



**Minutes of the
Millcreek Planning Commission
March 17, 2021
5:00 p.m.
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, March 17, 2021 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically per Millcreek State of Local Emergency Directive No. 2 of 2020 and live streamed via the City's website with an option for online public comment.

PRESENT:

Commissioners

Shawn LaMar, Chair
Victoria Reid, Vice Chair (electronic)
David Allen (electronic)
Scott Claerhout (electronic)
Skye Sieber (electronic)
Tom Stephens
Ian Wright (electronic)

City Staff

John Brems, City Attorney
Elyse Sullivan, City Recorder
Francis Lilly, Planning and Zoning Director
Erin O'Kelley, Planner (electronic)
Robert May, Planner (electronic)
Naba Faizi, Planning Permit Tech (electronic)
Kurt Hansen, Legislative Policy Director
Blaine Gehring, Legislative Analyst (electronic)

Attendees: Wayne Johnson (electronic), Christian Larsen (electronic), David Amott (electronic), and Aryel Cianflone (electronic).

REGULAR MEETING – 5:00 p.m.

TIME COMMENCED: 5:01 p.m.

Chair LaMar called the meeting to order. Mayor Silvestrini said two Commissioners had resigned, Russ Booth and Fred Healey, and he thanked them for their work. He introduced the new appointees, Christian Larsen and Aryel Cianflone, to the Commission and said they would be appointed at the City Council meeting on March 22, 2021. Chair LaMar read a statement explaining the duties of the Planning Commission.

1. New Business

1.1 Consideration of SD-21-001, Approval for Final Plat Location: 857 E. 4315 S.

Applicant: Ted Zaharias Planner: Robert May

Robert May said the application was an amendment to the existing Windsor One Subdivision. The property was rezoned to R-1-5 in December 2020. He showed the Commission a survey image of the property of the remnants purchased by the applicant to be consolidated into one lot. May said because the consolidation included the alteration of an easement, the application needed to come to the Planning Commission. He showed a

depiction of the location of the current public utility easement and the proposed relocation of it to the north. He said there appeared to be an irrigation easement owned and maintained by the Big Ditch Irrigation Company, however, the status and whether the ditch was operational was still in question. He said staff had contacted the Big Ditch Irrigation Company to provide notice of the proposed plat amendment and the Irrigation Company will be required to approve and sign the proposed plat amendment. He said the Irrigation Company would like a 10-foot easement preserved all around the property. May confirmed that all of the utilities came from the street. He said there was no neighborhood response, and the community council did not review the application. He recommended approval of the final plat subject to the conditions in the staff report with the update that the proposed location of the public utility drainage easement consist of no less than ten feet in width.

Commissioner Claerhout asked if the ditch was covered. May said there was no evidence of there being a ditch. The Irrigation Company confirmed that they were no longer utilizing it but would like to keep the easement in place.

Chair LaMar asked if there was public comment. There was no comment.

Commissioner Allen moved to approve the proposed final plat, Windsor One Subdivision 2nd Amended, file number SD-21-001 with the staff conditions listed in the staff report. and with the update, that the proposed location of the public utility drainage easement consists of no less than ten feet in width. Commissioner Claerhout seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

2. Continuing Business

2.1 Consideration of CU-21-001, Request for a Conditional Use Permit for 100 New For-Rent Townhomes with Amenities in the RM Zone Location: 525-575 E. 4500 S. Applicant: JF Capitol Planner: Erin O'Kelley

Erin O'Kelley said the applicant requested a continuance. Chair LaMar asked if there was public comment. There was no comment.

