

Plain City Commission
Minutes of Meeting
October 26, 2023

Plain City Planning Commission met in a regular meeting at City Hall on Thursday October 26, 2023, also accessible via ZOOM beginning at 7:00p.m.

Present: Chairman Faulkner
Commissioner Maw
Arrived 7:21pm Commissioner Ortega
Commissioner Neil
Commissioner Jenkins
Excused Commissioner Skeen

Staff: Tammy Folkman, Dan Schuler-Zoom

Attendees: Cody Rhees, Rick Scadden, Katie Barnett, Jon Barnett, Leslie Clifton,
Jim East, Kylie Shephard, Jeff Hales, Matt Dixon, Branden Richards,
Mike Hansen

Zoom Attendees: Barry Glittleman

Welcome: Chairman Faulkner

Pledge of Allegiance: Chairman Faulkner

Moment of Silence/Invocation: Commissioner Jenkins

1. Roll Call: Chairman Faulkner directed roll call. Commissioners Maw, Ortega, Jenkins, Neil are all present. Commissioner Skeen is excused, Commissioner Ortega arrived at 7:21pm.
2. Opening Statement: Chairman Faulkner
3. Ex Parte: none at this time
4. Public Comments: None at this time
5. Approval of Meeting Minutes for October 12, 2023
Commissioner Jenkins motioned to approve meeting minutes for October 12, 2023 Commissioner Maw seconded the motion. Commissioners Jenkins, Maw, Neil and Chairman Faulkner voted aye. The motion carried.
6. Technical Review Report: None at this time
7. Legislative Items:
Discussion: Conditional Use Permit for Brynlee Acres approx. 3459 W North Plain City Road- Rick Scadden
Rick Scadden is here requesting a conditional use permit for an adult community. They have partnered with Hamlet Homes he said they have a lot of experience in this type of project. He believes the product they have will be the least impactful on the city, it will be landscaped and have a management team to keep up with the landscaping. It won't put pressure on our schools and less traffic pressure. They have put in 23% open space with amenities. Commissioner Neil mentioned that at technical review they came in with 32 homes and now it is up to 41. Mr. Scadden indicated that at technical review it was 38 homes. He is aware that it has to be done

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in phases of 30 homes. He indicated that they are trying to buy the property next to Brynlee Acres. Commissioners were wondering what lots would be excluded from the first phase. Mr. Scadden said they have not got that far and he was hoping to talk with the city about this. There was some discussion about a park, commissioner Maw was wondering if this would be a community park or just for the residents who lived there. Mr. Scadden indicated at past technical review meetings the city mentioned they did not want another park, so he is thinking it will be private. If the city welcomed it, he will put in a pickle ball court. Commissioner Maw asked at what stage would this park be put in. Mr. Scadden said they would want it in the first phase. Commissioner Jenkins was wondering what the average lot size would be? Mr. Scadden said 52x102. Commissioner Jenkins mentioned a parking lot and he was wondering how many spaces they would have. Mr. Scadden said at one time it was 16 spaces. Chairman Faulkner wanted to clarify who owned the parcel on each side of the park, she thought it was owned by someone else. Mr. Scadden said it was owned by someone else and that there is a home on the property now. Mr. Scadden is asking the commissioners what they would like to see from him. Chairman Faulkner indicated phase one with a minimum of 30 lots.

Motion: Set Public Hearing for December 14, 2023 Brynlee Acres approx. 3459 W North Plain City Road-Rick Scadden

Commissioner Jenkins motioned to set a public hearing on December 14, 2023 for Conditional use Permit for a Senior Overlay for Brynlee Acres approx. 3459 W North Plain City Road. Commissioner Neil seconded the motion. Commissioners Maw, Jenkins, Neil and Chairman Faulkner voted aye. The motion carried.

