



**Minutes of the
Millcreek Planning Commission
October 20, 2021
5:00 p.m.
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, October 20, 2021 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically and live streamed via the City's website with an option for online public comment.

PRESENT:

Commissioners

Shawn LaMar, Chair
Victoria Reid, Vice Chair
David Allen
Scott Claerhout (electronic)
Skye Sieber
Tom Stephens (left at 7:46 p.m.)
Ian Wright (electronic)
Christian Larsen (excused)
Aryel Cianflone (electronic)

City Staff

John Brems, City Attorney
Elyse Sullivan, City Recorder (electronic)
Francis Lilly, Planning and Zoning Director
Robert May, Planner
Kurt Hansen, Facilities Director
Naba Faizi, Planner (electronic)
Jen Smith, Planning Engineer (electronic)
Brad Sanderson, Current Planning Manager
(electronic)
Carlos Estudillo, Planning Permit Tech.
(electronic)

Attendees: Brandon Fry, Brian Strong, Mary Ann Strong, Marv Poulson, Tyler Morris. Todd Reeder, Peter Jacobsen, David Vaughan, Rachel and Jeremiah Clark, Ryan Heath, Wayne Johnson, Richard Hansen, Doug Sampson, and Wendy Sampson.

REGULAR MEETING – 5:00 p.m.

TIME COMMENCED: 5:06 p.m.

Chair LaMar called the meeting to order and read a statement explaining the duties of the Planning Commission.

Commissioner Stephens read a statement into the record on ex parte communication (see attached).

1. Continuing Application

1.1 Consideration of GP-21-001/ZT-21-007, Amendments to the City Center Master Plan Regarding District Signs/Amendment to Chapter 19.82 of the Millcreek Zoning Ordinance Regarding Billboards and District Signs Planner: Francis Lilly

Francis Lilly quoted Ogden Nash, "I think that I shall never see a billboard lovely as a tree." He said there were wicked interconnected problems in the world and this billboard was one.

Wicked problems are unique without a clear problem definition, were multi-causal and interconnected, had multiple stakeholders with conflicting agendas, straddled organizational and disciplinary boundaries, and it could take a long time to evaluate solutions which may not be right or wrong but better or worse and ramifies throughout the system. He said the issue was complicated with nuances and privileges. He asked people to understand that staff was trying to deal with a wicked problem. There was no money to be made and city integrity should not be castigated. There was no elegant way to get rid of a billboard, it was not cheap, fast, or easy. The City Council opted to not disclose the full appraisal incase the city needed to initiate an eminent domain proceeding. If that appraisal became public, it would make the city's position difficult. The Council authorized the value of the billboard and associated rights to be released, and that number was \$397,500. Staff did not know the true value of the sign in the context of a rotary market area, other proprietary information that would inform Reagan Outdoor Advertising's ("Reagan") appraisal, the time to resolve an eminent domain action, or the cost of an out-of-court settlement with Reagan. He suspected the cost would be well more than the provided value if this issue went to court. The city does not have time on its side because of the city hall lease, Millcreek Common construction, and payment on bonds.

Lilly asked the Commission to consider if digital signage was appropriate in the Millcreek City Center. He provided his opinion on aesthetics, safety, brightness, and eminent domain considerations. He asked if after controlling for light trespass and animation, if a digital billboard was more offensive than a lit static billboard. Complaints about billboards were on obstruction of view, development impediments, and overall "ugliness" that were just as apparent on a sign that changes its face once a month as they are on a sign that changes its face once every eight seconds. He wondered if a digital face was more offensive than a static face. He asked if a digital billboard was more dangerous than a static billboard, if a digital billboard was more dangerous than an electronic message center, which the city allowed, and if a digital billboard was more of a distraction than a smartphone. He noted the research was mixed on these conclusions. The city already has ambient illumination standards for on-premises signs. The standards assume signs up to 300 square feet in area. If the same standards are applied to a billboard that is allowed with on-premises signs, would it address the concerns about brightness. A condition of the memorandum of understanding (MOU – between Millcreek and Reagan) is that light trespass louvers be installed on the billboards, to direct light downward and within 30 degrees of the line of sight of the billboard. This is beyond what Millcreek code requires for electronic signs. Normally, allowing for the conversion of a static billboard to digital makes that sign much more expensive to condemn. Staff did not want to make a development impediment worse. The billboard owner must initiate or respond to a condemnation. That is why it was important for the city to own the sign. He said because Millcreek would own the digital district signs, ROA could not avail itself of the special eminent domain provision in state law. The City could not condemn its own property interest. He said there needed to be a provision in the license and lease agreement that provided for an equitable solution should either party desire to terminate the lease early. He noted that assigning the value to a billboard was an opaque process though digital was worth more.

Lilly said Commissioner Sieber brought up a comparison of sign options (in an email). He showed the Commission a rendering of sizes on the current billboard to be removed, the proposed district sign, and an electronic message center allowed by code. From where he

stood as staff, he would be doing the community a disservice if he did not stand behind the City's policy, which states, "it is the policy of Millcreek to reduce the number and combined square footage of billboards where feasible." This was a good faith attempt to do that while addressing the wicked problem. Staff came up with a plan to remove billboards from the city and this would move the city towards that goal more than any other option. The scope of the proposal was limited to the sign code, 19.82. The goal was to address the concept of a district digital sign and put language in the City Center Overlay Zone (CCOZ) into the sign code, but CCOZ was adopted before the amendments to the sign code. He said there was potential for a conflict between the two codes. He made two proposals; make an interpretation that addresses signs located on public property and signs that serve a public purpose, and fix the CCOZ because it had other deficiencies such as the height diagram no longer being accurate and some other items. The legislative intent would be clear if the Council decides to amend the zone. He said the situation was similar to the conflict between the PUD and RM zones. He brought up that Commissioner Sieber asked about advertising on billboards. He did not know the cost of a billboard advertising campaign. He noted that the firms working on the programming and design of Millcreek Common recommended the city be nimble in advertising, and one way was through electronic signage.

