

TOQUERVILLE CITY
PLANNING COMMISSION MEETING AGENDA
Wednesday - June 20, 2018
Work Meeting 6:30 p.m. and Regular Meeting 7:00 p.m.
Held at 212 N. Toquerville Blvd, Toquerville Utah



6:30 PM WORK MEETING:

1. Discussion of Flag Lots
2. Discussion of Short Term Rentals-Bed and Breakfast and Nightly/Short Term Rentals
3. Discussion of Accessory Buildings

7:00 PM REGULAR MEETING:

1. Call to Order by Chairman Alex Chamberlain; Pledge of Allegiance by Manning Butterworth
2. Disclosures and Declaration of Conflicts from Commission members (if any)

A. REVIEW OF MINUTES:

1. Review and Possible Approval of Planning Commission Special Business Meeting from May 9, 2018, Meeting Minutes from the Work and Regular Business Meeting on May 16, 2018.

B. PUBLIC FORUM:

Comments from public and public requests for future agenda items.

Limit three (3) minutes per person; please address the microphone and state full name and address.

C. BUSINESS/ACTION ITEM(S):

1. Discussion on ORD 2018.XX Appeal Authority Replacing The Board of Adjustment.
2. Discussion and Possible Recommendation of Proposed Changes To Land Management Code Title 10-17-3: Bed and Breakfast Services, and Title 10-17-4: Nightly or Short Term Rentals.
3. Discussion of Expansion Process for Home Occupation and Conditional Use Permits.
4. Discussion of Proposed Cotton Gin Project and Neighborhood Canvass.

E. HO/CUP REVIEW & POSSIBLE RECOMMENDATION:

1. Bed and Breakfast Conditional Use Permit at 15 Springs Drive for Miguel D and Reina H. Garcia.
2. Bed and Breakfast Conditional Use Permit at 124 North Ash Creek Drive for Renee S. Garner/Zion Adventurers' Retreat.
3. Bed and Breakfast Conditional Use Permit at 245 W Sunset Ave for Jessica Russo/Zion View Bed and Breakfast.
4. Wedding and Event Facility Conditional Use Permit at 580 East Springs Drive for Shawn and Teila Huntsman.

F. ADJOURN:

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Dana McKim at the City Office 435.635.1094, at least 48 hours in advance. This Agenda will be sent to the Spectrum Newspaper, posted on the State website at <http://pmm.utah.gov>, on the Toquerville City website at www.toquerville.org, and in four places at least 24 hours in advance of this meeting. The four places are: (1) City Office Board; (2) Toquerville Post Office Kiosk; (3) Cholla Park Kiosk; (4) Westfield Road Kiosk. Posted June 18, 2018 by Toquerville City Recorder, Dana M. McKim.

10-19E-4: FLAG LOTS:

A. Flag Lots: A flag lot for one (1) single-family dwelling may be allowed to accommodate the development of property that otherwise could not reasonably be developed under the regulations contained in this title or other titles adopted by the City. Flag lots will be considered and approved on a case by case basis as a simple subdivision and shall follow the approval process prescribed in this chapter. In addition, all flag lots shall meet the following additional requirements:

1. Factors: Flag lots may be allowed and approved after consideration of the following factors:
 - a. More than two (2) contiguous staffs are prohibited.
 - b. The development of the property in question must be found by the Planning Commission to be reasonable and practical under normal City land use and subdivision regulations.
 - c. The creation of the flag lot must not foreclose the possibility of future development of other large interior parcels that are not developable unless a street is extended to them across other adjacent properties.
2. Development Standards: If any proposed flag lot meets the above requirements, the development shall be subject to the following standards and conditions:
 - a. The original parcel, after the flag lot split, shall conform to and meet all requirements, set-backs, height restrictions, etc., of the zone in which it is located.
 - b. The flag portion of the lot shall meet all lot width, setback and yard requirements for the zoning district in which it is located. The staff portion of the lot may be included in the calculation of lot area.
 - c. A flag lot shall be comprised of a staff (narrow) portion and a flag (wide) portion. The flag and staff must be contiguous.
 - d. The staff portion of the lot shall front on a public street. The minimum width of the staff portion at any point shall be twenty six feet (26') and complies with fire authority specification. However, a greater staff width for lots in sensitive lands overlay zones may be required. The maximum length of the staff shall be five hundred feet (500') and the maximum grade of the staff shall not exceed twelve percent (12%).
 - e. The lot access-turn-around and fire protection shall be approved by the Hurricane Valley Fire District.
 - f. No building or structure will be located within the staff portion of the flag lot.
 - g. The front yard of a flag lot shall be on the side of the flag portion which connects to the staff. Yard setbacks shall conform to the setback requirements of the zone in which the flag lot is located.
 - h. The main building shall be located no more than two hundred fifty feet (250') from a fire hydrant, measured along a public or private right-of-way or along the staff portion of the lot. An easement for any fire hydrant located on private property shall be provided to the City for access to and maintenance of the hydrant and water line.

- i. Upon review, the City may require installation of curb, gutter and other drainage control measures in the staff portion of the lot to prevent runoff from entering neighboring properties.
- j. Clear address signage shall be installed and maintained at the street by the owner, including notice that the driveway is a private right-of-way.
- k. All structures shall meet the height requirements of the zone in which a flag lot is located.
- l. Before a flag lot is approved a site plan and construction drawings must be submitted and approved by the City and all utility providers.
- m. All required improvements shall be installed on the newly created lot prior to recording the final plat for such lot.

St. George Flag Lot Ordinance

D. Flag Lots: After determination by the commission that standard lots are not feasible, the commission may, in order to encourage more efficient use of land, allow flag lots to be developed subject to the following conditions:

1. The property cannot be subdivided with typical public street frontage either at the present or in the foreseeable future.
2. The staff portion of said lot shall front on a dedicated public street. The minimum width of the staff shall be twenty five feet (25').
3. No building or construction, except for driveways, shall be allowed on the staff portion of said lot.
4. All lot size and setback requirements shall be the same as may be required by the zone in which the lot is located. The staff portion of the lot shall not be used to calculate the minimum lot size. Setbacks shall be shown on the plat and approved by the commission and city council.
5. No more than two (2) flag lots or four (4) dwelling units may be served by one 25-foot wide staff.
6. Each flag lot shall be specifically approved by the commission.