Discussion/Motion: Zoning Ordinance regarding Site Development Standards

Chairman Faulkner mentioned that the city council past the accessory dwelling unit ordinance, one of the changes was for it to match the accessory building ordinance. The change to be taken out is 2-(b). *Accessory Dwelling Unit Detached units shall have a minimum separation from the primary dwelling of fourteen (14) feet. Rear and side setbacks are five (5) feet, and corner lot side setbacks are thirty (30) feet.* Commissioner Maw was wondering what changes the city council wanted to be done on the drawings. Chairman Faulkner mentioned changing (14) feet to (10) feet on the drawings.

Commissioner Maw motioned to recommend to City Council to approve the Zoning Ordinance regarding Site Development Standards with revisions as discussed. Commissioner Jenkins seconded the motion. Commissioners Maw, Jenkins, Ortega, Neil and Chairman Faulkner voted aye. The motion carried.

Discussion: Commercial Zone Ordinance

Commissioner Jenkins explained what happened at city council. He said Branded Beauties came to city council to get their business license, city council only approved it conditionally but rejected the tattoo and piercing portion. City Council didn't feel piercing and tattooing were on our commercial zone ordinance. They would like planning to look at tattooing, piercing and body art as three separate things. Commissioner Jenkins also mentioned that there would be teaching for the tattooing, it did get approved to be done on a nonliving canvas. Chairman Faulkner asked Katie from branded beauties what she will be teaching. Katie said it will be tattoos, nails and microblading. Chairman Faulkner talked about the information Tammy sent out about what other cities are doing with tattooing, she mentioned that in some of the cities it was permitted and some it was not permitted. She mentioned the one from Tremonton is tattoo/body art together. Commissioner Neil would like to have more time to review what the conditions are on the Tremonton ordinance. Chairman Faulkner and Commissioner Jenkins agreed to put it on as a conditional use for now. Commissioner Neil would like to review the conditions first so everything can be done at the same time. Mr. Rhees asked to speak, he

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appreciates what the commissioners are doing, he said Katie is in his building. He said she is renting a professional office inside a professional building and the professional office is already permitted and she holds a professional license from Utah State right now, she is not working without a license. He is wondering if planning can give her a temporary license until we get the ordinance fixed. He feels she is working in the bounds of the state and in his opinion in the bounds of the ordinance we already have. Chairman Faulkner indicated that planning commission is not the body that can approve business licenses and city council has already given us direction on what they want to have happen. She doesn't think we can over ride that and give a temporary license. Commissioner Jenkins feels if we hold off on this it will be a pretty big delay and push it into January 2024. Chairman Faulkner would like to just schedule the public hearing, she said it doesn't hold us to anything we can still make changes and look at the conditional uses and it won't slow down the process. Commissioner Jenkins asked if we were going to address tattooing, body art and piercings as three separate additions as well as teaching. He is wondering how we define teaching. He mentioned the city council was comfortable with teaching, but not on a living canvas. Chairman Faulkner suggested we have tattoo and body art together and piercing could be a separate one and teaching could be another one. This will be in C-2, C-3 zones. Commissioner Neil was wondering what the difference is between tattooing and body art. Katie said body art is using one needle and microblading you don't use a needle you use a very small blade. She feels it could technically be under the same thing. Katie does not think there is a clear difference between tattooing and body art. Commissioners agreed to put body art and include tattooing with the body art. Katie mentioned that the health department has it listed as a body art facility.

Motion: Set Public Hearing for December 14, 2023 for Commercial Zone Ordinance

Commissioner Jenkins motioned to set a public hearing on December 14, 2023 to add to the Commercial Zone Ordinance body art, including teaching and piercing, including teaching. Commissioner Maw seconded the motion. Commissioners Maw, Ortega, Jenkins, Neil and Chairman Faulkner voted aye. The motion carried.

8. Administrative Items:

Discussion/Motion: Lot Line Adjustment at 4702 W 2200 N Overland Homes - Jeff Hales

Jeff Hales mentioned this is the lot line adjustment that takes in lot 1 in BB's Place. The lot that is outside the subdivision turns it 18 feet. He mentioned that the engineer's comments have all been addressed. Mr. Hales mentioned that the amendment to the subdivision was approved at city council last week.

