



Planning Commission Meeting

Tuesday, August 6, 2019 at 6:30 pm

Attendees: Chairperson Lee Bennett, Commissioner Mary Cokenour, Commissioner George Matocha, Commissioner Gordon Reeve, City Manager Doug Wright, City Recorder Cindi Holyoak- not present

Meeting Location: 17 N 100 E

- 1. Call to Order**
- 2. Minutes Review/Approval**

Attachments:

- 2019-07-02 PC Minutes (Minutes_2019-07-02-PC.docx)

- 3. Public Comment**
- 4. Future Road Corridor on North Main Street - Attorney Discussion**

Attachments:

- Walter Bird Attorney Opinion Letter (Legal_Opinion_Schafer_Property_2019.pdf)

- 5. Amendments to Subdivision Ordinance**
- 6. Amendments to R-1 & R-2 Zoning Ordinance**
- 7. Review Zoning Map**
- 8. Other Information/Discussion**
- 9. Next Meeting Agenda**
- 10. Adjournment**

Monticello City Planning Commission
Meeting Minutes

7/2/2019

1. Call to Order/Roll Call

Lee Bennett called to order the regular meeting of the Planning Commission at 6:30 p.m. on Tuesday, July 2, 2019. A roll call was conducted; the following persons were present:

Chairperson Lee Bennett
Commissioner Tom Wigginton - Resigned
Commissioner George Matocha
Commissioner Mary Cokenour
Commissioner Gordon Reeve

City Recorder Cindi Holyoak
City Manager Doug Wright

Visitors: None

2. Minutes Review/Approval

The minutes of May 7 and June 4 were reviewed.

MOTION was made by Commissioner George Matocha to approve the minutes, as presented. The motion was seconded by Commissioner Mary Cokenour and passed unanimously.

3. Public Comment

None

4. Amendments to Subdivision Ordinance

More information will be gathered for the next meeting. Manager Wright and Recorder Holyoak have been speaking with the Utah Association of Local Governments to come up with some ideas for subdivision ordinance revision.

5. Amendments to R-1 & R-2 Zoning Ordinance

Suggested amendments were reviewed by the commissioners. For the next meeting they would like to review the zoning map for accuracy and then schedule a work meeting with the City Council to discuss major changes to the zoning ordinance.

6. Update from ULCT Training: Cindi Holyoak

City Recorder Cindi Holyoak discussed new legislature concerning low to moderate income housing. New mandates will affect larger cities and ideas to encourage lower cost housing were discussed.

Date/Agenda Items for Next Meeting

Tuesday August 6, 2019, at 6:30 p.m.

Review Changes to R-1 & R-2

Subdivision Ordinance

Zoning Map Review

Other information/Discussion

None.

7. Adjournment

MOTION was made by Commissioner Mary Cokenour to adjourn the meeting at 8:42 p.m. The motion was seconded by Commissioner Gordon Reeve and passed unanimously.

Attest: _____
Cindi Holyoak, Recorder, CMC

Minutes APPROVED by: _____
Lee Bennett, Chairperson

Date: _____

**WALTER J. BIRD
MONTICELLO CITY ATTORNEY
532 W. OAKCREST DRIVE, PO Box 14
MONTICELLO, UTAH 84535
PHONE: (435) 459-1838
WALTERBIRD@HOTMAIL.COM**

August 25, 2019

To:	Doug Wright Monticello City Manager 17 N 100 E Monticello, Utah 84535
Re:	Schafer Property and General City Road Corridor Preservation Powers

As Monticello City Attorney, representing the City of Monticello, I have been asked by the Monticello City Manager to provide an opinion on a proposed road corridor mapped by the City that transects the Schafer property located on Highway 191 and roughly 200 N. The City Manager is also interested in the legal status of other proposed road corridors.

The facts as they have been presented to me are as follows:

At some point, in the last twenty years or so, the City of Monticello (hereinafter “city”) created a proposed road corridor map with the intention of protecting such corridors for future roadways to service growth within the city. Very few, if any, of these proposed corridors have been acquired by the city in fee title or as easements. As such, many, if not all of these proposed corridors on the aforementioned map overlay private property.

