

### **Application Information**

Request: Zone Change from S-1, Special Highway Service Zone to R-1-9, Residential  
Applicants: Byron Bastian and Neil Craig (Owner)  
Application Date: July 29, 2014  
Status of Request: Tabled on October 1, 2014

### **Review by Planning Commission – September 10, 2014**

Motion by Commissioner Nichols to recommend approval to the city council to approve the zone change amending the application from the R-1-9 Residential Zone to the R-1-12 Residential Zone, finding that this would allow larger residential parcels in the event that the proposed plan does not happen. Seconded by Commissioner Beecher. Motion carried.

### **Review by City Council – October 1, 2014**

MOTION by Councilmember Hardy to approve the zone change to a PO – 1 zone in this location finding it will help the business and economic development of Payson City. Motion seconded by Councilmember Skinner.

Councilmember Hancock clarified that in a PO zone the facility proposed is a conditional use so it would have to come through the Council for approval.

Voting aye: Councilmembers: Hardy and Skinner. Voting nay: Councilmembers: Hancock and Phillips.

Discussion was held regarding the tie vote, the request, etc. Councilmember Hardy stated he wanted to withdraw the motion and Councilmember Skinner withdrew his second.

MOTION by Councilmember Phillips to table the item. Motion seconded by Councilmember Hancock. Motion carries.

#### DISCUSSION REGARDING TABITHA'S WAY

Wendy Osborn, Director of Tabatha's Way explained that Tabitha's Way is a non-profit organization that provides food and supplies to the underprivileged. They have outdoor clothing collection bins and recycle those things collected. She explained how even the stained shirt or lone sock could be recycled. She asked to place clothing donation bins on City property.

Councilmember Skinner asked how often the bins were emptied and about things placed outside the bin. She explained that they are picked up at a minimum at least once a week, and if there is a problem and a call is made to them, they can pick up more quickly or even remove the bin.

Councilmember Skinner asked about locations. Ms. Osborn said that they have them at businesses and schools, but recommend about five bins at the recreation facilities, library and city office.

Councilmember Hardy wondered if it needed to be approved by agreement. Manager Tuckett said that it could be done informally or by agreement at a later time.

Councilmember Hancock said that earlier this year the Council approved allowing these on school properties, so wondered if this request is to put bins on any property or just city property. She said that this request is just specifically for city property. They have agreements with the owners of the property for the bins already in place; and explained that they have one bin each located at Payson Market, Payson Jr. High, One Man Band, and Broken Spoke.

MOTION by Councilmember Skinner to allow up to five additional bins on city property with the city to have the final say in the location of those bins, with the understanding that if they become an eyesore we can ask that they be removed at any time. Motion seconded by Councilmember Hancock. Motion carries.

#### AGREEMENT WITH SPANISH FORK TO HELP WITH BUILDING INSPECTIONS

Manager Tuckett explained that Spanish Fork's Building Inspector is having some health issues, so they are requesting that we approve an agreement with them to allow our building inspector to help with their inspections if needed. We have a similar agreement with Salem and Elk Ridge and those have not put too much burden on our building inspector.

MOTION by Councilmember Phillips to approve the Agreement with Spanish Fork to help with Building Inspections. Motion seconded by Councilmember Hardy. Motion carries.



#### PUBLIC HEARING – REQUEST FOR APPROVAL FOR A ZONE CHANGE FROM THE S-1, SPECIAL HIGHWAY SERVICE ZONE TO THE R-1-9, RESIDENTIAL ZONE

MOTION by Councilmember Hardy to open the public hearing to receive public input regarding a request for zone change from S-1 to R-1-9 Zone along Turf Farm Road and 1130 South. Motion seconded by Councilmember Hancock. Motion carries.

Public hearing opened at 6:55 p.m.

Planner Spencer presented the following staff report:

In accordance with Section 19.2.8 of the Zoning Ordinance (August 6, 2014) it is proposed that the zoning designation for Utah County parcel number 41-712-0099 be changed from the S-1, Special

Highway Service Zone to the R-1-9, Residential Zone. The parcel is located near the intersection of 1130 South and Turf Farm Road, immediately west of the Heritage Village Development. The applicants, Byron Bastian and Neil Craig are requesting the zone change to facilitate a request to construct an assisted living center on the 3.27 acre parcel.