Commissioner Jenkins motioned to approve the Lot Line Adjustment at 4702 W 2200 N. Commissioner Neil seconded the motion. Commissioners Maw, Ortega, Jenkins, Neil and Chairman Faulkner voted aye. The motion carried.

Discussion/Motion: Site Plan for Town Center Business Plaza 2392 N 4350 W -Cody Rhees

Commissioner Jenkins asked Mr. Rhees how many parking spots he would have. Mr. Rhees said he has 17 spots in front of his building that he owns. He said in our ordinance it says parking may be located no farther than (500) feet therefrom. He indicated that he drew a diagram of all the parking spots, on the north side of Royles there are 5 and on the north side of the ball diamond there are 38, west side of the restrooms there are 4 and 11 on 4425 and 5 on the northwest corner of the church parking lot and 25 on south side of park and an additional 15 in front of the church. There are 116 parking spots that fit inside this limit. Commissioner Maw mentioned that the parking stalls in front of the church are church property. Mr. Rhees indicated that the church owns all of the parking stalls in front of their building as well as the ones across the street at the park. He said it

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is in the public right of way. Commissioner Jenkins is wondering if the whole building will be used for dental. Mr. Rhees said he believed the dentist will finish off 60% of the building for now. Chairman Faulkner indicated to Mr. Rhees that when the dentist adds to his building, he will need to come in for a site plan. Commissioner Maw wanted to know what the connector would be. Mr. Rhees said it would be same materials footing, foundation, concrete and wood at the top. Commissioner Maw asked if it would be a brick veneer. Mr. Rhees said it will match the other brick on the front of the building. He also indicated that he has turned in his engineered drawings to the city for review. Chairman Faulkner mentioned the engineer's comment about separate water meters, she is wondering if Mr. Rhees is going to abandon one of the meters. Mr. Rhees said there are only two water meters for the whole site, he did say they won't abandon any water meters they will make sure that the line going into the dentist office will be exposed.

Commissioner Ortega motioned to approve the Site Plan for Town Center Business Plaza 2392 N 4350 W. Commissioner Jenkins seconded the motion. Commissioners Maw, Ortega, Jenkins, Neil and Chairman Faulkner voted aye. The motion carried.

Discussion/Motion: Site Plan for Massage Therapy 2396 N 4350 W -Kylie Shepherd

Commissioner Maw asked if Kylie was just using one of the offices in the building and how many people would be using that office. Kylie said she was only using one office and that it would be her and a client. Commissioner Jenkins wanted to know if she was going to have signage. Kylie said maybe some vinyl on the door. Commissioner Ortega was wondering if she shared an entrance with someone else. Kylie indicated that she did share the entrance.

Commissioner Jenkins motioned to approve the Site Plan for Massage Therapy 2396 N 4350 W- Kylie Shepherd. Commissioner Maw seconded the motion. Commissioners Maw, Ortega, Jenkins, Neil and Chairman Faulkner voted aye. The motion carried.

Discussion: Land Use Ordinance Changes -Legal

Chairman Faulkner mentioned that we are going to discuss the land use ordinance. She has invited legal here tonight as well as Matt Dixon from South Ogden City. She indicated that Utah State legislature has passed a law that planning commissions are the Utah Land Use authority for subdivisions. Mr. Dixon mentioned the intent of the legislation was to help stream line the cities processes so that applications for building and development have some form of constancy and predictability. This is from senate bill 174, there were amendments to title 10 and title 17 dealing with counties and cities dealing with the subdivision process. He mentioned that there can be challenges in land use decisions in local governments where you have a group of elected officials the legislative body the mayor and the council who serve as the legislative branch of the government. They make legislative decisions all the time, an example would be adopting the general plan, looking at rezone applications, these are legislative in nature and as a result it is the council's authority to make those decisions for the community, and part of the legislative process you want all of the public input that you can get. One way is through public hearings on the general plan. There are also administrative decisions like approving a subdivision, issuing permits as well as site plan approval. Administrative decisions are applying the legislative ordinances to an application. It gets cloudy and messy when the legislative decisions are handled by the same legislative body. He mentioned that it is really hard for the general public to come to a meeting and one agenda item can be legislative and you are invited to stand up and say why a rezone can be a good idea or a bad idea. Then the very next agenda item could be the approval of a subdivision plan which is administrative. He said it is really hard to educate the public on why you want their input on the rezone. You should not accept public input or clammer to an administrative decision. If an applicant can come in and demonstrate that they