Commissioner Claerhout moved to continue application CU-21-001, request for a conditional use permit, to a future meeting to be determined. Commissioner Allen seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

2.2 Consideration of ZT-21-001, Amendments to the Millcreek Historic Preservation Ordinance Staff: Blaine Gehring, Legislative Analyst

Blaine Gehring said the Commission had previously reviewed the application and held a public hearing, but it was continued pending input from the Mt. Olympus Community Council. The Chair of the Mt. Olympus Community Council provided a letter to Gehring which could be found in the staff report. David Amott, Preservation Utah, said he was willing to answer any of the Commission's questions. Chair LaMar asked about residents removing their property from the historic list. Amott said preservation ordinances have a combination of sticks and carrots, and this ordinance does not have a stick. He said the City could provide a lot of carrots to incentivize residents to stay on the list such as being eligible for state and/or federal tax credits and various grants. He said the ordinance created a preservation culture in Millcreek. Chair LaMar asked about remodeling or adding to homes on the historic

register. Amott said the local commission could have a nonbinding say in what materials are used, but the National Park Service standards would dictate whether it received tax credits. Commissioner Reid asked if Millcreek participated in the CLG program. Amott said in order to participate in the Certified Local Government program, a city needs a preservation ordinance and a historic commission which would be accomplished through this ordinance. Commissioner Allen confirmed that it would be up to a homeowner to join and withdraw from the register. Kurt Hansen asked if the ordinance encompassed the interior of the home. Amott said it is usually the exterior of the home. Gehring confirmed the exterior appearance.

Chair LaMar asked for public comment. There was no comment. Commissioners Allen, Wright, Reid, Claerhout, and LaMar expressed favor for the ordinance.

Commissioner Stephens, as respects to application ZT-20-001 adoption of a historic preservation ordinance, moved to recommend approval to the City Council. Commissioner Sieber seconded. Commissioner Stephens said the rationale was that it was a good first step for preservation in Millcreek. **Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

3. Business Meeting

3.1 Open and Public Meetings Act Annual Training; John Brems, City Attorney

John Brems reviewed the Open and Public Meetings Act with the Commission. He also brought up the special rule for the Planning Commission adopted in their Rules of Procedure (Resolution 17-32) stating that no member of the Commission shall have any ex parte discussion regarding any administrative or re-zone land use application before the Commission. Commissioner Stephens asked about one commissioner discussing an application via email. Brems said the Act allowed it, but the Planning Commission's Rules of Order and Procedure did not. Commissioner Stephens asked about discussion of administrative versus legislative matters. Brems said if there was no quorum, the Commission could discuss either. Chair LaMar asked about a matter that the Planning Commission passed a recommendation on to the City Council. Brems said if it was no longer before the Commission, they could discuss it with the public. Commissioner Stephens asked about a non-quorum of commissioners discussing a piece of vacant property development. Brems said again, no ex parte communication. Francis Lilly said the Commissioners could discuss things with city staff. Commissioner Reid clarified that it was okay to copy all commissioners on email communication. Brems confirmed. Lilly said he documents email discussions during the Commission's meeting. Commissioner Reid asked if the Commission could discuss legislative items with the public. Brems said it would be considered ex parte if the applicant was involved.

3.2 Accessory Dwelling Unit (ADU) Progress Report; Erin O'Kelley, Planner

Erin O'Kelley said the Millcreek ordinance proposal on accessory dwelling units (ADUs) was put on hold due to the legislative session where H.B. 82 Single-Family House Modifications was adopted. She said it affected Millcreek's proposed ordinance. O'Kelley then reviewed the highlighted provisions of that bill.

- Enforcement tools for short term rentals.
- Modifies and defines terms applicable to municipal and county land use development and management.

- Allows a municipality or county to punish an individual who lists or offers a certain licensed or permitted accessory dwelling unit as a short-term rental.
- Allows municipalities and counties to require specified physical changes to certain accessory dwelling units.
- In any single-family residential land use zone
- Requires municipalities and counties to classify certain accessory dwelling units as a permitted use and
- Prohibits a municipalities and counties from establishing restriction or requirements for certain accessory dwelling units with limited exceptions.
- Allows a municipality or county to hold a lien against real property containing certain accessory dwelling units in certain circumstances.
- Provides statewide amendments to the International Residential Code related to accessory dwelling units.
- Requires the executive director of the Olene Walker Housing Loan Fund to establish a tow-year pilot program to provide loan guarantees for certain loans related to accessory dwelling units.
- Prevents a homeowners association from prohibiting the construction or rental of certain accessory dwelling units.
- Makes technical and conforming changes.