**TOQUERVILLE CITY
PLANNING COMMISSION
SPECIAL BUSINESS MEETING MINUTES
WEDNESDAY-MAY 9TH AT 6:30
Held at 212 N. Toquerville Blvd, Toquerville Utah**



Present: Planning Chair Alex Chamberlain; Planning Commissioners: Manning Butterworth, Jake Peart, Rebecca Hansen, Kris Smedley; Staff: Recorder McKim, Zoning Official Mike Vercimak; Public Brent Bluth. Absent: Greg Turner

6:30 PM SPECIAL BUSINESS MEETING:

The meeting was called to order by Chair Alex Chamberlain at 6:32 p.m. There were no disclosures, nor conflict declarations stated.

Chamberlain declared the public hearing item.

B. PUBLIC HEARING:

Limit three (3) minutes per person; please address the microphone and state full name and address.

1. An ordinance to amend and restate section 4-1 of Title 10, Chapter 10a of the Toquerville City Code to allow the minimum frontage of subdivided lots abutting a cul-de-sac located in the City's R-1-12 zone be reduced by thirty percent (30%).

Brent Bluth from Self-Help Homes:

Thanked the commissioner for holding a special meeting to modify the code. The Ash Creek Overlook subdivision was delayed several times due to other extenuating circumstances the city has dealt with. Bluth stated the subdivision meets the use, parking requirement, and the cul-de-sac ordinance. The Toquerville code was silent on cul-de-sac requirements and hopefully, this will remedy the concern. Bluth and his engineer drafted a suggested modification to the code, due to its ambiguity to state, "Frontage may be reduced by 30% on a cul-de-sac lot if said total lot area exceeds 12,500 square feet." Attorney Snow modified the suggestion from 12,500 square feet to 12,000. Bluth explained the cul-de-sac size will not be changed. The self-help home organization believed the design benefits the property efficiently. The developer wanted to give the opportunity for these future homes to have backyards. To modify the cul-de-sac design would add approximately \$10,000.00 to the construction of the homes for utilities, concrete, and landscaping.

Chamberlain closed the public hearing.

C. BUSINESS/ACTION ITEM(S):

1. Discussion and Possible Recommendation on Ordinance 2018.XX – An Ordinance to amend and restate section 4-1 of Title 10, Chapter 10a of the Toquerville City Code to allow the minimum frontage of subdivided lots abutting a cul-de-sac located in the R-1-12 zone be reduced by thirty percent (30%):

Commissioner Butterworth suggested the proposed ordinance should include the title R-1-12 District (12,000 SQUARE FEET) above the requirements to clarify the zone in the ordinance. He wondered if the preamble is not a part of the ordinance and wanted the intent clarified. He would like the change to be included in the motion. He also thought there was redundancy in the minimum lot area and the minimum frontage. Vercimak explained due to geographical features or the implementation of a PDO zone sometimes a lot may be less than 12,000 square feet. He said what seems to be obvious becomes a point of clarification. He was asked if this ordinance would give developers a loophole to change the intent of the zone. He didn't believe it would be, because of the minimum square foot requirement. The Almond Heights Subdivision was created quite some time ago and this is the last portion of the development. He apologized to the commission the cul-de-sac was missed during the preliminary and final plat process. Commissioner Peart asked if Bluth could modify the design. Bluth stated they have accommodated with the neighborhood to create the design presented. He believed this was the best design available.

Peart asked about parking concerns. He asked how the parking works with the current layout. He asked how the design accounts for two parking spaces per lot. Bluth stated there will be two spaces on-site per lot in the driveway. Peart did print out some current cul-de-sac designs in Toquerville and LaVerkin. Some of the examples had four lots in the cul-de-sac, but most of them had five. Chamberlain asked what the radius lengths were. Peart did not know.

Chamberlain wondered if the size of the cul-de-sac was relevant to the design. There was a brief discussion about the examples presented. The Ash Creek Overlook cul-de-sac design is 106 feet. Peart spoke about his personal experience of parking in a cul-de-sac during the holidays. He recommended there shall be no off-street parking. He wondered how the fire department would be able to turn a fire truck around inside the cul-de-sac.

Chamberlain stated the examples presented by Peart, if shown to scale are substantially smaller than the Ash Creek Overlook cul-de-sac design. He didn't know about the scale accuracy of the handouts given. Commissioner Hansen thought the design was appropriate and suggested at a later date the parking could be prohibited but didn't want to initially restrict off-street parking. Commissioner Smedley believed parking could potentially present a problem.

Peart read one of the recitals in the ordinance, "Whereas, the City has determined that it is in the best interest of the health, safety and general welfare of the city and its residents to allow for the reduction of frontage requirements on subdivided lots abutting a cul-de-sac in the City's R-1-12 Zoning District" was contrary to the public comment during the preliminary plat application.

There was a discussion about how many neighbors were against the preliminary design.

Chamberlain shared a couple of his thoughts. He was pretty surprised there weren't requirements for cul-de-sac designs in Toquerville. Chamberlain once worked for an engineering firm and there was always a relief when a cul-de-sac reduction was found in various city codes. It frees up restrictions from a design standpoint. He was in favor of the proposed ordinance in the R-1-12 zone. He felt the reduction was reasonable for the zone, but would not support such a reduction in a smaller zone where homes are more concentrated. He didn't believe the reduction would be needed for lots larger than 12,000 square feet.

Bluth explained the ordinance would be inserted in the R-1-12 zone and there wouldn't be a need to include the title above the requirements. The recital explains where the modifications are made.

Peart asked if parking becomes a problem in the future, how will the city mitigate the concern?

Bluth believed the city may, at any time, restrict parking if it becomes a health hazard or

problem. Vercimak suggested the problem would be addressed from citizen complaints and the city will address the concern.

Commissioner Jake Peart made a motion to approve the proposed cul-de-sac reduction ordinance and include no on-street parking where the frontage is reduced by 30%, and specify the reduction only applies to an R-1-12 Zone. The motion was seconded by Commissioner Manning Butterworth.