Commissioner Reid appreciated Lilly's comments. She asked about the appraisal number not being final. John Brems said the appraisal was still a draft, so the number was not final. Commissioner Stephens asked about brightness standards being applied to a billboard the same as an on-premises sign. He asked if a 300 square foot (sf) sign was possible. Lilly said the ambient light standard was in the EMC section of code. Commissioner Stephens asked if 300 sf was allowed. Lilly did not know, but there was a standard already in place. Commissioner Sieber asked if the Commission would make two separate motions because of the different applications. Lilly said it could be broken up if the Commission wanted.

Chair LaMar said public comment was heard on the first time hearing a matter, but this was the second. The Commission still welcomed public comment.

Brian Strong, 3734 Greenbriar Way, appreciated the Commission coming up with resolutions to wicked problems which should stem from the General Plan. He said Reagan's sign had a date on it, so they had the leverage. He said if there could not be a good agreement, then the parties could walk away and work around the billboard. He said if a digital sign was profitable, it would be up to Reagan to establish. He said Reagan could make any size sign they wanted, not just the industry standard (12' x 24'). There were other options than just leaving it too. There was no prescribed date. The city was able to solve issues to Millcreek's advantage. The immediacy was a perception from the seller and the city would be perpetuating the problem by allowing signs to be in for 40 years.

Mary Ann Strong, 3734 Greenbriar Way, appreciated Lilly's analysis. She said there was a solution not considered. She had seen the clout Reagan has at the Legislature, but the Legislature seemed to be less tolerant of billboards now, so this situation could be the exception of billboards to eminent domain. She was confident the city could be successful if they lobbied for a change in state law. She felt the legislators would be sympathetic to Millcreek's plight at this time.

Marv Poulson, 3621 S. 1020 E., asked if the city had an option on the current city hall lease for extension. He said electronic billboards are the light source, the other billboards are reflected light, and therefore the electronic billboards were much brighter. The perception of the brightness was different seeing it in lightness instead of darkness, so the previous demonstration (from another meeting) should have been done in the dark. He said the light would shine onto the adjacent buildings and should be demonstrated for clarity. He liked the way the Commission did business.

Commissioner Allen commented that the question of digital signage being appropriate for the Common should have been raised sooner. The problem now is that the city is under a time crunch. He felt the wicked problem was self-created and commented that making decisions out of fear seldom produced good results. The city needed to slow down and explore other options. The one option presented does not comply with the city's ordinances and the Commission was only allotted 30 days to make a decision on the application. Chair LaMar said the Commission continued the matter in September for want of more information. He said the Commission now had a little more information. The heaviest question was whether the application warranted changing the guiding documents.

Commissioner Wright appreciated the information provided and felt the application was not in the best interest of the city. The city should take chances exploring other options. Commissioner Claerhout said he voted no at the last meeting for the continuation of the application. He was not in favor of the application; he did not want digital billboards. Commissioner Stephens said the MOU was created from a point of weakness, and the city compounded the problem by having a single individual do the negotiating. He said Mike Winder, Assistant City Manager, was the recipient of political donations from a billboard owner. He felt there was inadequacy of the MOU, that many aspects should be negotiated by expert negotiators without ties to the other party.

Commissioner Sieber stated that she agreed with the city policy to reduce the billboard square footage. If the city wished to advance that policy, there should be a comprehensive review of all the billboards in the city and staff should prioritize the signs based on individual conditions in an attempt to be creative at removing them. She recognized it took a lot of effort to come up with solutions to wicked problems. She appreciated the extra time and information given to the Commission. She was uncomfortable making changes to the sign ordinance that allowed a newly defined use in the City Center that seemed to conflict with the vision for future signage outlined in the City Center Master Plan. She referenced a section of the plan that said future signage should be intentionally accessible to people traveling by all modes. The size and height of the signs are designed to be auto centric. She said there was only one billboard (1333 E. 3300 S.) that was an actual impediment to development, and it was accelerating the conversation and review of the proposal. She did not want to complicate plans for the City Center or new city hall, but the city should not look at an all or nothing deal. She would be more comfortable moving forward with one digital sign, not three. She found the proposed amendments to the City Center Master Plan unnecessary.

Commissioner Reid hoped the city would be better off from the process of the Commission grappling with the wicked problem. She found it difficult to deal with the lack of and misleading information and felt forced to adhere to a self-imposed deadline. She felt like it did not matter what the Commission did since the Council start hearing the application before

the Commission made a recommendation and the Commission was only given one regular meeting to consider the matter. She said \$397,500 was a lot less than \$1.3 million as presented. She felt statements about sign face amounts going up and coming down were inaccurate. The Commission was comprised of volunteers trying to do the best thing for the city. The city newsletter came out in the spring about the digital billboards always being part of the City Center Master Plan. The city has all the tools to make their position known and the Commission was limited. A more open process with appraisals of all the signs would help the Commission understand the financial implications of the plan. Commissioner Allen said in a letter dated October 14, 2021 from Mike Winder, a challenge facing the city was to buy three digital district signs for \$750,000. He felt that was not correct because it had not been proposed before and because it said the city was going to build the billboards anyway. He felt that challenge was misleading. He felt all the billboards in the city needed to be appraised and the \$1 lease to Reagan in the MOU should be examined. He noted there were safeguards in code that were being traded for a dollar amount. He brought up the idea of a referendum. He wished the Commission had an economic analysis of the long-term impact of this MOU on the city center and wondered if it the MOU was a good deal. He rhetorically asked if it was the modern trend to have district signs because other similar city centers did not have digital billboards.

Commissioner Stephens said planning staffs' arguments was that the MOU fulfills a goal of the General Plan. The net amount of reduced billboard square footage as a consequence of this deal was a reduction of 1,143 sf, which equates to 2.5 static double-faced billboards, or 5 faces being saved. The reduction of square footage proposed by the MOU was marginal at best and unconvincing. The MOU says when the city hits milestones, the billboards would be removed, so every billboard lease was already constructed in a manner to terminate the lease at will. He said virtually every billboard was banked sf that could be moved at will with short notice and that reduced the attractiveness of reducing the net sf.