O'Kelley explained that an "internal accessory dwelling unit" means an accessory dwelling unit created within a primary dwelling and within its footprint. Millcreek can prohibit the installation of separate utility meters, prohibit the alteration of the appearance of the home, require a primary dwelling, require 1 additional off-street parking stall per ADU, require that parking requirements for the single-family home are still met, require a license to rent the ADU, and prohibit ADUs in mobile home parks. Lilly said the footprint could not be expanded to accommodate an ADU. O'Kelley said the general minimum requirements for safety per the International Residential Code were still required though firewalls would not be imposed. The changes adopted in this bill were not opposed by the Utah Association of Building Officials because of the owner occupancy requirement. Generally, these changes do not impact the Planning and Zoning requirements but do make an impact on the feasibility of creating an ADU on a lot, most importantly the financial feasibility. O'Kelley proposed that staff schedule a meeting with the Planning Commission and City Council to discuss the following regarding accessory dwelling units: conditional use permits for detached accessory dwellings, heights, setbacks, fencing, parking in the front yard, parking stalls, existing ADUs, and prefabricated homes. She reminded the Commission of having an option list targeted at mitigating privacy. That updated proposed code language was the following:

1. Exterior lighting for an ADU shall provide illumination directed downward. Light source shall not be visible from adjacent properties.
2. Windows for a detached accessory dwelling unit shall be translucent or not visible from an adjacent property or installed as a skylight.
3. Parking for a detached ADU shall be in a garage or 8 feet from any property line or screened from adjacent properties unless utilizing a driveway in the front yard.
4. Screening. Entrances, parking, and stairways shall not be visible from adjacent properties. This may be done with a fence along the side and rear property lines, landscaping that is dense enough to obscure activity or placing the entrances and stairs out of view of adjacent properties.
11. Balconies for detached ADUs on located on the second story are prohibited.
12. Exterior stairways and landings may not encroach into a setback.

O'Kelley said at the request of a community council, staff reached out to other cities in the County who had adopted an ADU ordinance to learn about their obstacles post adoption and if they have made changes or plan on making changes soon. In Salt Lake County there are approximately twenty municipalities/townships, nine of them have some form of legal ADU, 4 are illegal, and seven are unknown (two are in process of adopting an ordinance, including Millcreek). Of the nine staff reached out to, five saw obstacles after adoption and potential changes. Some of the obstacles were the locations of parking needed to be adjusted, the impact of workload on staff particularly with conditional use permits, yard and lot coverage needed to be adjusted, building code requirements and fire standards, financing, similar setbacks to single-family dwellings were too strict, wanting stricter design standards, wanting to removed conditional use and create a permitted use, and wanting to allow larger sizes and second stories. Some cities changed their codes to allow non-related persons to live in an ADU, made changes to the recorded notice, adjusted the height limit to 25 feet, and allowed an additional kitchen.

She showed the Commission pictures of detached ADU examples. She said the Commission had considered requiring a conditional use permit for ADUs and staff was neutral on the idea. She recommended having preapproved site plans for applicants to follow and presented a few options to the Commission. Chair LaMar asked about the effective date for H.B. 82. O'Kelley said it would be July 2021. Commissioner Stephens asked when another Millcreek draft ordinance would be ready for review. O'Kelley said it was ready and she would post it on the City's website. Lilly said he would like to schedule a joint meeting with the City Council to discuss the matter.

Aryel Cianflone asked if Millcreek no longer allowed people to expand their homes. O'Kelley said residents could expand their home as an addition. Cianflone asked about the State passing more restrictive standards. O'Kelley said the State did not cover expansions of the primary dwelling or detached ADUs.

3.3 Approval of February 17, 2021 Meeting Minutes

Commissioner Stephens moved to approve the February 17, 2021 meeting minutes. Commissioner Reid seconded. Chair LaMar called for the vote. Commissioners Stephens, Reid, Claerhout, Wright, Sieber, and LaMar voted yes. Commissioner Allen abstained. The motion passed.

3.4 Updates from the Planning and Zoning Director

Francis Lilly said the City Council would be voting on the RM and PUD code changes at their next meeting. He said since the Commission had last seen that ordinance proposal, Lilly had made a change to it. He said a developer had tested out the new RM code and liked it but not some of the architectural requirements. They had expressed a desire to construct their whole project in brick. Lilly said the developers would still have the list of four requirements to be met, unless 80% of the building was stone or brick. Lilly said good materials were desirable.