Commissioner Hansen asked what the repercussions were to disallow parking on-street in a cul-de-sac. There was a brief discussion between commissioners about parking availability. Bluth cautioned the commission to require no on-street parking may create a capricious situation. The developer has met every section of the ordinance. Where the house will sit on the lot is what they are trying to accomplish. Hansen believed if the parking became a problem, the city would address on-street parking. Vercimak expressed a thought if there was no on-street parking it could possibly worsen the parking situation of the neighborhood and surrounding areas.

Vote on motion: Butterworth-aye, Peart-aye, Smedley-nay, Chamberlain-nay, Hansen-nay. Motion dies for lack of majority.

Commissioner Rebecca Hansen recommends approval to City Council Ordinance 2018.XX, an ordinance to amend and restate section 4-1 of Title 10, Chapter 10a of the Toquerville City Code to allow the minimum frontage of subdivided lots abutting a cul-de-sac located in the City's R-1-12 zone be reduced by thirty percent. The motion was seconded by Commissioner Smedley.

Commissioner Butterworth asked if the motion included the clarification in the ordinance will specify for the codifier the reduction is for only the R-1-12 zone.

Commissioner Rebecca Hansen modified her motion to include the reduction will only apply to an R-1-12 zone. The modified motion was seconded by Commissioner Smedley. Chamberlain-aye, Hansen-aye, Smedley-aye, Peart-nay.

E. ADJOURN:

Chair Chamberlain adjourned the meeting at 7:08 p.m.

Planning Commissioner – Alex Chamberlain

Date

Attest:

Toquerville City Recorder – Dana M. McKim

DRAFT

TOQUERVILLE CITY
PLANNING COMMISSION MEETING MINUTES
Wednesday – May 16, 2018
Work Meeting 6:30 p.m. - Regular Meeting 7:00 p.m.
Held at 212 N. Toquerville Blvd, Toquerville Utah



Present: Planning Chairperson Alex Chamberlain; Planning Commissioners: Greg Turner, Rebecca Hansen, Manning Butterworth, Jake Peart; City Staff: Mayor Lynn Chamberlain, Councilmember Mike Ruesch, Zoning Official Mike Vercimak, Recorder Dana McKim; Public: Elaine Kist, Steve Kist, Gregg Leiby, Dan James, Brigham Darger, Sherree Olsen, Gary Chaves, Chuck Williams.

6:30 PM WORK MEETING:

1. Historic District Update:

Commissioner Hansen, under direction of the Planning Commission asked her husband Kevin Hansen, whom is an archeologist to research possible archeological and historical sites in Toquerville. He found a few homes that may have some historical value. To research the archeological information he would need access to ESRI mapping software. Ruesch will look at downloading a free ESRI trial to try and open the file. The archeological map designates interest areas in a hexagon pattern. Each pattern may have more than one site of interest. Hansen believed the information was proprietary and asked how the commission would manage the information. She provided the commission with a list of possible historical locations. Chair Chamberlain asked Mayor Chamberlain if the city council have made a decision on the development of the historic cotton gin area. The mayor replied by saying the owner of the property was yet submit a formal proposal. Mayor Chamberlain suggested the commission create a historical site definition. There was discussion about creating designated historical sites. It was suggested sometimes these classified sites become a burden on the property owner. Hansen wanted to make sure the group was supportive of restoring the buildings, and not declaring property as historical for enforcement reasons. There was discussion of where the existing historical district boundaries are in town. Chair Chamberlain asked the Commission what direction they wanted to pursue in making the historic commission active. Hansen wanted the commission to look at the setbacks on Toquerville Boulevard, and accept the non-conforming properties as legal non-conforming properties. Chair Chamberlain cautioned that thought and reminded the commission to waive setback requirements may infringe on a neighboring property. Peart asked if the commission wanted to preserve the historic district and continue with a commission. Alex Chamberlain thought the purpose of the historic commission would incentivize property owners to improve the property. Peart wanted to make sure the board wouldn't require the property owners to financially commit to improvements because of a historical finding. Turner was in favor of some type of preservation. Chair Chamberlain suggested the historic information may just be the recording of information, and not require action.

2. Accessory Buildings – Guesthouse:

In city code Toquerville has a guesthouse definition which allows the construction of a guest home on a single parcel, but shall not be rented or otherwise used as a separate dwelling unit. Peart asked if the concern of the commission was because guest homes frequently end up as either short term or long term rentals, or if there was more to the issue. Councilmember Ruesch suggested if anyone wanted to look at a multi-dwelling developed area to drive into the Westfield area. He would like to curtail the future construction of detached dwellings on a single parcel in the city.

There was a brief discussion on the definition of single-family zoned property. Someone suggested once a secondary structure building permit is granted, the property owner should be required to sign an

agreement with the city to not rent the dwelling out. Ruesch asked how the city would manage the enforcement of these agreements and uses. Chair Chamberlain believed the concern would come to light when the city received a complaint from a neighbor. Peart agreed. Vercimak recommended the city could limit height requirements on secondary structures to deter casitas or guest homes to be constructed above garage areas. Mayor Chamberlain wanted to make sure the height requirement would still allow for a garage to house a motorhome.

3. Discussion on Flag Lots:

Chair Chamberlain requested this topic to be the first discussion item at the next upcoming planning commission work meeting.

Work meeting adjourned at 7:00 p.m.

7:00 PM REGULAR MEETING:

1. Meeting called to order by Chairperson Alex Chamberlain at 7:00 p.m. Commissioner Rebecca Hansen led the Pledge of Allegiance. Commissioner Rebecca Hansen, owner of Dulce Domum declared her bed and breakfast establishment as a conflict on the agenda for a conditional use permit renewal and will vote on the item.

A. REVIEW OF MINUTES:

1. Review and Possible Approval of Planning Commission Meeting Minutes from the Regular Work and Business Meeting on April 18, 2018.

Chair Chamberlain requested the minutes should reflect Brad Bishop, not Brent Bishop as the self-help representative in attendance on April 18, 2018.