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have met the ordinances and the code, there should be no discretion. An example (you shouldn't listen to me as a member of the public to come in and say I don't care if this application meets the code, it is a bad subdivision). This is often times the challenge between legislative and administrative decision making at the local government level, that unfortunately results in a lot of stress and confusion and litigation. Because if you deny an administrative decision on public clammer that meets your code, that puts you and the city in a very bad place. When you have a room full of people who are your neighbors who don't want the subdivision but the applicant has met all the code requirements, unfortunately at times the local government will go with the neighbors and allow the public clammer to influence an administrative decision. Mr. Dixon is hoping this will help set the stage for some of the reasons why this legislation has come about. The legislation will only impact subdivisions for single family, two family or town home developments. It does not include commercial. The code defines administrative land use authority as a individual board, commission appointed or employed by the municipality including municipal staff or municipal planning commission. The city has a lot of discretion to decide who will be our land use authority to approve a subdivision. This is what has been asked by the state legislature to be in place by February 1, 2024. He also said it clearly defines that a land use authority is not the legislative body. He suggested we have a conversation with the elected officials to say why don't we go through our entire land use ordinance and separate legislative completely from the administrative decision making, he feels it is the best practice. Chairman Faulkner mentioned that it makes so much sense, the city council becomes the one that has more say in the ordinance making. If it is so important to them how a subdivision comes together, they need to make the ordinance how they want subdivisions to happen. Mr. Dixon mentioned if the community is unhappy with the way a certain subdivision looks or they have a problem with setbacks or certain landscape requirements. The time and the way to remedy that is not to come to a subdivision approval and complain. It is to get the ordinance changed or updated at the council level. The rules should change for everybody not on a case-by-case bases. Legal mentioned that it takes the pressure off city council. Chairman Faulkner said the planning commission already knows they need to follow the rules the council and mayor are elected officials and they should listen to the public and make changes as needed. Mr. Dixon mentioned the state code has consolidated it down to where the subdivision process is you have a preliminary and a final. The applicant may request a pre-concept plan, we can't require it. He said we can't require a pre-concept plan if they have filled out the complete application you are vested and you move forward. There is a time frame of 15 business days for the preliminary that will need to be followed. Commissioner Neil mentioned that we give our engineer 30 days, we may need to revisit this. The applicant also has a time frame, once you give them the feedback, they have 15 to 20 days. If they go past that then our time also gets extended out. There are 4 cycles that's all you get, you either approve the application or you deny it. Legal feels sometimes cities get a bad rap from the development community complaining that it is always the city finding one more thing. He said there is a flip side developers show up and the city finds a valid issue of concern and will not allow that to be approved and they ask to be tabled to fix the issue or will you give me a contingent approval. He thinks on the city side it is an opportunity for the city to say at the very start to say here is your application and here is what you have to have, either it is all there or its not. You get your 4 cycles and that's it. Mr. Dixon said the code does allow the city hold a public hearing at the preliminary plat phase. Commissioner Maw asked if that was determined by the city. Mr. Dixon said it would be a policy decision. He said the state said there may be some value in doing this, he did say it could be a challenge to limit comments to things that are specific to the city code. Legal said a lot of times public comments are about the roads, Chairman Faulkner said also water. Mr. Dixon said the second phase is the final subdivision plat. The state code says that it may not require the planning commission or city council approval, so the council can designate by code that you are the land use authority to approve preliminary subdivisions, but how he interprets the state code you can't be the land use