He gave the Commission an update on Millcreek Common. He said staff discovered that the fault line is more to the west than anticipated and it squeezed the developable western property. The new city hall was contemplated in the northwest corner of Chambers Avenue

and Millcreek Common. He reviewed three potential upcoming development agreements. Development agreement 1 would be for development at the corner of 1300 E. and 3300 S. and would include: moving the commercial requirement from the southwest corner to the opposite eastern corners, City Hall and a public market on the northwest corner, a restaurant on the southwest corner, limited to no setback with the City acquiring the fault line boundary, shared parking with the City to contribute to the parking structure use, a custom parking ratio, no setback, specific materials, and the project to be reviewed by a design review committee.

Lilly said the City was buying property to the east edge of Millcreek Common from the fault line setback. He said he keeps two concepts in mind when negotiating a development agreement. He asks if the City would still get the “cool thing” without the development agreement and if the answer was no, it was good to pursue one; a but for. The second concept is pursuing a tradeoff with an equivalent value. Commissioner Stephens asked if there was anything in code authorizing a design review committee. Lilly said no but staff would look at adding one. He then showed a preliminary site plan of the western side of Millcreek Common.

Lilly reviewed development agreement 2 for property currently owned by Comcast between Miller and Woodland Avenues, which would include: modifying the commercial requirement along the park boundary with possible live/work units since the City does not want vehicular access there, the developer to build or contribute to an amphitheater in lieu of the commercial requirement, a 10 foot additional height proposed on account of the odd shaped parcel and to allow for two levels of parking, possible shared parking and a custom parking ratio, possible setback allowances, a pedestrian path on the east side of the site, a potential arts component, and the project to be reviewed by a design review committee.

Lilly said the idea for the second northern phase of Millcreek Common is a pedestrian experience. Aryel Cianflone asked how Millcreek was acquiring the land for Millcreek Common. Lilly said in some cases the City was doing trades with developers otherwise the City was purchasing it. He said some buildings were on the fault line and could not be redeveloped and that is why the park plaza was going in.

Lilly said MC33 had an approved project south of 3300 S. on Highland Drive for apartments. They want to change the project to condominiums, expand their project, and build a pedestrian bridge across 3300 South. Development agreement 3 would be for this project and it would require a contribution in lieu of open space, the pedestrian bridge. Lilly said it would involve an amended conditional use permit with an approval subject to the Council’s approval of the development agreement since it did not involve a rezone. He said each required City Center Overlay Zone (CCOZ) amendment stands on its own, requiring a text amendment approval by four community councils. He then proposed that staff look at creating a process in the CCOZ to allow a streamlined development agreement modification process.

Commissioner Stephens asked how a design committee would work with a development agreement. Lilly said the approval would be subject to a recommendation of the design review committee. Commissioner Stephens asked if development agreements could be made with a conditional use application. Lilly said development agreements would typically stay

with rezones. Christian Larsen asked for an estimated time on these development agreements. Lilly said a proposed text to the CCOZ would be in May then the projects would follow.

3. Calendar of Upcoming Meetings

- City Council Mtg., 3/22/21, 5:00 p.m. at City Hall
- East Mill Creek Community Council Mtg., 4/1/21, 6:30 p.m. TBD
- Mt. Olympus Community Council Mtg., 4/6/21, 6:00 p.m. TBD
- Millcreek Community Council Mtg., 4/6/21, 6:30 p.m. TBD
- Canyon Rim Citizens Association Mtg., 4/7/21, 7:00 p.m. TBD
- City Council Mtg., 4/12/21, 5:00 p.m. at City Hall
- Planning Commission Mtg., 4/21/21, 5:00 p.m. at City Hall

ADJOURNED: Commissioner Claerhout moved to adjourn the meeting at 6:50 p.m. Commissioner Reid seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

APPROVED:  Date APRIL 21, 2021
Shawn LaMar, Chair

Attest: 
Elyse Sullivan, City Recorder