Commissioner Jake Peart made a motion to approve the Planning Commission meeting minutes from April 18, 2018, with the name change modification discussed. The motion was seconded by Commissioner Greg Turner. Motion unanimously passed 5-0. Peart-aye, Hansen-aye, Butterworth-aye, Turner-aye, Chamberlain-aye.

B. PUBLIC FORUM:

Comments from public and public requests for future agenda items.

Limit three (3) minutes per person; please address the microphone and state full name and address.

No comments were made.

C. PUBLIC HEARING:

Limit three (3) minutes per person; please address the microphone and state full name and address.

Chair Chamberlain proceeded to the public hearing portion of the meeting.

1. *Public input is sought on Conditional Use Permit Application submitted by Sherree Olsen for a Bed and Breakfast establishment located at 1065 South Westfield Road in Toquerville, UT 84774. Property Tax ID# T-AHP-A-44-A. Zoning is R-1-20.*

Brigham Darger from Old Church Road asked if the Planning Commission had set a density requirement for bed and breakfast establishments. Chair Chamberlain stated currently there is not a density

requirement, but the city council and commission are currently working on the ordinance. Darger would like the boards to consider limiting the number of establishments allowed in residential areas. Councilmember Ruesch encouraged Mr. Darger to stay and listen to business item D3 on the agenda, discussion of bed and breakfast services and nightly/short-term rentals.

Elaine Kist from West Grassy Lane, a neighbor to the applicant was supportive of the bed and breakfast conditional use permit. She divulged to the commission the applicant's husband was recently in an accident and they have three small children. She commended Mrs. Olsen for thinking outside the box to gain more income for their family. The portion of the business is inclusive of the home's footprint and doesn't see any issue with the business being next door to her.

Chair Chamberlain moved out of the public hearing portion of the meeting and onto the business/action items.

D. BUSINESS/ACTION ITEM(S):

1. Discussion and Possible Recommendation on a Conditional Use Permit Submitted by Sheree Olsen for a Bed and Breakfast Establishment Located at 1065 South Westfield Road in Toquerville, UT 84774. Property Tax ID# T-AHP-A-44-A. Zoning is R-1-20.

Commissioner Hansen was supportive of the application. She believed the application was a shining example of why the city allows bed and breakfast establishments in a residential neighborhood. She also thought the application demonstrated the perfect example of balance between the rights of the property owner and the neighbors.

Staff recommendations for the application read by Chair Chamberlain:

Staff discussed off-street parking and it was determined that there was ample parking for the required application. The cooking facilities in the attached casita were also discussed and it was decided that removal or disabling of these facilities would be required as a condition of the permit.

1. Cooking facilities to be disabled or removed in the casita to the satisfaction of the Building Official.
2. Required off-street parking will be available and inspected.
3. The premises will receive an inspection by the Hurricane Valley Fire District and the Toquerville Building Official and any corrections or deficiencies will be corrected.
4. Applicant agrees to abide by all conditions set forth in section 10-17-3 of the Toquerville Code.
5. This permit shall receive an annual review by the Toquerville Planning Commission.
6. This permit shall not be enlarged, expanded or changed otherwise without the express written consent of the City of Toquerville.

Commissioner Hansen recommended approval on a conditional use permit application for a bed and breakfast establishment located 1065 S Westfield Road for Sheree Olsen. The motion was seconded by Commissioner Jake Peart. Motion unanimously carried 5-0. Peart-aye, Hansen-aye, Turner-aye, Chamberlain-aye, Butterworth-aye.

2. Discussion and Possible Action on a Subdivision Lot Line Adjustment Application Submitted by Jonathan Cheney. Consolidation of Property Tax ID# T-TRES-1-1 and T-TRES-1-25. Zoning is R-1-20.

Mike Vercimak spoke on the applicant's behalf, as they were unable to attend the meeting. The staff comments should reflect it is a lot line adjustment and not a lot split. The comment was a typographical error.

The staff recommendations were:

1. Applicant agrees to abandon one (1) set of utility services to the satisfaction of the Public Works Director.
2. A document which clearly sets forth a description of the original parcels, as well as a description of the newly created parcel, will be provided by the applicant for recordation with the Washington County Recorder.

Commissioner Butterworth asked if it would be the responsibility of the applicant to pay for the abandonment of the utility lines. Vercimak advised the commission the applicant would be responsible for the cost and would need to be abandoned by the satisfaction of the Public Works Director, Lance Gubler.

Commissioner Jake Peart made a motion to approve the lot line adjustment application submitted by Jonathan Cheney. The motion was seconded by Commissioner Greg Turner. Motion unanimously carried 5-0. Butterworth-aye, Chamberlain-aye, Peart-aye, Turner-aye, Hansen-aye.

3. *Discussion and Possible Recommendation of Proposed Changes to Land Management Code Title 10-17-3: Bed and Breakfast Services, and Title 10-17-4: Nightly or Short Term Rentals.*

Commissioner Butterworth provided the commission with a proposed draft of title modifications from notations taken from the special city council and planning commission meetings held on May 3, 2018, and May 10, 2018.

The commission discussed the application fee and adding an annual fee to maintain the permit in accordance with administrative costs. Ruesch said a fee cannot be higher than what it costs the city to manage applications. Mayor Chamberlain said the annual fee would cover the annual inspection and record keeping required by the conditional use permit. Vercimak wondered if the county would assess a higher tax rate for bed and breakfast owners since the business is within the primary residence. The commission discussed the pros and cons of an annual fee requirement.

Commissioner Peart spoke about density requirements. He owns a vacation rental in LaVerkin. He stated his property taxes are higher because the home cannot be considered as a primary residential home. He noted his sewer and water rates are also higher. He thought the higher rates would limit the number of applications.

Mayor Chamberlain suggested the owner of the primary residence needed to be modified. The commission decided a natural person needs to be the controlling owner and the permit holder of the business. It was unanimous the owner shall reside in Toquerville. They also decided to add a nightly rental permit shall have an ownership interest of no more than two nightly rentals in the City of Toquerville.

