

Minutes of the Regular Meeting of the Ogden City Board of Zoning Adjustment held on Wednesday, August 28, 2024, at 4:30pm, in the Council Chambers and via electronic means on the third floor of the Municipal Building, 2549 Washington Boulevard, Ogden City, Weber County, Utah.

Members Present: Charles Casperson, Chair
Dr. Judy Elsley
Lance Evans

Members Excused: Stephanie Nix
Scott Larsen

Staff Present: Joseph Simpson, Deputy Planning Manager
Damian Rodriguez, Planner
Kathy Barron, Administrative Assistant I
Katie Ellis, Assistant City Attorney

Others Present: Craig Jensen
Carson Fuller
Aaron Robertson
Selvoy Fuller
Jason Boal

Approval of the Minutes, of the regular meeting held May 22, 2024

These are in process and not yet ready.

Case #2024-5: Appeal of the Planning Commission's interpretation of the zoning ordinances as unambiguously requiring the completion of commercial components of mixed-use group dwelling or a multiple family dwelling on a lot 4 acres or larger in a CP-2 zone prior to occupancy of any buildings.

Craig Jensen, with the law firm of Snellen Wilmer representing the applicant/developer Heritage Land Holdings. His client is the horizontal developer and their project has been approved for a single phase, conditional use permit and a recorded plat for one commercial building approximately 7200 sq ft, one mixed use building approximately 1900 sq ft and 68 residential units. We received direction that certificates of occupancy would not be issued to the residences without completion of those commercial components of the project. The Planning Commission, in June, issued a formal finding that as you read the zoning ordinance unambiguously requires completion of the commercial component of a mixed use group dwelling or a multiple family dwelling on a lot four acres or larger in the CP-2 zone prior to occupancy of any buildings. We're here to appeal that decision today. He continued with their interpretation and arguments for their client.

Discussion continued regarding financial constraints, the time limit and the 25% requirement.

Mr. Fuller-We designed and are putting a nice commercial building there. We are not trying to disregard the requirements that we have agreed to, it's all about timing.

Mr. Boal-I'm an urban planner who works for Snellen and Wilmer. The plat, the project, the CUP was approved 4 years ago. He continued to talk about the development finances, constraints developers face, incentives for communities and developers, residential and commercial development,

having different lenders. The lots have been plotted to sell to separate individuals, so they are handled separately.

Board Member Elsley-Not all lenders have programs for both residential and commercial loans but I don't know if you're making a general case, or if you're saying that's the case in this situation.

Mr. Boal-Where these parcels have been plotted, we have the ability to sell to separate individuals so they are handled separately. The developer doesn't want to own property it's not going to build on and the city doesn't want property that's not going to be built on. Craig outlined the legal aspect and the interpretation of the code, we feel strongly the code to read with plain language, that 25% is required.

Mr. Bradshaw-I'm the attorney with the law firm Manning, Curtis Bradshaw and Bednar. We are outside council for the City Council and the City of Ogden. I'm going to turn the time over to Mr. Simpson and then come back up to fill anything that needs to be filled.

Mr. Simpson presented an overview of the property as described in the staff report. The petitioner is appealing the Planning Commission's interpretation of the zoning ordinance and is requesting the interpretation be overturned to allow the occupation of residential units in a commercially zone, mixed-use group dwelling project prior to completing the commercial component of the project.

Staff recommends the Board determine the Planning Commission did not err, deny the appeal, and affirm the Planning Commission's interpretation of the zoning code as unambiguously requiring the completion of the commercial component of a mixed-use group dwelling or a multiple family dwelling on a lot four acres or larger in a CP-2 zoned prior to the occupancy of any buildings.

Board Member Elsley-Why do you require 25%?

Mr. Simpson-Because it's a commercial zone and the intent is to preserve non residential uses in our commercial zones. He went on to discuss the protections in place in our code, lot size, the 25% and the language.

Board Member Elsley -The applicant has pointed out; it doesn't say anything about timing. Why can't they develop their 25% of commercial property at the same time as residential?

Mr. Simpson-Our code treats commercial development and residential development as one development, a mixed use group dwelling is that development. He read 1510 from the group dwelling code and the chapter which discusses the conditions and stipulations.

Board Member Elsley -It doesn't say anything about timing.

Mr. Simpson-They have to build one then the other. There are multiple stages to a development; zoning, subdivision, ownership site plan reviews, building permit reviews, construction, inspections, then once all has been approved, certificates of occupancy. He further explained about the processes and steps for approval. He then read from Title 15, Chapter 13.

Board Member Elsley-The applicant put a big emphasis on time. You're not putting a big emphasis on time but on completion. They can do whatever they like but you will not give them the right to occupy those buildings until 25% of the commercial is completed.

Mr. Simpson- We encouraged the appellants to do a phasing plan where the whole development is broken up into manageable, bite sized chunks. Each phase needs to be compliant with our code. He discussed the parallels with another project he's working on as well. Then went back to the 25% and NAS.

Mr. Bradshaw-You are here to determine whether the Planning Commission's interpretation of the ordinances presented to you tonight are correct. Further explanation of the commercial component,

the zoning, ordinances, 25% and the certificates of occupancy. He also discussed section 1510.8 from the code.

Board Member Elsley- Why doesn't phasing work for you?

Mr. Jensen-I'm not going to say it doesn't work, it's not a requirement under the zoning ordinance itself.