Commissioner Cianflone agreed with the other Commissioner's comments. Chair LaMar said he looks at how to make applications work. He said the MOU seemed to be motivated by saving construction costs which seemed off since the overall City Center project was for millions. If money were not an issue, he guessed that the city would not want digital billboards. He felt the city's guiding documents could be swayed by dollars. The misinformation to the community councils was troubling to him so he felt their recommendations were not fully accurate. Commissioner Allen said the City Council previously stated in a city meeting that the city was not just another applicant, but a special applicant. He said his first impression was against that notion but then changed his mind that the city was a special applicant. The city, representing the residents, had a higher burden as an applicant. The standard for the city was one of accurate information and impeccable public process that was open and engaging. The city had to set the standard because its decisions used public funding and impacted residents like no other developer did. He felt the city had failed to act like a special applicant.

Commissioner Stephens said the Commission was providing a recommendation on the application before them, not on other possible options.

Commissioner Allen, as respects to applications GP-21-001/ZT-21-007 as currently written and proposed, moved that the Planning Commission makes a negative recommendation to

the City Council. The reasons for this negative recommendation are itemized below: 1) process tainted by inaccurate information and a shorter than reasonable timeframe, 2) lack of accurate information, appraisals, and economic impacts and analyses were not completed that should have been completed, and 3) lack of options developed to solve one billboard problem. Commissioner Stephens requested that the Chair be charged to itemize the reasons for the recommendation in an addendum to accompany the motion. **Commissioner Stephens seconded the motion.** Commissioner Reid recommended that be done within 24 hours. **Commissioner Allen reframed the motion to recommend to the City Council a negative recommendation for the reasons he summarized and the more detailed summarized list that Shawn made and will reformat into a more concise summary and will distribute it as the basis for the motion (see attached).** Commissioner Stephens re-seconded the motion. Chair LaMar called for the vote. Commissioners Allen, Stephens, Sieber, Reid, LaMar, Claerhout, Wright, and Cianflone voted yes. The motion passed unanimously.

The Commission took a break from 6:50 – 7:04 p.m.

John Brems commented that as to the information of the value of the billboards, there was some representation that it may have been inaccurate or deceptive. He said the \$1 million figure was given to Mike Winder from a very reputable source. That was how much it cost another city to move a billboard. Brems had obtained the appraisal that reflected the \$397,500. He said Winder was visibly shaken with that number thinking that he had made a misrepresentation.

2. Public Hearings

2.1 Consideration of CU-21-016, Request for a Conditional Use Permit for Development of a 9-Plex Condominium in the R-M Zone Location: 4820 S. 1300 E. Applicant:

Brandon Fry Planner: Naba Faizi

Naba Faizi said the applicant was seeking a conditional use permit to construct a two-story 9-plex residential condominium structure. The proposal included podium parking on the majority of the main level and consisted of 2 one-bedroom units and 7 two-bedroom units. The applicant had indicated his intentions to further subdivide the building into individual condominium units which would require a PUD application, requiring the Planning Commission's review and approval at a future date. The site was surrounded primarily by the RM, R-1, and A-1 zones. The property is accessed by 1300 E. A traffic study was conducted for the proposed project, which showed low levels of service and low impact on 1300 East. She noted the zone allowed the proposed building height of 30 feet and the proposal complied with setbacks. There would be 3 parking stalls for the 1-bedroom units and 14 parking stalls for the 2-bedroom units as required in code. There would be 3 guest parking spaces and one ADA parking stall provided on the property. There would be 20 spaces of parking total. She briefly showed the Commission the proposed site plan, building elevations, and landscaping plan.

Faizi said staff sent notices to directly affected property owners and entities on September 24, 2021 and did not receive comments from residents. At their regularly scheduled meeting on October 5, 2021, the Millcreek Community Council discussed an elevator, aesthetics of the building, a retention pond, and individual trash receptacles. The applicant responded to them that the only access to the second floor would be via the stairs from the rear of the property and parking structure, the design requirements had been met, and the retention pond

would be landscaped and made available as a small open space/dog park. She noted that the applicant had made changes to the plans which now show a shared on-site trash collection system. The Millcreek Community Council voted to recommend approval of the project.

Staff found that:

1. The Applicant can meet all the requirements through a Conditional Use permit.
2. The Applicant has indicated that they plan to submit a PUD condominium application at a later date.
3. The Applicant can meet requirements through Technical Review.
4. The height of the project is comparable to the surrounding building heights.
5. The project will not be a major impact due to only being 9 units and the results from the Traffic Study have stated a low level of service and impact on 1300 East.
6. Signs and accessory buildings will require separate building permits and staff review for zoning/land use compliance.

Faizi recommended approval of the conditional use permit subject to the following conditions:

1. *No upward illumination is allowed. Any installation of public lighting facilities or lighting located within the public right of way must be approved by the Millcreek Public Works Department. No light may trespass onto adjacent lots.*
2. *Any modifications to these approved plans must be approved by the Millcreek Planning & Zoning Department. Any adjustments to the exterior design of the building, or alterations that increase the height or building footprint of structures, or any increase in density, must be approved by Planning Commission. Any changes to the site plan along a public right of way must be reviewed and approved by Millcreek Public Works Department.*
3. *The applicant will submit application for a PUD for preliminary approval before starting the Technical Review process for the project.*
4. *The applicant will comply with all requirements established through the technical review process prior to receiving final conditional use approval.*
5. *As part of the technical review, applicant is required to meet all standards for roadway development as determined by the Millcreek Public Works department.*
6. *All applicable fees from the technical review process required must be paid in full before final conditional use approval can be granted and before certificate of occupancy is granted.*
7. *The applicant will be required to install oil and water separators in the parking lot inlets below the living units.*
8. *There must not be any inlets in or near the dog park and vice versa.*
9. *The applicant will comply with all requirements of the Unified Fire Code and is subject to approval by the Fire Marshal. Any safety measures required by the Fire Marshal including a fire hydrant shall be installed. The applicant must include fire sprinklers and riser room in the front of the building, the Riser room will need a door that can be accessed directly from the exterior of the front of building and will need to be of sufficient size for maintenance and mobility.*
10. *The applicant shall obtain a complete review for an approved building permit and shall comply with the requirements of Millcreek City, and utilities. Building permit may only be applied for once final approval letter for conditional use permit and PUD is given to applicant.*
11. *Applicant must obtain utility will serve letters during the technical review process.*
12. *The applicant and its successors shall properly and continually maintain all required landscaping, fencing, buildings.*
13. *An approved landscape plan that complies with the minimum standards found in Chapter 19.77 and shall be bonded for prior to final conditional use approval. A tree preservation, replacement, and removal plan will be completed and approved by City staff.*
14. *Applicant will be required to receive approval from Salt Lake County addressing department before final conditional use approval.*

15. Applicant is required to bond for all proposed or required improvements of landscaping and public improvements as determined by the Public Works Department and Planning and Zoning Department.
16. That applicant shall schedule a pre-construction meeting with the public works department once bonding is complete.
17. The develop shall meet all requirements of Low Impact Development (LID) approach. This approach includes long-term stormwater BMPS that allow stormwater to infiltrate, evapotranspiration or harvest and reduces runoff from the site and protects water quality (MS4 permit 4.2.5.1.3). If a LID approach is infeasible, an alternative rationale must be provided and documented showing that infiltration, evapotranspiration, and harvesting methods were used to the maximum extent feasible. Reasons for infeasibility may include the following: high ground water, drinking water source protection areas, soil conditions, slopes, accessibility, excessive costs, or others (MS4 permit 4.2.5.1.5).
18. All items of the staff report and 19.44, 19.78 requirements.

Commissioner Stephens asked if code required an elevator for a two-story building. Lilly said they were not required. Kurt Hansen, Millcreek Facilities Director, said typically in residential multi-family, building code required a certain number of units on the first floor to not need an elevator to the second floor. Commissioner Stephens noted that the PUD and RM zone conflicts had been remedied. Chair LaMar asked about staff condition 8. Jen Smith, Millcreek Planning Engineer, said the city was worried about water quality and the plans showed a roof drain that would drain into the inlet that goes into the dog park which appears as a basin. Chair LaMar asked about oil/water separators below the living units. Smith said the Jordan Valley MS4 permit required strict measures. Staff was trying to take the inlet away from the dog park. The other inlets were in the parking garage and that was why the separators were needed. Commissioner Reid asked if people would be cleaning the dog park regularly. Commissioner Allen said an HOA would govern that. Lilly said the city did not have specific regulations unless it became a nuisance.

Brandon Fry, applicant, thanked Faizi. He said an elevator was not required. He said tenants at another project requested a dog park over a barbeque area. The HOA would regulate the weekly clean-up of it and the tenants would clean it on a regular basis. He said the oil/water separators were typical and not a problem. Commissioner Sieber asked about the perimeter fencing. Fry said there was existing fencing, but it would be updated to vinyl with masonry columns. He would also work with the neighbors on their input for fencing. Commissioner Sieber asked about the dog area. Fry said it would be an off-leash area.

Chair LaMar opened the public hearing.

Wayne Johnson, Millcreek Community Council, said the Millcreek Community Council Member's concern about the elevator was how residents would move furniture upstairs.

Brian Strong, 3734 Greenbriar Way, asked about the height of the building to the adjacent Mountain America Credit Union and the setback from 1300 E.

Chair LaMar closed the public hearing.

Faizi said the height would be 30 feet as permitted by code and could not recall the Mountain America height. She said the proposal would not stand out in the neighborhood. Lilly said the

Mountain America was a single-story building with a tall, pitched roof. Commissioner Allen said the Commission should not require an elevator and was fine with the application, as is.

Commissioner Reid moved to approve CU-21-006 with the staff conditions. Commissioner Allen seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

2.2 Consideration of CU-21-017, Request for a Conditional Use Permit for Development of a Multi-Family Project in the M-D Zone Location: 4074 S. West Temple Applicant: CDCU Planner: Robert May

Robert May said the Commission had seen the project as a rezone request in July. He said the current property was vacant and unimproved. The rezone was approved for the MD Zone. He briefly showed the Commission building renderings and elevations, and the landscape plan. At their regularly scheduled meeting on October 5, 2021, the Millcreek Community Council voted unanimously to recommend approval of the proposed CUP application with the understanding that a development agreement had been recorded. During that meeting, there was a resident that had a question regarding the construction phase and best management practices for dust, debris, and noises. Staff recommended to the applicant to prepare a construction timeline during technical review and how the concerns of the resident would be mitigated. May noted the staff findings on the project had not changed. He said there were minor changes on the approved development agreement about offering flexibility on the size of the mural and footprint of the building to within 500 square feet of the proposal since the plans were conceptual at that point. The planning staff recommendation was approval of the conditional use permit along with the conditions as Exhibit A in the recorded development agreement.

Chair LaMar noted the Commission had discussed a reduction in bicycle parking at their last meeting. May did not know about that offhand. Lilly reviewed the July 2021 minutes, and the Commission did ask for it to be looked at. Commissioner Sieber noted that the plans had changed. May said it was not discussed when negotiating the development agreement, but staff could fix it with this motion.

Todd Reeder, CDCU, said he was not at the Commission meeting in July either. He said he was a big bike fan and did not see a need to reduce bike parking. Commissioner Reid asked if the age restriction was permanent. Reeder said the low-income housing tax credit program they were applying for had a 15-year compliance period and the state had a 50-year compliance period.

Chair LaMar opened the public hearing.