Butterworth and Ruesch discussed parking concerns. Chair Chamberlain and Turner suggested parking should require enough ample off-street parking spaces for both homeowner and guests. Peart suggested no on-street parking should be allowed overnight by guests and residents of the home. Hansen was not comfortable with the on-street parking restriction. Vercimak wanted the commission to know about a neighboring town's struggle to regulate parking concerns. He said a lot of these rentals have clientele who bring in large trailers or toy haulers. To allow on-street parking impacts the neighborhood. Chair Chamberlain suggested they should allow one parking stall per guestroom, and two parking stalls per on-premises owner, and no overnight on-street parking for guests. He didn't feel parking restrictions should be imposed on the property owner. Peart felt differently. Peart thought a business should not have the

same rights as a residential property owner concerning parking. If a business is ran out of a residential home, it shouldn't burden neighbors with limited parking. Turner and Butterworth both thought residential owners should not be restricted from parking on-street.

The commission wanted to remove the modification required to exclude separate outside entrances to the guestrooms. They believed the establishment should be allowed to have separate entrances.

There was a discussion concerning detached short term rentals. Vercimak suggested the commission could deny applications where a single parcel contains multiple dwellings on a single parcel. Mayor Chamberlain would like the historic district to be able to use detached dwellings as short-term rentals, especially state historic designated buildings. Peart thought to exempt the historic district would change the zone of single family residential to multi-family zoned property. Mayor Chamberlain believed these structures have historic value and suggested any new construction wouldn't allow for this use. Vercimak spoke specifically about Turner's property (263 N Toquerville Blvd). The property had an old home on the parcel. A building permit was pulled for a new home to be constructed behind the old home. The city should have required the old structure removed before allowing the new home to be built, or not allowed the new home to be constructed on the same property parcel. In allowing the building permit it created two dwellings on a single parcel. Hansen felt those historical homes should not be removed from the property. The commission discussed the definition of a dwelling unit. A structure containing a bedroom and a bathroom is not a dwelling. Once a kitchen is added, it then becomes a dwelling. The commission discussed if the word permit should be defined. If someone decided to construct ten tuff-sheds in the backyard, would the application be one permit or ten separate permits. Chair Chamberlain suggested a nightly rental permit should be contained under one roof.

The commission unanimously agreed to lower the penalty fees as proposed from an earlier draft.

Recorder McKim researched those fees from the quoted earlier draft. A first violation would incur a \$500.00 fine, second violation a \$1500.00 fine, and third violation a \$4000.00 fine. A fourth violation would result in an automatic revocation of the license.

There were no changes to the site approval, public hearing, or annual review requirements. It was agreed to maintain a logging requirement. It will be the permit owner's responsibility to provide upon request of a city official, the name and phone number of the renters. Mike Vercimak suggested the commission modify the license/permit requirement. Under current code in residential zones, bed and breakfasts are a conditional use permit, and nightly short-term rentals are not. He suggested short term rentals would no longer be conditional use permits. The use would no longer run with the land. He suggested once changes to the chapter occur, the commission will need to review the rest of the code and how it relates or references the use. Butterworth asked Vercimak to draft the license/permit requirement for the commission. Vercimak agreed to do so. The commission agreed to maintain health requirements.

There was brief discussion regarding notification requirements. Property owners within a 300 foot of the application will receive notice via a public hearing. The applicant will need to obtain a 75 percent approval from those owners. Permit holders of a nightly rental will be excluded from the 75% approval calculation. Title 10-23-9 defines the radius notification from the outside property perimeter.

Signage requirements will need to be cross-referenced to 10-22-7 which sets forth the regulations of signs in a residential zone. The code will need to be modified to exclude bed and breakfast terminology, and change it to reflect nightly short-term rental signage. There was a brief discussion about lit signs. Mayor Chamberlain would prefer signs to not be illuminated. Commissioner Hansen spoke about her sign and the obstacles she has faced with addressing confusion in her neighborhood. They discussed the difference between a monument sign, an address marker, nameplates, and a bnb sign. They also discussed the different sign size requirements in relation to lot sizes. Chamberlain suggested Hansen could provide a modification to the sign ordinance and it could be a future agenda item.

Commissioner Turner asked if the commission wanted to discuss a possible historic overlay zone. Peart didn't believe the historic district should have different requirements. He would like to identify historic properties and not a broad zone. No decision was reached.

The commission agreed noise requirements should be the same as the long-term residents of Toquerville. Vercimak enlightened the members how noise complaints and citations slip through enforcement cracks. Violators are cited and the permit owner is never notified. Nuisance complaints are brought to light when neighboring property owners come to city council meetings. It was doubtful law enforcement is aware whether or not the premise is a vacation rental when responding to violations. Incidents are not usually tracked by location, but usually by a name file. Premise files would need to be maintained through the Sheriff's Department. Butterworth asked if the citizens could be educated when a complaint is filed with the sheriff's department from a local citizen, they should also contact the city. Chamberlain suggested that process could be included the notification letter when the applicant submits a short term rental permit. Ruesch would like the information put on the website. Vercimak suggested a phone number and contact number should be posted visibly from a window at the premise to contact the property owner when a complaint handled, either by law enforcement or a concerned neighbor. A revised draft of the document will be prepared by Manning Butterworth for discussion and possible recommendation at the next planning commission meeting. They hope the draft will then be ready to forward it to city council meeting in July.

Commissioner Jake Peart made a motion to table this item until next month with Commissioner Butterworth's revisions. The motion was seconded by Rebecca Hansen. Motion unanimously passed 5-0. Peart-aye, Hansen-aye, Chamberlain-aye, Turner-aye, Butterworth-aye.

E. HO/CUP REVIEW & POSSIBLE RECOMMENDATION:

1. Home Occupation Conditional Use Permit of Kay's Glass at 230 S Ash Creek Drive for Kay Mitchell.
2. Home Occupation Conditional Use Permit for Cheney Construction at 73 E Kolob Circle for Natalie & Jon Cheney.
3. Home Occupation Conditional Use Permit for Guns and Diamonds at 48 W Old Church Road for Randy & Jane Scott.
4. Home Occupation Conditional Use Permit of Lannister Construction at 460 N Toquerville Blvd for Todd Young.
5. Home Occupation Conditional Use Permit of Bjarnson Construction at 1563 Ash Creek Drive for Leif Bjarnson.
6. Conditional Use Permit of Eagle's Nest Bed & Breakfast at 238 N Hillside Drive for Margie Evans.
7. Conditional Use Permit of Dulce Domum Bed & Breakfast at 457 South Westfield Road for Rebecca Hansen.