Board Member Elsley-It's an option for dealing with this situation.

Mr. Jensen-It may be but it causes a lot more problems than solutions. He gave a hypothetical example regarding phasing, development and the 25%. He further discussed the definition of terms, timing and the code section 15-8. He also described what the 1510-8 described. And then went back to 1510-8, then 1510-15, -13 and -23. I didn't address your question about phasing.

Dr. Elsley-Why not do it by phasing?

Mr. Jensen-I'm not saying that we're not, however, my perspective is it's not required, it comes down to timing. Further discussion on the ordinance and the language then the constraints to develop and build.

Board Member Evans-Do you know what developing a property means?

Mr. Jensen-It is undefined in the Ogden city code. He went on to read from the Utah State Land Use Management guide in section 103 and discuss it.

Board Member Evans-Does Heritage or the code talk about your client using phasing in any other project?

Mr. Fuller-The short answer is yes; we have lots of projects that have different phasing components. We are horizontal developers and don't build anything vertical when developing projects. We develop roads, sewer systems, water systems, and that's what we are in the process of doing here. We don't swing hammers or lay bricks and so as our Attorney Craig has relayed, when we look at develop as an undefined term, we're in the process of developing the commercial. We've laid the water lines and are getting ready to put down the curb. We're doing the things that would be required in preparation for somebody else to build vertically and in our plan, in how we conduct business, the term developed to subdivision is a regionally clear interpretation of what that looks like and it does not include building a vertical building of any kind, residential or commercial because I'm selling off a lot to somebody else to do that component. He continued to talk about vertical building, financing, and the city's requirements.

Board Member Elsley-Is the language unclear enough this should go back to the city for clarification and that we're actually bound even making a decision on this one?

Ms. Ellis, Attorney-Your job and what the code gives you authority is to look at the evidence both sides have presented and to decide if it met their burden to prove the planning commission made a wrong decision interpreting whether 25% commercial has to be developed concurrently with 75% residential.

Board Member Elsley -You want 25% of the commercial building developed before you can sell off the residential housing until you can occupy it. If we could all agree that language inevitably open to interpretation and we're going with intention, I'm going to say on the city side.

Chair Casperson-I see where you're coming from and would like to hear your rebuttal to Craig's, or either one.

Mr. Simpson-clarified the language for group dwelling, vertical, horizontal and requirements for building. The conditional use permit had building elevations in it and has added some complexity because the potential buyer of just the residential portion, the Planning Commission making amendments, which is what happens when an entitlement company comes in and does a development, they'll sell and the person either really has to love what their design is, or they're going to have to amend

it and change it. We're working with that right now and have gone through those processes. That was part of the conditional use permit amendment and there may be multiple amendments especially for doing phasing, and they sell phases off to different developers.

Board Member Evans-Yes, and then what was presented to the property rights ombudsman.

Mr. Simpson-I was in attendance there, it was a request. The appeals Ombudsman office is a service offered by the state and has a panel that looks at codes. What they had was not an advisory opinion but was more a discussion.

Board Member Evans-Did they look at everything we are looking at?

Mr. Simpson-They did look at everything.

Board Member Evans-My question would be to Heritage. You can't go further until you build vertically.

Mr. Fuller-I wouldn't say we're at a dead end and have no way forward but the clear way forward, and everything we planned on and the millions we've spent up to this point, is at a complete stop and we have to go back to the drawing board to figure something else out. He spoke further about possibly selling a property partially developed to figure out how to build the commercial. They want to sell some projects and build the new office building which we can't do at this point.

Board Member Elsley-I'm not quite sure how to proceed. Did you feel the Planning Commission erred? I think the language is clear as it can be or it may need some changes but the intent is very clear. It doesn't look like the petitioners made a mistake.

Board Member Evans-I am a little uncomfortable with saying the intent is clear. What's the code requirement? I'm looking for a different section of the code, does it require development of the entire thing residential for slightly different reasons. To apply that we don't know what development means, or phasing, well, it's a common development activity. What do you think Charlie?

Chair Casperson-I don't think time is there but I would assume development is finished and I agree with both of you. Anyone want to make a recommendation?

Board Member Evans-It's correctly applying the laws written and they did not violate due process, or they held the hearing.

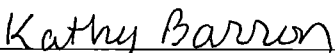
Chair Casperson-That's due process to me and I would move to concur with the Planning Commission's interpretation for the second.

Board Member Elsley-I agree with you but it's a really difficult situation.

A MOTION WAS MADE BY MR. EVANS THAT THE PLANNING COMMISSION DID INTERPRET CODE CORRECTLY WHEN THEY STATED THE COMMERCIAL AND RESIDENTIAL HAD TO BE DONE TOGETHER PER THE CODE REQUIREMENTS. MOTION WAS SECONDED BY DR. ELSLEY AND PASSED UNANIMOUSLY, WITH ALL VOTING AYE

New Business

As there was no additional business before the Board, **DR. ELSLEY MOVED THE MEETING ADJOURN AT 6:10PM. MOTION WAS SECONDED BY MR. LARSEN, ALL VOTED AYE.**



KATHY BARRON
ADMINISTRATIVE ASSISTANT I

APPROVED: September 25, 2024

This document in conjunction with the digital recording and information packet constitute the official minutes of the Ogden City Board of Zoning Adjustments.