Mary Ann Strong, 3734 Greenbriar Way, said she enjoyed her two bikes and asked if there was bike storage. She asked about adequate parking, storage options, and gathering space.

May said there was plenty of green and open space. Reeder said there was an internal community room for gathering space inside and green space outside. There were also interior storage closets. The parking ratio was reduced per the population. The parking study compared similar projects for parking.

Chair LaMar closed the public hearing.

Chair LaMar did not have concern of the 500 square foot variance. May noted it was already in the approved development agreement. Commissioner Allen said it was a fun project.

Commissioner Claerhout moved to grant preliminary conditional use approval of application CU-21-017 subject to the stipulations in the staff report. Commissioner Sieber seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

Commissioner Stephens recused himself and left the meeting at 7:46 p.m.

Robert May broke down the new presentation format he would provide to include a review, summary, and recommendation. The review would explain property characteristics, code requirements, and the application request. The summary would establish if the application plans met code and review any requested exceptions. The recommendation would include the community council response, staff findings, and staff recommendation. He asked the Commission for feedback on the new format of presenting. He reported that Millcreek code allows preliminary conditional use permit plans to be conceptual but shall provide reasonable accuracy and specifications to allow for full understanding (19.84.030). Fully detailed and complete engineer plans were expensive and required a considerable amount of investment which is unfortunately required for some projects. However, for most, this was a tall order when facing the uncertainty of not being approved and it put a challenging financial burden on the applicant.

May displayed an image of the application process which progressed in the following manner: the applicant meeting with planning staff to discuss the code and application details, a multi-agency development review committee meeting, a pre-application review to organize required documents, studies, approval letters, etc., preparing and submitting a complete application which included paying fees and preparing noticing, a community council meeting and recommendation, a planning commission preliminary approval, a technical review with agency reviewers to do a final plan review and bonding, and a final conditional use permit approval to then prepare and submit a building permit.

May explained that plans must show that all requirements are met for completeness. In an effort to validate whether the application can move forward and qualify for preliminary approval, staff identifies the “make or break” items within the plan that demonstrate the requirements of whether the application can meet code. The “break” items are the requirements that typically shatter an application’s ability to move forward and obtain final approval. The applicant may be unable or find difficult to modify. The “make” items are requirements that although must be met and are important, do not tend to stop an application from moving forward. The applicant can easily modify and revise plans without much change in design. He gave an example list of make and break items. Commissioner Sieber asked about flexibility with make and break items. May said the list was an example. She said it helped provide focus. Commissioner Allen noted a lot of time was spent by the Commission on break items.

Chair LaMar said sometimes information was spread out over paragraphs in the staff reports and he enjoyed seeing tables. Commissioner Allen said sometimes the presentations were exact reflections of the staff report so there was not a desire to read the staff report. Chair LaMar noted that Commissioners ask questions for clarification, not because they were challenging staff. He asked about the term “preliminary conditional use approval.” May said those applications did not come back to the Commission, but went through a technical review process with staff. Lilly pointed out that code did allow projects to come back before the Commission for final approval if necessary.

**2.3 Consideration of CU-21-018, Request for a Conditional Use Permit for a Mixed-Use Development with 7,735 Square Feet of Commercial Space and 226 Residential Units
Location: 3300 S. 1306 E. Applicant: Cottonwood Residential Planner: Robert May**

Robert May said the request was for preliminary approval but due to a couple factors, mainly inconsistencies and an error in the traffic study, staff recommended the application be tabled. The property was currently vacant but had a history. Commissioner Reid recommended historical use data on sites be in the staff report and not in the presentation. May reviewed the mixed-use building proposal with office and retail space. Cottonwood Residential was proposing a mixed-use multi-family project consisting of 226 residential units and 7,735 sf feet of commercial retail and office space. The project and proposed building, “The Hudson,” would be located at the southeast corner of 1300 East and 3300 South and would include a 20’ x 15’ corner plaza. The seven-story / 75’ tall building has ground-floor commercial retail and office uses resulting in a mixture of co-working office space, a coffee shop, and fitness studio that would be available to the public and residents of the building. There would be on-site covered parking using a shared parking concept between commercial and residential uses. The provided parking would be completely off street in an enclosed multi-level parking garage with access at 1300 East and 3300 South. May showed images of pages from the staff report as the summary for the project. He noted a professional transportation consultant, Fehr & Peers, was commissioned by the city to provide a parking analysis. The complete parking analysis was included in the staff report. The applicant was seeking a 9% reduction (395 stalls required) in the parking requirements through shared parking, but the parking study allowed for a 13% reduction (367 stalls required).

Commissioner Allen said the parking summary provided was helpful and brought up concerns about comparing other projects. May noted the plans would need to identify the shared parking. Commissioner Sieber asked if the city had a say in the comparables since it commissioned the study. Lilly said yes. Commissioner Reid cautioned using a checklist to verify parking requirements. Chair LaMar noted that more information on parking was better. John Brems said there were always issues with project comparables for parking. He felt an ordinance change was needed for shared parking. May noted a definition was needed as well for the mixed-use component.

Tyler Morris, Cottonwood Residential, provided clarification on the detail of shared parking reduction request. The applicant was proposing 359 stalls excluding 8 ADA stalls. The Millcreek code shared parking total required 396 stalls. The CCOZ required 415 stalls. He noted that 174 subterranean stalls would be gated, and 184 ground level stalls would be publicly accessible 100% of the time. He indicated peak usage for guests and commercial space was 96 stalls, so 185 should be adequate to service public users. He said the scope of and the uses of the mixed-use component mattered. He said the proposed parking only falls

short of the requirements from the shared parking table for the period between midnight and 7 a.m. Otherwise, he felt the 359 stalls easily satisfied the indicated usage for every other time period. There would be four floors of parking, two underground. All levels of parking could be accessed from all entrances. He showed the Commission a rendering of the building levels. The gated stalls would be designated for residential use. The rationale for shared parking reduction was that the only pinch point was from midnight to 7 a.m. He noted Fehr & Peers recommended treating the usage of guest stalls differently than the resident stalls for the overnight period. Their suggestion was a 10% usage rate overnight for the guest stalls, but the applicant was requesting a usage rate of 50%. There would be 75 guest stalls provided, so the requested 50% would leave 38 guest stalls available for overnight use. The comparable property analysis contemplated 1.14 stalls per unit, but they requested 1.59 stalls per unit.