Commissioner Greg Turner made a motion to approve the listed conditional use permits contingent upon the bed and breakfast establishments pass their yearly inspection by the building inspector. The motion was seconded by Commissioner Jake Peart. Motion unanimously carried 5-0. Hansen-aye, Chamberlain-aye, Turner-aye, Peart-aye, Butterworth-aye.

F. ADJOURN:

Chair Chamberlain adjourned the meeting at 8:58 p.m.

Planning Commissioner – Alex Chamberlain

Date

Attest:

Toquerville City Recorder – Dana M. McKim

TOQUERVILLE CITY
ORDINANCE 2018.XX

AN ORDINANCE REVISING AND RESTATING IN ITS ENTIRETY SECTION 2, CHAPTER 3, TITLE 10 OF THE TOQUERVILLE CITY CODE TO REORGANIZE AND RE-NAME THE TOQUERVILLE BOARD OF ADJUSTMENT TO A SINGLE MEMBER PANEL KNOWN AS THE TOQUERVILLE APPEAL AUTHORITY

RECITALS

WHEREAS, pursuant to the Utah Constitution and the partial delegation of the State's police powers to municipalities and counties to regulate land use and development of land within its boundaries, the Utah State Legislature adopted Chapter 9a of Title 10 (Municipal Code), known as the Utah Land Use Development & Management Act – "LUDMA" in 2005.

WHEREAS, pursuant to LUDMA, a municipality has been required to have at least one separate body (other than its governing body) to act as an "appeal authority" to hear appeals on various types of land use decisions or staff interpretations/applications of a City's land use ordinances as well as property owner's application's for variances.

WHEREAS, in compliance with the requirements of LUDMA, Toquerville City ("City") has maintained a body of appointed officials known as the Toquerville Board of Adjustments ("B of A") and the Toquerville City Council ("City Council") has designated the B of A as its "appeal authority" on all types of land use related appeals from decisions made by the City Council and Toquerville Planning Commission as well as the appeal authority for purposes of hearing and determining whether or not to grant variances for structures and parcels not in conformance with Title 10 of the Toquerville City Code (Land Use Regulations).

WHEREAS, in recent years the Utah State Legislatures have made changes to LUDMA to clarify that a municipality's "appeal authority" need not consist of any certain number of members but that the size and the internal operation of an appeal authority is left to the discretion of each municipality, except in certain instances.

WHEREAS, the City Council has determined that because of the size of the City, the low number of variance applications and appeals, and that fact that Section 2, Chapter 3 of Title 10 of the Toquerville City Code requires the City Council to appoint regular members and two alternates to the B of A, it is not in the City and its residents best interest to maintain such a large appeal authority and to keep them trained on the proper procedures, protocol and criteria prescribed LUDMA and Title 10 of the Toquerville City Code.

WHEREAS, the Town Council has determined that it would be more cost effective and that a higher level of expertise, experience and professionalism could be obtained by the City in all land use appeals and variance requests that may come before it, if the Mayor, with the consent of the City Council were to appoint a single individual, who preferable has considerable experience and training in Utah municipal law and particularly municipal land use law as well as

Utah administrative law, Utah's Rules of Civil Procedure, Evidence, and Appellate Procedure who could hear appeals and various request and render decisions thereon in a very well-reasoned and articulated manner.

WHEREAS accordingly, the City Council has determine that in order to implement and authorize a 1 person, law trained "Appeal Authority", that Section 2, Chapter 3 of Title 10 of the Toquerville City Code must be amended significantly.

ORDINANCE

NOW THEREFORE BE IT ORDAINED BY THE TOQUERVILLE CITY COUNCIL, based upon the recitals set forth above, that:

1. Amended & Restated Section 2, Chapter 3, Title 10 of the Toquerville City Code: Section 2, Chapter 3, Title 10 of the Toquerville City Code is hereby amended and restated in its entirety as follows:

10-3-2: APPEAL AUTHORITY

A. DEFINITIONS.

"Appeal Authority" means the person appointed by the Mayor with the advice and consent of council to hear appeals from person(s) who have been affected by the implementation of the Land Use Ordinances.

"Land Use Authority" means anyone who has the authority to interpret or implement the City's Land Use Ordinance and for purposes of this Section shall be the Toquerville City Council except for in those instances with the Land Use Ordinance the City Council has delegated a specific power to the Toquerville Planning Commission or an appointed official of the City, in which cases that body or person shall be the Land Use Authority.

"Land Use Ordinance" is defined in Title 10, Chapter 9a of the Utah Code and for purposes of this Section shall be Title 10 of the Toquerville City Code.

B. APPOINTMENT.

There is hereby created an Appeal Authority to be appointed by the Mayor with the advice and consent of the City Council. It is the intent of the City that the appointed individual will not personally benefit from decisions associated with the interpretation of the ordinances of the City.

C. TERM.

The Appeal Authority shall serve for a term of two (2) years. Notwithstanding the preceding, the term of office of the initial Appeal Authority shall run from the date of appointment until December 31, 2020. Thereafter all subsequent terms shall

commence on January 1st of every other year or until the Appeal Authority position is vacant on account of death, resignation, removal or disqualification. In the event of early vacancy, the position of Appeal Authority shall be filled in the same manner as an original appointment for the expired term.

D. REMOVAL.

The appointed Appeal Authority may be removed for cause by the Town Council upon written charges, which shall be filed with the Mayor, and after public hearing, if such public hearing is requested by the appointed Appeal Authority.

