

MINUTES
ENOCH CITY PLANNING COMMISSION
February 23, 2016 at 5:30pm
City Council Chambers
City Offices, 900 E. Midvalley Road

MEMBERS PRESENT:

Commissioner John Horstdaniel
Commissioner Paul Hardy
Commissioner Josh Killian
Commissioner Debra Ley
Commissioner Bob Tingey

STAFF PRESENT:

Julie Watson, City Recorder
Rob Dotson, City Manager
Dave Nelson, Bldg. Inspector
David Harris, Council Member

PUBLIC PRESENT: Dave Owens, Chet Simpson, Mitch & Linda Gibilterra, Natalie Cooley, Robyn Cox, Shane Sackett, Roy Tryon, Gordon Batt

1. **CALL TO ORDER OF REGULAR MEETING-**By Chairman Pro-tem Tingey at 5:30pm. He welcomed the audience.
 - a. **Pledge of Allegiance** –Led by Roy Tryon
 - b. **Invocation** –Audience invited to participate. Given by Council Member Harris
 - c. **Approval of agenda for February 23, 2016** – Chairman Pro-tem Tingey said he would like to change item #4 to Item #2 so Commissioner Killian can participate before he has to leave at 6:15. **Commissioner Horstdaniel made a motion to approve the agenda with that change. Motion was seconded by Commissioner Killian and all voted in favor.**
 - d. **Approval of minutes for February 9, 2016-Commissioner Hardy made motion to approve the minutes. Motion was seconded by Commissioner Horstdaniel and all voted in favor except Commissioner Killian who abstained because he missed that meeting.**
 - e. **Conflict of Interest Declaration-**Commissioner Ley stated she owns property adjacent to the zone change being discussed.

2. **DISCUSS AND MAKE RECOMMENDATION TO THE CITY COUNCIL ON ZONE CHANGE FROM REGIONAL COMMERCIAL (R-C) TO MULTIPLE RESIDENTIAL (M-R-2) FOR PROPERTY LOCATED ON MIDVALLEY ROAD OWNED BY MJB, ENOCH, LLC**

Chairman Pro-tem Tingey prefaced the discussion by reading from land use training information written by David Church, legal counsel on land use to ULCT. “First, planning commissioners must understand and appreciate the dual role that they may play. “When they are a making a recommendation on a general plan or on a land use ordinance they are a part of the political, legislative process. They have broad discretion in what their recommendation can be. They can listen to the public even if it is just uneducated clamor. And Commissioners do not represent neighborhoods or points of view. The role is not to act as a gate keeper. Their role is to be experts in planning and the local ordinances. They are to make reasoned recommendations and apply the ordinances as written. When the planning commission is acting as a land use authority it has little discretion. The land owner’s application either complies with the ordinances or it does not. An individual planning commissioner’s opinion of the merits of a proposed land use application is not relevant to the process. Any individual commissioner’s opinion and any of the public’s comments and concerns are relevant only to the extent that they speak to issue of compliance with the existing law.” - David Church (ULCT Legal Counsel) He noted we held the public hearing at the last meeting and asked for discussion.

Commissioner Horstdaniel referred to a situation in the northern part of the state he thought was similar saying he would like to table this action to see how that turns out. The Planning Commission up north put it on hold for an indefinite period of time. He sees something of this nature again and that a precedent could be set dealing with the same situation as here. He added he is not in favor of sending this to the City Council. Commissioner Hardy said he was told someone was coming tonight to tell us what they are going to do. City

Manager Dotson said they did not get it together for tonight and are not required to do so. **Commissioner Hardy made a motion to table until we hear what they want to do.**

Commissioner Ley asked if our ordinances trump the general plan. Council Member Harris said yes they do however they should not be in conflict generally. Council Member Harris suggested if Commissioner Ley sees discrepancies those could be addressed in the future but would not affect this application. He explained the general plan is a guide for making the ordinances and is open to interpretation. Council Member Harris brought up affordable housing issues saying we are mandated not to put up roadblocks to affordable housing. There was more discussion of types of dwelling units and what would be permitted however it was noted we do not know what the developer is planning at this time. City Manager Dotson said our attorney is reviewing some definitions now and this will be addressed in future meetings and discussions. **Commissioner Hardy made a motion again to table for more information. Commissioner Horstdaniel seconded the motion.**

Council Member Harris brought up concerns he read in the past minutes about flooding issues. He said the zone change does not affect that and we will mitigate that issue at building time. We would require retention basins that would help everyone on flooding issues. The zone does not affect subdivision infrastructure requirements and storm water mitigation would be required. Commissioner Killian said we have all the information we are required to get to send this to the City Council with a recommendation for them to decide.

Chairman Pro-tem Tingey asked for a vote on the last motion.

Commissioner Hardy amended the motion to say table this until March 8, 2016. Motion was seconded by Commissioner Horstdaniel. A roll call vote was held as follows:

Commissioner Horstdaniel- yes	Commissioner Ley no
Chairman Pro-tem Tingey-no	Commissioner Hardy yes
Commissioner Killian no	Motion to table to March 8, 2016 failed

Commissioner Killian made a motion that we send a favorable recommendation to the City Council to rezone the land as M-R-2. There was no second to the motion so motion died.