Morris said other considerations for the shared parking reduction request was the unit mix impact, bike parking in excess of the requirement, and vacancy impact. The required parking could be decreased within the current envelope by converting 1-bedroom (BR) units to studios or merging (3) 1BR units into (2) 2BR units. This would not decrease the rentable square footage of the property and would actually increase the number of bedrooms and likely occupants overall. This manipulation skews the mix away from what they believe best serves the pool of likely renters and seems to sidestep the spirit of the requirement. They were proposing 100+ bike parking stalls, rather than the 12 required. He said multifamily properties generally run at 5%-10% vacancy, which would leave parking stalls related to those units unused during vacancy. The 5% vacancy would leave 20 stalls empty, and 10% vacancy would leave 40 stalls empty. Basic frictional vacancy is around 2% just to allow 2 weeks of vacancy for the ~50% of apartments that vacate every year. He showed a list of directions for approaching the building in each direction and noted that the proposed layout provided strong access to and from the project, based on two years of discussions with Millcreek and UDOT, and multiple architects. The community council asked if known future developments were contemplated in the traffic study. The applicant understood that they were but when seeking clarification, they were not. The impacts from the property should be minimal but the revised study would come back at the next meeting.

Commissioner Sieber appreciated the directional explanation of approaching the project. She asked about the bus stop on 1300 E. Morris said he would check with UTA, but thought it would stay put. Commissioner Reid said the building was beautiful but massive. She did not feel like it was to scale for Millcreek. She asked the applicant to think about it creatively. Morris said they had visited multiple configurations. He noted the courtyard on the south side was optimal for sun for the residents. He acknowledged the prominence of the building but noted that it met the zoning envelope. Commissioner Allen appreciated the parking explanation. Morris said he wanted residents to live there, so parking and access was important. Chair LaMar said it was helpful to know how the administration of the parking stalls would be set up. Morris said there would be signs. Commissioner Cianflone said the visualization made the front feel very open with lots of space but in actuality it would feel very different next to 3300 S. and asked if there was anything that could be done to open it up and make it feel more like a project that fits with the feeling of Millcreek Common.

Wayne Johnson, Millcreek Community Council, said the council provided a recommendation letter to the Commission. He noted he did not personally agree with the letter. He wanted the

project to have a method to improve pedestrian safety across 3300 S. He recommended that the building rendering should accurately reflect the location on 3300 S.

Chair LaMar opened the public hearing.

Mary Ann Strong, 3734 Greenbriar Way, expressed concern about the height and mass of the building. The city code on parking required 415 stalls and it would be reduced to 367 with ADA stalls. She said she used to live next to a fitness facility and there was parking spill over in the mornings and evenings. She said the 174 residential stalls would not adequately cover the 226 units. She recommended enough gated parking for the residents. There was no room for spillover parking. She noted that the project comparables were under parked. She asked about locked storage per unit for bicycles and personal items. She said it would be unappealing to have bikes hanging off of patio railings.

Marv Poulson, 3671 S. 1020 E., noted that the proposed digital billboards would wash this building with light.

Chair LaMar read an email received from Bruce Parker. *"I am traveling tonight. If I did not have a prior commitment, I would attend your meeting to provide my comments. They are presented via this email for your consideration. Application CU-21-018, Cottonwood Residential, requests a conditional use permit for a mixed-use development; 7,735 square feet of commercial space and 226 residential units (3300 S. 1306 E. approx.). As this is a conditional use application, the Planning Commission may impose reasonable conditions necessary to mitigate the project's possible impacts, including the proposed uses at the proposed location. I respectfully submit the following.*

- 1. Design v Density. As I have walked District 4, I have heard resistance to High Density. I suspect it may be resistance to project designs rather than density. The project location is part of the Millcreek Commons Community Reinvestment Area. It is also immediately south of the City's proposed Millcreek City Center Plaza. RECOMMENDED CONDITION. Consider requiring.*
 - a. Additional design features on all building facades. It is not the intent to increase project costs. Simple changes in materials and colors would create interest. Consider requiring revisions to the project design palette for façade materials and colors.*
 - 2. We all see how apartment balconies become areas for BBQ-ing, outside storage, and other resident activities. Likely because such spaces are not available, free of charge, onsite. However, the provision of such areas is not unusual. RECOMMENDED CONDITION. The project shall provide:*
 - a. Onsite storage areas and facilities for dedicated resident use. This condition is not unusual.*
 - b. Provide resident-only outdoor use areas. An amenities deck is proposed that includes a pool. Ensure other additional active and passive recreational facilities are included at no cost to residents. These facilities often include basketball court(s) and BBQ areas, at a minimum. Require a complete amenity package that includes both private and public use amenities. Again, reasonable and not unusual.*
- 3. The application proposes a reduction in required off-street parking based on the proposed mix of uses. However, the total area of commercial use space is only 7,735 square feet. RECOMMENDED CONDITION. Require a peer review of the parking study and related materials (Fehr & Peers). One can question the "comparables" used due to different contexts. Proceeding with a peer review may allay fears of the appropriateness of the proposed parking reductions and the parking stall dimension reductions.*
- 4. The project proposes two levels of above-grade structured parking. RECOMMENDED CONDITION. In addition to the proposed landscaping, consider requiring the above grade south and east-facing garage walls to include visual interest that may incorporate material changes, patterning,*

relief elements, and other visual enhancements. This is important to mitigate the visual impact of the garage structure on adjacent properties and others.

Thank you for considering the above points and for your dedicated service to Millcreek City and its residents."

Chair LaMar closed the public hearing.