Those are precisely the facts of present case, the city’s future road corridor map shows an eastern extension of 200 N. that clearly dissects the Schafer property as it moves east. Also, the city has not acquired any fee or easement rights to the Schafer property for the proposed road corridor. Furthermore, a potential buyer of the Schafer property approached the city with the question of obtaining a building permit to improve the property but was told by city staff that such a permit could not be granted in order to preserve the future road corridor.

The controlling state law is summarized as follows:

Utah Code Annotated § 72-5-401, *et seq.*, entitled Transportation Corridor Preservation Act (hereinafter TCPA), a subsection of the Utah Right-of-way Act, gives state and local governments guidance on how to legally protect transportation corridors for future planning efforts. The TCPA attempts to provide for the public purpose of planning present and future transportation structures while protecting private property owner’s rights.

The TCPA defines “corridor” as a “. . . path or proposed path of a transportation facility , that exists or may exist in the future and may include the land occupied or to be occupied by a transportation facility, and any other land that may be needed for expanding a transportation facility or for controlling access to it.” Additionally, the TCPA defines “corridor preservation” as

a “. . . planning or acquisition process intended to: (1) protect or enhance the capacity of existing corridors; and (2) protect the availability of proposed corridors in advance of the need for and the actual commencement of the transportation facility construction.” See § 72-5-401(1) and (2), UCA.

The legislature specifically stated in the TPCA that “. . . planning and preservation of transportation corridors is a public purpose, that the acquisition of public rights in private property for possible use as a transportation corridor years in advance is a public purpose, and that acquisition of public rights in private property for possible use as alternative transportation corridors is public purpose, even if one or more of the corridors . . . is not used . . . if developed within the time period established under this part”. With that said, the legislature declares that acquisition or private property for the preservation of transportation corridors should be done on a voluntary basis and not by the use of eminent domain.” See § 72-5-402(1) and (2), UCA.

Within these sideboards, the TCPA permits municipalities to “undertake transportation corridor planning, review and preservation processes; and acquire fee simple rights of less than fee simple, including easement and development rights, or the rights to limit development, including rights in alternative transportation corridors, and to make these acquisitions up to projected 30 years in advance of using those rights. In addition, municipalities may “limit development for corridor preservation by land use regulation and by official maps, and by ordinance prescribed procedures for approving limited development in transportation corridors until . . . transportation facility construction begins.” See § 72-5-403(1), (2) and (3), UCA.

Furthermore, the TCPA observes that municipalities “shall observe all protections conferred on private property rights” and allows a “private property owner whose property’s development is limited or restricted by a power . . . may petition . . . the municipality that adopted the official map to acquire less than or the entire fee simple interest in the affected property, at the option of the property owner” and “[i]f the municipality . . . does not acquire . . . the interest in the property requested by the property owner, then . . . the municipality may not exercise any of the powers granted under this part to limit or restrict the affected property’s development.” See § 72-5-405(1), (2) and (3), UCA.

On this basis, I hereby offer the following opinion:

Clearly, under the TCPA, the city’s attempt to plan and preserve its future road corridors by mapping them is good and valid exercise its public purpose powers to protect these future corridors from development. However, mapping alone isn’t sufficient alone under the TCPA to fully protect these corridors. As stated in § 72-5-403(2)(b), UCA, the city may “undertake transportation corridor planning review, and preservation processes” such as planning and mapping but to fully protect those efforts the city needs to “acquire fee simple rights and other rights of less than fee simple, including easement and development rights . . . and make these acquisitions up to a projected 30 years in advance” of the project. § 72-5-403(2)(c), UCA.

As stated above, the city has effectively planned and mapped proposed corridors, but it has not taken the next affirmative step of acquiring the fee or easement rights in the Schafer

property or other proposed corridors within the city. To effectively protect these proposed corridors the city needs to acquire fee, easement or development rights to such corridors.

Additionally, as stated in the TCPA, the city cannot restrict development on private property without acquiring such property interests. Therefore, the city cannot, short of acquiring the requisite interests in the Schafer property control how that property is developed within city codes because it has been planned for and mapped previously by the city.