Commissioner Ley made a motion to send an unfavorable recommendation for the M-R-2 zone to the City Council. There was no second to the so motion died.

City Manager Dotson reminded Chairman Pro-tem Tingey that he can make motions and vote. Unlike the mayor who only votes to break ties the Planning Commission Chairman makes motions and votes with the body.

Chairman Pro-tem Tingey asked for new motion. Commissioner Killian made a motion to send a favorable recommendation to the City Council for the rezoning to M-R-2. Motion was seconded by Chairman Pro-tem Tingey and a roll call vote was held.

Commissioner Horstdaniel- no	Commissioner Ley-no
Chairman Pro-tem Tingey- yes	Commissioner Hardy-no
Commissioner Killian- yes	Motion failed 3 to 2

There was more discussion of the ordinances and the general plan and Council Member Harris said it might be appropriate for the Planning Commission to review this zone and redefine it in the future. The current application would not be included in that change however our other requirements will prohibit any type of townhomes, or other structures that are not in compliance. Until then this is the law. When a landowner wants to do something with land we are bound to our own ordinances. Work to change laws but until then they were reminded that we are bound by our own laws and we can't deny application if they comply with the law.

City Manager Dotson added to what Chairman Pro-tem Tingey read earlier. This is where it is really tough. The Planning Commission is not the City Council. When this person has an application to change zoning and it is on your agenda you look to see if the application is in accordance with our ordinances and send a recommendation to the City Council or you table it for more review. The City Council can make the decision based on emotion or political values and evaluate if this is fair to other people and the landowner. They make that decision. You as the Planning Commission may want more information from the owner but case law says if you don't grant the request when they are in compliance you could be held liable in court. By not doing something you are basically hurting someone's property rights. We want to be fair to all but their role is not an emotional

role. If the application complies with law then you send something to the City Council and they decide. By not doing something it could be risky. We are saying to the property owner we are not going to let you do what you want with your property even though you are within the law. That is why laws get made in the legislature because of lawsuits. That is the reality.

There was more discussion of the type of homes that could possibly be built in this zone and it was restated that building permits would not be issued for structures that do not meet our requirements on lot size and all other things. In the Planning Commission recommendation we can't stipulate what can be done in the zone. The law says that. Chairman Pro-tem Tingey thanked everyone for their input. Chairman Pro-tem Tingey said he voted because this process complies with the laws and ordinances. Commissioner Hardy asked City Manager Dotson if they send an unfavorable recommendation does the property stay in its current zone of R-C until the City Council approves something else. City Manager said it does.

Commissioner Hardy made a motion to send a favorable recommendation that the land remain Regional Commercial (R-C) and not be changed to Mixed Residential (M-R-2). Motion was seconded by Commissioner Horstdaniel and a roll call vote was held.

**Commissioner Horstdaniel-yes
Commissioner Ley-yes
Chairman Pro-tem Tingey-no**

**Commissioner Hardy-yes
Commissioner Killian-no
Motion passed 3 to 2**

Commissioner Horstdaniel said the public is here and we are saying we don't support this action. Roy Tryon said they have a petition from 62 citizens in the area. Commissioner Horstdaniel admonished the public to attend the City Council meeting on March 2, 2016 and bring their petition to them. Council Member Harris said he will recommend that the City Council have another public hearing even though only one hearing is required by law. Chairman Pro-tem Tingey thanked everyone for coming. He excused Commissioner Killian who had to leave the meeting early.

3. REVIEW AND SET A PUBLIC HEARING ON REQUEST FOR A CONDITIONAL USE PERMIT FOR AN AUTO REPAIR BUSINESS IN A RESIDENTIAL ZONE-Shane Sackett

Chairman Pro-tem Tingey asked Shane Sackett to come up for questions. He said we have the application and there have been complaints from some residents which resulted in a letter sent to Mr. Sackett telling him to apply for a conditional use permit. As he reads from Chapter 5-9, City staff may approve home occupation licenses except for the things listed, one of which is a vehicle repair business so that is why we are addressing this. Chairman Pro-tem Tingey asked Mr. Sackett tell them what he wants to do.

Mr. Sackett explained he used to have a shop in town but he had to bring his work home because he has a seven-year old autistic boy and can't get any daycare to take of him. No one can manage him and he needs continual supervision from a parent. Due to that he changed his Cedar City business license to mobile auto repair. That way he could go out on repairs during school hours and be available to get his son off the school bus. His wife works until 6:00PM. Often repairing autos is more difficult to do off site. Enoch has businesses all over and he did not think he was in the wrong to do this. He started bringing work home and a few neighbors got riled when people dropped cars off to be fixed. He said he will not put signs up. He just wants permission to work at home. He has told customers not to drop off cars. From what he understands the only complaint is that cars were piled up out front and that he is in violation of the zoning ordinance. This is new to him and not one neighbor has come up and made even one complaint to him directly. He provides a service to people. He provides service with an option. He wants to be able to do this and do it right. The reason he is here is based on complaints. Commissioner Hardy said people come up to him and complain about the auto repair businesses with noise, congestion, and cars unloaded onto the street. Shane said he did have an incident one time but that is not ongoing. Only one car is not his on the lot and he is trying to keep it presentable. There is no noise after quiet time. He has six kids and is not working outside late and most of the time he works elsewhere. This is the first step and a business license is next step. Chairman Pro-tem Tingey said we are trying to follow