Commissioner Wright said he was constantly skeptical of the traffic studies that the city gets because they all say there would be no impact by the proposed projects. He asked if the projects contemplated the scheduled projects. He also expressed concern about artist renderings and requested they portray the area with accuracy. May said he would ask applicants for that in the future.

Commissioner Allen moved to continue this until staff schedules it to come back, CU-21-018. Commissioner Sieber seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

3. Commission Business

3.1 Approval of September 15, 2021 Meeting Minutes

3.2 Approval of September 16, 2021 Special Meeting Minutes

3.3 Approval of October 7, 2021 Special Meeting Minutes

Commissioner Sieber moved to approve the meeting minutes from the September 15, 2021 meeting and October 7, 2021 special meeting. Commissioner Reid seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

The Commission noted that there was not a quorum of commissioners present at the meeting who attended the September 16, 2021 meeting to vote on approval of those minutes.

3.4 Updates from the Planning and Zoning Director

Lilly noted that Brad Sanderson was the new Millcreek Current Planning Manager. Chair LaMar congratulated Commissioner Cianflone on the birth of her baby and Commissioner Wright for the impending birth of his child.

4. Calendar of Upcoming Meetings

- City Council Mtg., 10/25/21, 5:00 p.m. at City Hall
- Mt. Olympus Community Council Mtg., 11/1/21, 6:00 p.m. TBD
- Millcreek Community Council Mtg., 11/2/21, 6:30 p.m. TBD
- Canyon Rim Citizens Association Mtg., 11/3/21, 7:00 p.m. TBD
- East Mill Creek Community Council Mtg., 11/4/21, 6:30 p.m. TBD
- City Council & Planning Commission Special Mtg., 11/8/21, 5:00 p.m. at City Hall
- City Council Mtg., 11/8/21, 7:00 p.m. at City Hall
- Planning Commission Mtg., 11/17/21, 5:00 p.m. at City Hall

ADJOURNED: Commissioner Allen moved to adjourn the meeting at 9:18 p.m.

Commissioner Sieber seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

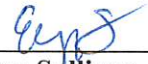
APPROVED:


Shawn LaMar, Chair

Date

11/17/21

Attest:


Elyse Sullivan, City Recorder

Statement made at October 20, 2021 Planning Commission Detailing to Different Sets of Conversations

Introduction:

There are two different set of circumstances that need to be reviewed that involve two sets of interactions I have had with Millcreek residents and others over the last few months, one involves conversations outside of the public meeting setting relative to the city's digital billboard plan application. The second interaction deals with a September 16, 2021 public meeting conversation I had with representatives of an applicant that has an administrative land use application before the planning commission.

First, let's review the context of the private conversations I have had that have been outside of the public meeting arena where the city's digital billboard plan was one topic.

1. It needs to be made clear that the digital billboard application is legislative. 100% legislative. It is not administrative; it is not quasi-judicial. It is not a re-zone application. No one can successfully dispute this fact. The application's goal is to make legal the city's digital billboard plan by changing zoning ordinances and a guiding document, the City Center Master Plan – all if which are 100% legislative acts with the city council being the decision maker. As respects this legislative application, the planning commission's sole responsibility, under both state code and city ordinance, is to provide a recommendation to the city council as to whether this digital billboard plan and the necessary changes in city code and master plan are in the best interest of Millcreek.
2. It is reasonable to think that my conversations on this legislative topic, outside of the public meeting venue, can in fact be classified as "ex parte" in nature.
3. An "ex parte" conversation is a "one-sided, private conversation with an "interested party". "One sided" means that, by definition, the other party to the transaction is not part of the conversation.
4. What constitutes and "interested party" can vary from the obvious (a person or business with a financial interest in the outcome of an application) to the more difficult to classify, such as Millcreek residents and others who have a general or specific interest in Millcreek's governance. For the sake of this review, I will include all these people as "interested parties". None of these people, to the best of my knowledge, have any financial interest in the outcome of the city's digital billboard plan.
5. The following question then arises: is an "ex-parte" conversation involving a planning commissioner a violation of the planning commission's bylaws?
6. The answer: it depends on the type of application before the planning commission.
7. Here is the complete Ex Parte text found in the planning commission's bylaws, broken down into four sentences.

8. First sentence: "No member of the Commission shall have any ex parte discussion regarding any administrative land use application or re-zone application pending before the Commission".
[This is an unambiguous statement.]
9. Second sentence: "Ex parte communication means any communication, including but not limited to electronic or social media communication, with interested parties of an administrative land use application or re-zone application pending before the Commission prior to the Commission reaching a final decision". [This is a clear statement: an ex parte conversation involving an administrative land use application or rezone application is prohibited. Note that the planning commission is the decision maker in these types of applications]
10. Third sentence: "An administrative land use application means any land use application where by Utah Code or Millcreek Ordinances the Commission is the final decision-maker". [this is clear statement]
11. Fourth sentence: "A **re-zone** land use application means any land use application where by Utah Code or Millcreek Ordinance the City Council is the final decision-maker". [This sentence is poorly constructed and should be rewritten. However, regardless of its convoluted structure, this sentence only deals with rezone applications. The city's digital billboard application is not proposing to rezone any land].
12. Conclusion: a private conversation between a planning commissioner and an "interested party" involving a purely legislative application is permitted by the planning commission's bylaws, **assuming** there is no violation of Millcreek's ethic code.

Let's review Millcreek's Conflicts of Interest section of the Ethics Code:

Conflicts of interest are divided into two categories: financial interest conflicts and "all other". The "all other" category, labeled "Unrestricted Conflicts of Interest", casts a wide net to include virtually any relationship or activity that may create the appearance or the actuality of a conflict of interest "where such conflict could impair their judgement regarding the faithful performance of city responsibilities ".

Let me state: I have no financial conflicts of interest and have no outside activities that I feel impair my faithful performance of city responsibilities.

