION by Councilmember Skinner to approve the ordinance amendments as recommended by the Planning Commission and denying the alternate member. Motion seconded by Councilmember Hancock. Motion carries.

ADJOURN TO CLOSED SESSION

MOTION by Councilmember Skinner to adjourn to closed session to discuss the character and professional conduct of an individual. Motion seconded by Councilmember Hancock. Motion carries.

Council adjourned to closed session at 7:16 p.m.

RECONVENE

Council reconvened at 7:55 p.m.

ADJOURNMENT

MOTION by Councilmember Hardy adjourn. Motion seconded by Councilmember Hancock. Motion carries.

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Council adjourned at 8:00 p.m.