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authority who approves final subdivisions. Chairman Faulkner asked the questions of who do you give that to if it can't be a legislative body. Land use authority as defined by the statute is an individual a board or commission appointed or employed by the municipality including municipal staff or municipal planning commission but for final subdivisions it says no it can not be the planning commission or the city council. Chairman Faulkner asked who does that for South Ogden. Mr. Dixon replied it is staff. In some communities he said they have staff approve site plans and subdivisions because once it gets to final it is simply applying the code. Commissioner Jenkins was wondering about going forward, do we always say yes or no to a public hearing or do we still have discretion based on the unique situation. Mr. Dixon said our code should spell out if we will allow a public hearing. Legal agrees that it should be consistent. Mr. Dixon said if we do allow a public hearing it should be with some real specific language to protect the city. He said to be specific when letting the public know what the public hearing is about so there is no clammer. Commissioner Ortega mentioned that the only thing he is listening for in a public hearing is if the public comes up with something that informs the commissioners is if the application hasn't met the ordinance. He said if staff were able to identify all those issues, we won't need a public hearing. He would like to make it very clear if we have a public hearing in the opening statement or right before the public hearing that we are only considering comments that are ordinance issues. Mr. Dixon wanted to make it clear that you absolutely want public comment on legislative items, its just the administrative ones where we are saying do you really want that or don't you. He recommended to have staff go through and do some red lining in the code and bring it back to the commissioners to work on. Chairman Faulkner indicated that Tammy was contacted by Mike Hansen who is here tonight and deals with helping cities get their codes in place. Mike is with rural community consultants, he said this is actually funded by the state to help the cities get this done before February 1.

9. Report from City Council: Commissioner Jenkins

Commissioner Jenkins mentioned council tabled the children's justice center, they had questions for Mr. Layton who wasn't there. He said council approved BB's Place subdivision amendment and approved fire station \$10,000 on radios and clothing. It will be paid back from a grant that will come in later. He said they approved the Building Height Definition. There was a public hearing set for the budget adjustment on Nov. 2, business licenses were approved, Branded Beauties was approved conditionally with the majority of the things being granted and some that were not granted.

10. Commission Comments:

Commissioner Neil would like to re-visit the parking lot where Mr. Rhees says (500) feet, he envisions that to be something like Kents parking lot. Even with those buildings there, we have gone through each of those buildings to make sure there is enough parking. Chairman Faulkner indicated we do need to review town square, she felt like there was some kind of variance and we need to take a look at it. Commissioner Neil also mentioned that he has heard advertisement for internal accessory dwelling subdivisions. Chairman Faulkner mentioned that she drove passed FIIZ the other night and they have a sign on the North side that is fully lit, she said in the minutes it said it would have some lights but it would be back lit. She is thinking we need to talk with the building inspector about this.

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11. Adjournment

Commissioner Maw moved to adjourn the meeting. Commissioner Jenkins seconded the motion. Vote: Commissioners Ortega, Maw, Neil, Jenkins and Chairman Faulkner voted aye. Motion carried.

Adjourned at 8:38pm

City Council: November 2– Commissioner Ortega

2023

<u>SKEEN</u>	<u>JENKINS</u>	<u>ORTEGA</u>	<u>MAW</u>	<u>NEIL</u>	<u>FAULKNER</u>
JAN 5	JAN 19	FEB 2	FEB 16	MAR 2	MAR 16
APR 6	APR 20	MAY 4	MAY 18	JUN 1	JUN 15
JUL 6	JUL 20	AUG 3	OCT 5	SEP 7	SEP 21
AUG 17	OCT 19	NOV 2	NOV 16	DEC 7	DEC 21

If you are unable to attend on your assigned night, please make sure someone goes in your place

Planning Commission Chair

Planning Commission Secretary