The parcel was included in the Winegar Annexation that was recorded on December 14, 2000. At the time of annexation the parcel was zoned R-1-12, Residential to provide larger lots as a transition between existing residential development and agricultural uses, including an adjacent turf farm. Since that time, the land use characteristics in this area of the community has changed significantly. Walmart Supercenter opened for business in 2004 and sparked the construction of other commercial buildings in the vicinity. Over the past decade, residential growth has also increased with the Maples at Brookside development, Winegar Estates Subdivision, and the Heritage Village active adult community. Most recently, the intersection has become the gateway to the Payson, Utah LDS Temple that is currently under construction.

Development in the area has also prompted changes in zoning. To accommodate the density and design of the Heritage Village development the zone was changed to the R-1-9, Residential Zone. In conjunction with this request, the previous property owner agreed to rezone the 3.27 acres located near the intersection of 1130 South and Turf Farm Road from the R-1-12 Zone to the S-1 Zone to support the expansion of commercial development. Simply stated, the parcel currently proposed for rezone was annexed with a residential zoning designation, but was rezoned by the City Council to support future commercial uses. The City Council will need to determine if the land use and economic development goals of the City have once again changed.

Even though it is typical for a specific development request to trigger a zone change request, a zone change is more encompassing than an individual development. Changing the zoning designation of a single parcel or several parcels should be assessed in context of the affect the land use designation will have on the community, the goals and objectives of the City Council, and the potential to impact uses beyond the development site. Furthermore, it is critical to consider that once the zone change has been approved, a landowner can develop the property in any manner that satisfies the zoning requirements, not necessarily as initially indicated.

Approval of a zone change requires approval from the City Council following a recommendation from the Planning Commission. The Planning Commission considered the request on September 10, 2014. Following a public hearing, the Planning Commission recommended approval of a zone change, but suggested the parcel should be rezoned to the R-1-12, Residential Zone. The City Council will need to hold a public hearing and consider public input prior to reaching a decision regarding the zone change application. Property owners within five hundred (500) feet of the proposed zone change have been notified, the notice has been posted in appropriate locations, and the public hearing was advertised in the newspaper for a minimum of fourteen (14) days.

### **Analysis**

A zone change is a request to alter the allowable uses of particular parcels of property within Payson City. Approval of a zone change is a legislative action of the City Council and great deference is given to the City Council in reaching a conclusion about the appropriate land use designation of the property. The City Council is under no obligation to approve the zone change request. The applicants are eligible to use the property consistent with the requirements of the underlying zone, S-1, Special Highway Service Zone, which was the designation when the property was purchased.

The applicants would like to construct and operate an assisted living center on the subject parcel. As indicated in the applicants' written request, they believe the need for assisted living is expected to grow in demand as more and more baby boomers are becoming the age where assisted living is necessary. The applicants believe this site is an ideal location for this type of facility. The proximity to shopping opportunities and medical facilities make it convenient for future residents of the facility. Moreover, the assisted living center will be located adjacent to the Heritage Village development which is an active adult community of person 55+ years of age.

As previously mentioned, it is typical for City Councilmembers to inquire about the anticipated use of the property. However, staff would suggest that a zone change is more significant than the current proposal. The City Council should consider all of the potential uses allowed in the R-1-9 Zone because once the zoning designation has been changed, the owner of the property is entitled to use the property in any manner that satisfies the regulations of the designated zoning district. If the zoning designation is changed, any of the permitted, conditional, or accessory uses of the R-1-9 Zone would be allowed.