E. DUTIES AND POWERS.

- 1. The Appeal Authority shall have the following powers and duties:*
 - a. To act in a quasi-judicial manner;*
 - b. Hear and decide requests for "variances" as that term is defined in Utah Code Ann. §10-9a-702;*
 - c. Hear and decide appeals of the Land Use Authority's administrative decisions applying the Land Use Ordinance.*
 - d. Serve as the final arbiter of issues involving the interpretation or the application of Land Use Ordinances.*
 - e. Hear and decide appeals from a fee charged in accordance with section 10-9a-510 of the Utah Code.*
- 2. The Appeal Authority may not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority.*

F. APPEALS TO THE APPEAL AUTHORITY.

- 1. As a condition precedent to judicial review, each adversely affected person may specifically challenge a Land Use Authority's decision, within fifteen (15) days of the land use decision and pay the related fee as may be set by the City Council, amended from time to time, and designated in the City's Uniform Fee Schedule.*
- 2. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of a Land Use Ordinance.*

3. *Only those decisions in which a Land Use Authority has applied a Land Use Ordinance to a particular application, person or parcel may be appealed to the Appeal Authority.*
4. *All documents and exhibits constituting the record upon which the action appealed was made shall be presented to the City Clerk with the application for hearing.*
5. *For every appeal, the applicant shall present to the Appeal Authority every theory of relief that it can raise in District Court.*
6. *The Appeal Authority shall conduct each appeal and variance hearing as described by this Section.*
7. *The person or entity who filed the appeal has the burden of proving that the Land Use Authority erred.*
8. *The Appeal Authority shall respect the due process rights of each of the participants in providing them with proper notice, right to be heard at a hearing and right to have legal counsel present and participate at said hearing if he/she/it so desires.*
9. *After the hearing, the Appeal Authority may give a preliminary decision, but shall issue a written decision within sixty (60) days after the hearing or after an applicant has submitted their appeal or variance request for decision and waiving their right to hearing in writing.*
10. *If an appeal of a land use decision is lodged with the City, the City Council may waive the requirements of Subsection F.1., above and allow the applicant to make their appeal directly to the 5th District Court, in and for Washington County, State of Utah.*

G. VARIANCES.

Any person or entity desiring a waiver or modification of the requirements of a Land Use Ordinance as applied to a parcel or property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.

1. *The Appeal Authority may grant a variance only if:*
 - a. *The literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinances;*
 - b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;*

- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;*
 - d. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and*
 - e. *The spirit of the Land Use Ordinance is observed and substantial justice done.*
2. *In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Subsection G.1.a., the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:*
- a. *Is located on or associated with the property for which the variance is sought; and*
 - b. *Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood; or*
 - c. *The hardship is self-imposed or economic.*
3. *In determining whether or not there are special circumstances attached to the property under Subsection G.1.b., the Appeal Authority may find that special circumstances exist only if the special circumstances:*
- a. *Relate to the hardship complained of; and*
 - b. *Deprive the property of privileges granted to other properties in the same zoning district.*
4. *The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.*
5. *Variances run with the land.*
6. *The Appeal Authority may not grant a use variance.*
7. *In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:*
- a. *Mitigate any harmful effects of the variance; or*
 - b. *Serve the purpose of the standard or requirement that is waived or modified.*

F. INTERPRETATION OF LAND USE ORDINANCE.

Any person alleging there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance may request an interpretation and decision from the Appeal Authority in accordance with this Subsection F.

- 1. The Appeal Authority will grant a waiver to the decisions of the Land Use Authority only as follows:
 - a. If the decision or requirement by the Land Use Authority conflicts with the intent or literal interpretation of the Land Use Ordinances; or*
 - b. If the decision or requirement by the Land Use Authority conflicts with state or local laws.**
- 2. In some instances, the Appeal Authority may not fully understand the intent of an ordinance or requirement placed upon any person(s) by the Land Use Authority. Under these circumstances the Appeal Authority may obtain a decision from the Town Council prior to making a final decision (if applicable).*
- 3. If the Appeal Authority requires an interpretation from the Town Council, the Appeal Authority shall make a final decision within ten (10) days after that interpretation is given.*

G. DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISIONS.

Any person or entity adversely affected by any decision of the Appeal Authority may petition the District Court for a review of the decision.

- 1. In the petition for review, the petitioner may only allege that there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance.*
- 2. The petition is barred unless it is filed within thirty (30) days after the Appeal Authority's decision becomes effective, which three (3) days after the written decision is issued by the Appeal Authority and mailed via first class mail to the applicant at the address designated in the application.*
- 3. The Appeal Authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.*

4. *Review of the Appeal Authority's decision shall be done by the court in the manner and upon the standards provided by law.*
5. *The appellant has the burden of proving that the Appeal Authority erred.*
6. *No person or entity may challenge in District Court a land use decision of the City that person or entity has exhausted their administrative remedies as provided in this Section or elsewhere in Title 10 of the Toquerville City Code.*

2. Repealer. This Ordinance supersedes or repeals the provisions of any ordinance, resolution that are inconsistent with the provisions of this Ordinance.

3. Savings Clause. If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

4. Effective Date. This Ordinance shall become effective immediately upon adoption by the Toquerville City Council.

PASSED AND APPROVED THIS ____ DAY OF _____, 2018.

Paul Heideman	Aye ____	Nay ____
Keen Ellsworth	Aye ____	Nay ____
Justin Sip	Aye ____	Nay ____
Mike Ruesch	Aye ____	Nay ____
Ty Bringhurst	Aye ____	Nay ____

TOQUERVILLE CITY
a Utah Municipal Corporation

Lynn Chamberlain, Mayor

Date _____

Attest: Dana McKim, City Clerk

10-20-11: MODIFICATION REQUIRES REVIEW:

No approved conditional use may be modified, structurally enlarged or expanded unless the site plan is amended and reviewed and approved by the city council in accordance with the procedures and standards of this chapter. (Ord. 2012.04, 1-18-2012)

10-20-3: REVIEW PROCESS:

