



Planning Commission Meeting

Tuesday, September 3, 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

Meeting Location: 17 N 100 E

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

Attachments:

- 2019-08-06 PC Minutes (planning-commission-meeting_minutes_2019-08-06.pdf)

- 3. Public Comment**
- 4. R-2 Residential Zoning Amendments - discussion**
- 5. City Council Update on Semi-Truck By-pass - Discussion**

City staff discussions with UDOT about the possibility of a future by-pass for semi-traffic in Monticello prompted a conversation with the City Council. The City Council did not express any interest in the by-pass for a future agenda.

- 6. Building Permit Report - Cindi Holyoak**
- 7. Administrative Communications**

Attachments:

- Attorney Walter Bird Opinion Letter (Legal_Opinion_Schafer_Property_2019.pdf)

- 8. Next Meeting Agenda**
- 9. Adjournment**



Planning Commission Meeting

Minutes

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

Minutes:

Chairperson Lee Bennet called to order the Monticello Planning Commission meeting at 6:32 p.m. Visitors present: City Attorney Walter Bird, Rowland Griffin

2. Minutes Review/Approval

Minutes:

Motion was made by Commissioner Mary Cokenour to approve the minutes of July 2, 2019, as presented. The motion was seconded by Commissioner George Matocha and passed unanimously.

3. Public Comment

4. Future Road Corridor on North Main Street - Attorney Discussion

Minutes:

Chairperson Bennett explained the property in question is listed for sale. This property includes a future road corridor which has not been deeded. Attorney Walter Bird was invited to attend the meeting in order to give legal council to the City regarding the future road corridor. Rowland Griffin, Realtor for County Wide Realty, discussed difficulty with obtaining a building permit for the potential new owner of the property to remodel the home. Building Official, Cindi Holyoak, told the potential new owner, during a preliminary review of the property, that a remodel must be designed to observe frontage on the future road corridor. Mr. Griffin then investigated easements recorded on the property deed and did not find

a deeded corridor. Attorney Bird said it shows on the plat map there are two easements but it does not show in the title report. These easements are not related to the corridor in question. Mr. Griffin said this property needs to be improved as it is an eyesore. Attorney Bird said he needs to research the law more to comfortably council the City with this situation. Mr. Griffin said that at some point, the issue with storm water running through the ditch on the south side of the property should be fixed as it is causing flooding problems. Chairperson Bennett said she was aware of the problem due to prior complaints but said she didn't know where the responsibility lies with the storm water. Manager Wright said it is important for the City to take proper measures in securing road corridors for the future. There was discussion about how the corridor may have been designated and a timeframe was estimated. Chairperson Bennett discussed prior proceedings to the best of her recollection, along with the process of producing a City General Plan to Utah State specifications. The Commission and realtors involved were content to wait for Attorney Bird's official opinion.

5. Amendments to Subdivision Ordinance

Minutes:

This item will be forwarded to a future discussion. Commissioner Matocha recommended this be moved to priority on the next agenda.

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

Minutes:

Chairperson Bennett discussed the sentiment of the public for keeping residential zones as they are with current permitted uses and intended character. There was discussion about rental properties and short term rentals and the allowance of accessory dwellings. The consensus was to allow short term rentals in all zones except R-1 and to allow long term rentals in R-1, proposing 9 month contract on the long term rental agreements. Commissioner Reeve said looking at the proposed set back increases, he feels uncomfortable with the new restrictions. Commissioner Matocha said it makes sense to increase the setbacks to allow for emergency vehicles and room for parking, etc.

7. Review Zoning Map

Minutes:

Commissioner Matocha discussed some areas that pose opportunity for change. It was decided that the Commission should go out and visit areas and discuss potential for zoning changes.

8. Other Information/Discussion

Minutes:

None.

9. Next Meeting Agenda

Minutes:

Amendments to Subdivision Amendments to R-1 & R-2 Zoning

10. Adjournment

Minutes:

Motion was made by Commissioner Mary Cokenour to adjourn the meeting at 8:24 p.m. The motion was seconded by Commissioner Gordon Reeve and passed unanimously.

Vote results:

Ayes: 4 / Nays: 0

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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.