The parcel proposed for rezone is located at the northern entrance of the South Meadows planning area. The City Council recently authorized staff to engage a consulting firm to assist staff in completing the specific plan for the area between 1130 South and 2000 South (12000 South, Utah County coordinate system) and between 930 West and Interstate 15. The specific plan process will determine appropriate land uses, densities, transportation network, utility systems, among other things. The subject parcel is located at the entrance of the planning area and as the gateway will have a significant impact on the appearance and atmosphere of the entire planning area. These decisions are very difficult for the Planning Commission and the City Council. Prior to the proposal to construct the commercial development where Walmart is now located, the owner of the property requested on several occasions to rezone the property to a residential zone. Past city officials recognized the importance of maintaining the commercial zoning designation and although it has taken several years to fully develop, the project is now a critical revenue source for the City, paying for the services provided to residential areas that do not generate the funds necessary to provide effective municipal services. Further reduction in commercial property could have an economic impact on the City. Therefore, even though the request involves only a single parcel, the decision could have a far reaching effect.

The applicant is only seeking approval of a zone change at this time. A discussion of development related issues would only serve to complicate the decision of the City Council because staff has not completed a review of the available infrastructure, access, and density of the developable property in the area proposed for rezone. If a zone change is approved by the City Council, the property owner is eligible to develop the property in any manner that satisfies the requirements of the designated zoning district and the other applicable development ordinances of the City.

### **Recommendation**

The applicant is seeking approval to change the zoning designation of Utah County parcel number 41-712-0099 containing approximately 3.27 acres from the S-1, Special Highway Service Zone to the R-1-9, Residential Zone. Following a public hearing to receive public input and a review of the allowable uses in the R-1-9 Zone, the City Council will need to determine if it is appropriate to modify the zoning designation of the subject parcel.

Staff would suggest that the issue before the City Council can be simplified into a question of whether the City Council would rather encourage residential or commercial development in this location. If the



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City Council determines residential uses are appropriate in this location and consistent with the land use goals and objectives, the City Council should approve the request. Conversely, if the City Council determines residential uses are not appropriate in this location or consistent with the land use goals and objectives, the City Council should deny the request.

Councilmember Hancock clarified that the City is in the process of preparing an RFP for the master plan of this area.

Curtis Payne said that they are looking for a rezone on this property to build an assisted living facility, and presented some information regarding their business proposal. He explained their procedures and they will be using antimicrobial copper because 20% of residents die from infections caught in a facility.

Earlene Thompson lives in the 55 and over community next to the proposed property and said they have been contemplating this since they attended the Planning Commission meeting. They fully support it and feel it is a need in our community and will be attractive.

Ross Huff said that he owns an assisted living facility on 900 East and wondered about the comment regarding 20% of residents die from infections caught in a facility, and he thought that comment might be misleading because they have been in business for 15 years and haven't had any one die from an infectious disease. He asked what levels they would be providing.

Mr. Payne explained this would be a Type 2 facility and have 16 individual residents/16 suites in each home/facility. We can accommodate up to 4 residents that will not need assistance. He said they will provide furniture, but encourage residents to bring some of their own so they feel the familiarity.

Councilmember Skinner wondered if the residents would come from the local population. Mr. Payne said that typically an assisted living facility would pull residents from a 5-10 mile radius, however since we are so unique the radius is larger. Their Draper facility pulls from the whole Wasatch Front.

Councilmember Skinner wondered if they currently own the property. Mr. Payne said he was not at liberty to discuss details, but it is a joint venture.

Councilmember Skinner said that they requested an R-9 zone and Planning Commission recommended R-12 and wondered if it mattered. Mr. Payne felt it didn't matter.

Planner Spencer read an email she received from Janice Howman:

"I would like to propose that the zoning change be postponed until an up-dated master plan for Payson is in place. I feel that control of property use should be in the hands of the city planners until that time. I would like to see a growth plan which includes maintenance schedule for present structures with funds available to make needed repairs etc. I would like to see a community effort to clean up and fix up the beautiful city of Payson."

Planner Spencer said that now knowing what the applicant's proposal is, it would have to be a Professional Office Zone, because it is the only zone we have that would accommodate multiple buildings.

Planner Spencer explained to Mr. Huff that the City Council is just reviewing a zone change not this particular use, so the public hearing was not advertised for this facility just a zone change.

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Mr. Payne also explained to Mr. Huff that he quoted National Statistics when mentioning people dying from infectious diseases caught in a facility, and that includes any medical facility.