- A. Application: An application for approval of a conditional use shall be filed with the planning department on a form provided by the city, and must include written consent by the owner of all property to be included in the conditional use. Other information required to be submitted on or with the conditional use application can be found in [chapter 6](#) of this title.
- B. Staff Review: Upon receipt of a completed conditional use application, the city planner and city staff shall conduct a review of the application. The city planner shall prepare and deliver to the planning commission a written advisory report with a recommendation, including any recommended conditions on the application.
- C. Planning Commission Review:
 - 1. Within a reasonable time of receipt of a complete application, the planning commission shall give public notice consistent with section [10-1-8](#) of this title, and hold a public hearing on the conditional use application. Members of the public may submit written comments to be part of the public hearing record or may present oral comments at the hearing.
 - 2. With receipt of input from appropriate city departments or officials, and input from any public hearing, the planning commission shall review the project and make a preliminary determination regarding the conditional use application and any conditions of approval. The planning commission will forward to the city council a recommendation to grant, to grant with conditions or to deny the conditional use application.
- D. City Council Action: After receiving the planning commission recommendation regarding a conditional use application, the city council will consider the conditional use application and the recommendations of the planning commission at its next regularly scheduled meeting. The city council may grant, grant with conditions or deny any application for a conditional use permit.
- E. Exception: The review process set forth in this section shall not apply to applications for home occupation permits, which shall be reviewed by the planning commission pursuant to chapter 23 of this title. Notwithstanding the foregoing, a home occupation permit will not be issued unless the planning commission is satisfied that the applicant for the home occupation permit has or will meet all of the conditions set forth in this chapter and chapter 23 of this title.



Toquerville City Home Occupation Conditional Use Permit

This Conditional Use Permit was granted to Renee Garner for a Bed and Breakfast Establishment located on property parcel T-58-B-1; 124 North Ash Creek Drive by the Toquerville City Council on July 13, 2018.

The conditions under which this Permit has been approved are as follows:

1. No on-street parking by guests.
2. The required off-street parking is provided and verified by City staff.
3. Maximum number of 2 guests per room and 10 occupants total excluding owner and family.
4. No cooking facilities are allowed in the guest rooms.
5. All local, state and federal health requirements are met.
6. An inspection by the Hurricane Fire District and the Toquerville Building Official be completed and any deficiencies corrected.
7. Must obtain all local, state and federal licenses including a business license from the City of Toquerville and a sale tax license from State of Utah.
8. The premises will receive an annual inspection by a designee of the City.
9. The permit cannot be enlarged, expanded or changed otherwise without express written consent from City of Toquerville.
10. The permit shall receive an annual review by the Toquerville Planning Commission.


Dana M. McKim
Toquerville City Recorder





Toquerville City Conditional Use Permit

This Conditional Use Permit was granted to Miguel D. and Reina H. Garcia for a Bed and Breakfast located at 15 Springs Drive by the Toquerville City Council on July 13, 2017.

The conditions under which this Permit has been approved are as follows:

1. The required Off-street parking is provided.
2. Maximum number of 2 guests per room and 10 guests total excluding the owner and family.
3. No cooking facilities are allowed in the guest rooms.
4. All local, state and federal health requirements are met.
5. An inspection by the Hurricane Valley Fire District and the Toquerville Building Official be completed and any deficiencies corrected.
6. Applicant must obtain all local, state and federal licenses including a business license from the City of Toquerville and a sales tax license from State of Utah
7. The premises will receive an annual inspection by a designee of the City.
8. This permit cannot be enlarged, expanded or changed otherwise without express written consent from City of Toquerville.
9. The permit shall be reviewed annually by the Toquerville Planning Commission.

By: 
Dana M. McKim
Toquerville City Recorder

Date: 





Toquerville City Conditional Use Permit

This Conditional Use Permit was granted to Shaun and Teila Huntsman for a Wedding and Event Facility at 580 East Spring Drive by the Toquerville City Council on July 13, 2017.

The Planning Commission and City Council approved the use under the following conditions:

1. The applicant must provide adequate off-street parking for the facility. This parking space should meet the criteria of Chapter 10, Section 21 and should include the required 15% landscaping.
2. There will be no off-street parking alongside the road.
3. Applicant will provide a painted crosswalk and crosswalk signs erected if parking is exercised from across the street.
4. If parking lots are constructed in the future they will be in full compliance with all federal and state rules and regulations.
5. The applicant should submit a request and proposal for "hours of operation" due to the possible impact to the neighborhood.
6. Any offsite improvements proposed by the applicant should be subject to the approval of the property owner where such improvements are to be made and by the holders of any such easements traversing the property where intended improvements are planned.
7. The applicant is not allowed to do any construction in flood way of the Ash Creek and must provide the City with a "flood plain certificate" from a certified firm.
8. Applicant agrees to comply with the rules and conditions for this permit as outlined in Chapter 10, Section 20 of the Toquerville Land Use Code.
9. Applicant agrees to obtain all required local, state and federal licenses required and assure continued compliance with all applicable regulations either local, state, or federal.
10. This permit cannot be enlarged, expanded or changed otherwise without express written permission from the City of Toquerville.
11. This permit will receive an annual review by the Toquerville Planning Commission.

By: 
Dana M. McKim
Toquerville City Recorder

Date: 
July 17, 2017





TOQUERVILLE CITY CONDITIONAL USE PERMIT

Date of issuance: July 9, 2015

This Conditional Use Permit is issued to Jessica Russo by the Toquerville City Council for the property at 245 W Sunset Avenue, Parcel #T-109, Toquerville, Utah.

Purpose of Permit: Operation of a Bed and Breakfast under the name "Zion View Bed and Breakfast, LLC", to rent for overnight use and provide breakfast to guests.

The conditions under which this Permit has been approved are as follows:

1. The owner shall limit total occupancy on the dwelling to no more than 10 persons.
2. The Bed and Breakfast room shall be limited to sleeping area, bathroom area and living area, but shall not include a kitchen.
3. The applicant shall obtain all Local, State and Federal licenses and permits required and agrees to abide by all rules and regulations of each such jurisdiction.
4. The applicant must obtain and maintain a current business license with City of Toquerville and pay the required Bed Tax to State of Utah.
5. This permit cannot be altered, enlarged, expanded or changed otherwise without express written consent of the Toquerville City Council.
6. This permit shall receive an annual review for compliance by the Toquerville Planning Commission.

By: *Renee Garner* Date: July 15, 2015
Renee Garner, Recorder