our regulations and asked how many vehicles does he anticipate to be worked on at his home? The average in the back yard is 5-7 vehicles. He will have none in front. He has over a half acre and has it fenced. Chairman Pro-tem Tingey asked for questions. After brief discussion they instructed the City Recorder to send out notices to the residents. **Commissioner Hardy made a motion to set the public hearing for March 22 on a conditional use permit for auto repair business in a residential zone. Motion was seconded by Commissioner Horstdaniel and all voted in favor.**

4. DISCUSS AND MAKE RECOMMENDATION TO THE CITY COUNCIL ON CHANGE TO THE ZONING ORDINANCE, CHAPTER 2, SECTION 2-16 IN REGARD TO FENCE REQUIREMENTS

Chairman Pro-tem Tingey asked City Manager Dotson to explain this item. City Manager Dotson explained the ordinance as it is now and drew a diagram. He said there is a situation where someone may purchase three lots making the back two lots their backyard. They would like to be able to fence it with a six-foot fence and that is currently not allowed. He explained there are many side yards with six-foot fences in areas so this is not a radical idea. If this option were made available the people would not need to vacate the lots out of the subdivision to do what they want to. Council Member Harris asked if we do it like proposed they could still sell off the lots at a later date and the fence comes down. It leaves the option to sell the lots later. Chairman Pro-tem Tingey clarified we are discussing the underlined portion for the new language. There was a brief discussion of types of fences and easements.

Chairman Pro-tem Tingey asked for a motion. **Commissioner Horstdaniel made a motion to send a favorable recommendation to the City Council for this change to the Zoning Ordinance Chapter 2-2-16 in regard to fence requirements clarifying we are adding the sentence underlined. Motion was seconded by Commissioner Hardy and all voted in favor. Commissioner Killian had left the meeting early and did not vote.**

5. PUBLIC COMMENTS-none

6. COMMISSION/STAFF REPORTS

Council Member Harris reported he hopes they will look at commercial zoning. The City Council is in a position to hear what the public has to say and he will recommend another public hearing be held. He said he personally defers to property owners because it is their land. He has feelings about what he prefers but it is not our land. Do we deny their rights? It is a dilemma but you need a legal reason to deny the application. He encourages the Planning Commission to explore the issue. If you think the zone itself is in conflict with the general plan they need to change the zone although that change would not apply to this application. He hopes the public realizes this too.

Commissioner Ley asked if we could rewrite something like that without huge clusters with smaller lots. City Manager Dotson talked about affordable housing and what it means. It means the state says someone with certain income should be able to afford to purchase a home. We are mandated to encourage affordable housing and have plans that do not discriminate against affordable housing. In our County affordable housing is not necessarily rentals. It is what a person can purchase with 1/3 household income going to housing. If more than that is required to purchase then it is not affordable. We created an affordable housing plan and it is a great plan, City Manager Dotson said. It is one of the highest rated plans by the state. You have to be moving in a direction that does not discriminate. In encouraging affordable housing one way was the M-R-2 zone. Commissioner Ley said the problem is higher density and asked if affordable housing means it is duplexes. No, City Manager Dotson said. It is that a certain income can purchase homes. Affordable housing does not necessarily apply in M-R-2. We do not allow dual ownership. In a duplex one side has to be owner occupied. Council Member Harris said we still need a legal reason to deny this application. City Manager Dotson said after a zone change is approved then the developer comes in to the design review committee first before they do their drawings.

Commissioner Horstdaniel said he thinks we should look at M-R 2 and flat eliminate some things. Chairman Pro-tem Tingey said it is important we understand our role and make not make decisions on what might happen.

Commissioner Ley asked about conditional use permits saying can we allow it with conditions? Yes, we can place conditions City Manager Dotson said and he cited past examples.

Dave Nelson commended them for how they handled this. One caution from him is if you have emotions pushing you can table the item again. It means you don't understand the law and you study the law first and then move on it. You don't have to go fast. He added when you do a conditional use permit make sure in your motion that the conditions are spelled out. If they violate the conditions you can pull the conditional use. Dave added when you have a public comment meeting you listen and do not respond to the comments.

City Manager Dotson said there is a new website for land use authorities with lots of training. It is luau.utah.gov

Commissioner Horstdaniel said on Shane Sackett that in the public hearing we will get negative comments on him but it might be good to make our own notes as to whether we are in favor or opposed and also note some things you would like to have as conditions. While people are here in for the public hearing we can let them know we are setting limits on his business.

7. ADJOURN-Commissioner Hardy made a motion to adjourn. Motion was seconded by Commissioner Ley and all voted in favor. The meeting ended at 7:15pm.

Julie Watson, City Recorder

Date