Mr. Payne said that given this information, he thought they might request the Professional Office Zone rather than the Residential Zone.

Councilmember Hardy asked about the Fregonese Plan and Planner Spencer explained that it incorporates neighborhood and commercial in the proposed area. She said she didn't know if this plan would be looked at when we get the RFP's back for the master planning.

Ross Huff clarified that the requested facility could go from 16 to 64 beds. Mr. Payne explained that it would be four separate facilities and managed and staffed separately so 16 beds in each facility.

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

Public hearing closed at 7:35 p.m.

Councilmember Hancock said he is impressed with the facility, but we are here to consider a zone change not this facility. Planning Commission got side tracked also and said that Planning Commission motion for R-1-9 did not pass, and didn't pass until the R-1-12 and anything allowed in that zone could go in the area if this facility did not get completed. We need to look at the effect of the zone change on the area. With no master plan there would be no required infrastructure for the whole area, he believes we need to wait for the master plan.

Councilmember Hardy agreed with some of Councilmember Hancock's comments. He also said that we need to do something to spur economic development in town. He felt that the Professional Office Zone would be more in line with what was presented in the Fregonese Plan and what we are thinking down the road. He wondered if we should re-zone or how much delay there would be if we wait for the master plan.

Planner Spencer explained that if it is rezoned and an applicant comes in with a proposal for something that is allowed in the zone, no matter what zone, it would just go through staff and not have to come back to the Council.

Councilmember Skinner understands that there are many rules we have to abide by, so since the request is for Residential, he wondered if we could even consider Professional Office zone. Planner Spencer said if the Council felt there was a better zone for the area than requested, they could zone what they feel is best.

Councilmember Hardy said that the PO zone doesn't allow any residential, but neither does the Commercial zone it is zoned now, so he doesn't see the PO as giving anything away.

**MOTION** by Councilmember Hardy to approve the zone change to a PO – 1 zone in this location finding it will help the business and economic development of Payson City. Motion seconded by Councilmember Skinner.

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Councilmember Hancock clarified that in a PO zone the facility proposed is a conditional use so it would have to come through the Council for approval.

Voting aye: Councilmembers: Hardy and Skinner. Voting nay: Councilmembers: Hancock and Phillips.

Discussion was held regarding the tie vote, the request, etc. Councilmember Hardy stated he wanted to withdraw the motion and Councilmember Skinner withdrew his second.

**MOTION** by Councilmember Phillips to table the item. Motion seconded by Councilmember Hancock. Motion carries.

#### DISCUSSION REGARDING IMPROVEMENTS IN HOLLOW PARK

Tracy Zobell, Golf Pro explained that 10-15% grade is required in order to mow and the area in Hollow Park has a 40% grade.

Discussion was held regarding what to do with the sloped area in Hollow Park including retaining walls, other types of landscaping, or leave it as “natural”. Liability and parking in the area was also discussed.

Councilmember Phillips felt water needed to be considered before grass is planted.

Parks Superintendent Mark Hyland recommended selling the two lots as they are. Mr. Zobell said we can put it up for sale as is and see if there is any interest. Any money made from it should go toward Hollow Park.

Manager Tuckett said that Councilmember Ford told him she was in favor of selling the lots, but didn't think it would go that way and would be a team player.

Planner Spencer said that the parcels would have to be subdivided before sellable.

On a different note, Manager Tuckett said that Jesse Sorenson talked to him about making a bike trail out of the area between the school and the ball parks, until it is developed, similar to what they have in Draper. Mayor Moore wondered what would happen if you got it started and Woodbury came through to build more ball parks. Council would like to see some pictures.

Tracy Zobell also said that the RV Park at the golf course is getting very busy and if we did some upgrades we could get a lot more out of it.

#### UTOPIA DISCUSSION

**MOTION** by Councilmember Hardy to table this item. Motion seconded by Councilmember Phillips. Motion carries.

#### ADJOURN TO CLOSED SESSION

**MOTION** by Councilmember Phillips to adjourn to Closed Session to discuss possible land acquisition. Motion seconded by Councilmember Hardy. Motion carries.

Council adjourned to closed session at 8:10 p.m.