Second, I want to give an overview of a conversation I had with Cottonwood Residential representatives at the scheduled October 16 public meeting held at the city center construction site. The following narrative has been given to John Brems, city attorney:

I identified myself as a planning commission member and listened to the CR representatives describe their conceptual plans for their project to be situated just to the east of the city hall site. They asked me questions, including their interest in finding relief from certain City Center Overlay Zone Ordinance standards. I told them that the city recently adopted a new ordinance that they could use to possibly convince the city council to relax development standards. I told them that they needed to talk to with Francis Lilly as he is the starting point for the guidance necessary to navigate this new ordinance.

I or the CR representatives then brought up the city's digital billboard plan. One rep said his company was taking a "neutral stance" on this issue. The other CR rep claimed to have watched the live stream of the planning commission's four hour meeting the previous evening. One told me that they were

concerned that digital billboard light trespass will could impact their two mixed use projects to be located on 3300 South. I told them of the louvered design that will be used, which limits the angle at which the digital illumination will impact the surrounding area – I remember as being 35 degrees off of vertical. I drew a crude picture of a billboard and the approximate angle at which light trespass will occur. I suggested that they become engaged in this subject if they were concerned about digital light trespass – that they can view the archived live stream of the planning commission meeting held the prior evening, read the staff report, attend future public meetings and provide comment. Did I express a comment about the goodness or badness of digital billboards to these gentlemen? I don't remember, but that is what city staff apparently thinks from Francis Lilly's conversation with the CR representative. The fact that the CR rep talked to Mr. Lilly sometime after this public meeting leads one to believe that they were concerned about some aspect of our conversation – either with regards to their development plans or the digital billboard conversation. It is reasonable to think that these CR representatives don't understand the conditional use process and might have begun to worry that I had some sort of outsized influence on the success of their projects. Perhaps they had other motives. Since this public meeting interaction was not recorded, the details of the conversation with the CR reps will forever have a substantial element of uncertainty, if in fact our recollections differ.

Some additional thoughts as respects the conversation with the CR representatives:

1. It should be of no surprise to city staff that the digital billboard issue came up, as the Cottonwood Residential reps said they were following this issue and that one purpose of this public meeting was to discuss the city center developments and issues with the developers and city council members. In addition, there were others, unrelated to the planning commission or city council, in attendance.
2. I had no knowledge that one of the Cottonwood Residential 3300 South projects was going to be on the October 20 planning commission agenda. In fact, the CR representatives gave no hint that this project was well along the design process and close to being ready for submission as a conditional use application.
3. I had no knowledge that CR is the developer that the city is engaged with to purchase / trade the parcel that is encumbered with the "First Right of Refusal" issue. Staff and city council members live and breathe the details of the city center development, but I don't and nor do most or all of the other planning commissioners. based
4. In no manner am I prejudicial toward the CR developments planned for the city center. And even if I personally did not like their projects, this attitude is irrelevant. Their projects are assured success at the planning commission level (and my affirmative vote) if they conform to the zoning ordinances. And I know that staff works hard to make sure incomplete / non-conforming projects don't make their way to the planning commission agenda in the first place.
5. I have discussed this conversation with Jordan Cullimore of the state property rights ombudsman office, and he finds no violation of open meeting laws, based upon my recollection of the public setting and conversation. This was a noticed public meeting whose purpose was to discuss the city center developments, their progress and issues with all in attendance.

6. The planning commission bylaws are a factor in addition to “state law” considerations. Given my understanding of what constitutes an “ex parte” interaction and the commission bylaws, my judgement is that an ex parte conversation did not take place, as the interaction / conversation took place at a noticed public meeting where the design of the meeting led to our conversation. Neither I nor the CR representatives sought each other out, nor attempted to have a private, one-sided conversation. No attempted quid pro quo, no exchange of confidential or non-public information. There were numerous people, including city staff, within a few feet who could have been part of the conversation.

In summary:

As respects ex parte communications involving the city’s digital billboard legislative application: these conversations are clearly permitted by the planning commission’s bylaws, based upon a clear reading of the ex parte section. It is my perspective that the substantial public interest in this application is unrelated to any private conversations I have had. It is the details of the application and its timing – brought forth at the height of a city council election cycle – that have created the public’s interest in it. In addition, I am confident that I am in conformance with Millcreek’s Ethic Code. Therefore, recusing myself from the city’s digital billboard application is **not** warranted.

As respects the public meeting conversations involving Cottonwood Residential, I will recuse myself from all involvement in its present and future administrative land use applications solely because one of its representatives visited with Francis Lilly after our conversation and expressed reservations or objections as respects some aspect of our conversation. I don’t know the nature of these concerns, but those concerns were sufficient enough to bring to Mr. Lilly’s attention. The planning commission enjoys a strong slate of planning commissioners who can ably work with this applicant.

Appendix

Planning Commission Bylaws: Ex Parte Communications – No member of the Commission shall have any ex parte discussion regarding any administrative land use application or re-zone application pending before the Commission. Ex parte communication means any communication, including but not limited to electronic or social media communication, with interested parties of an administrative land use application or re-zone application pending before the Commission prior to the Commission reaching a final decision. An administrative land use application means any land use application where by Utah Code or Millcreek Ordinances the Commission is the final decision-maker. A re-zone land use application means any land use application where by Utah Code or Millcreek Ordinance the City Council is the final decision-maker.

October 22, 2021

To: Francis Lilly, Elyse Sullivan

CC: Planning Commission

From: Shawn LaMar

Regarding: Motion of Negative Recommendation

In its regular meeting on October 20, 2021, the Millcreek Planning Commission reached a decision of a negative recommendation to the City Council regarding the following applications:

- GP-21-001 Amendment to the City Center Master Plan Regarding District Signs
- ZT-21-007 Amendment to Chapter 19.82 of the Millcreek Zoning Ordinance Regarding Billboards and District Signs

The following are the explanation and details for the commission's negative recommendation:

1. Our guiding documents do not support this application. The vision for the city center and the city's principles should not be swayed by dollars; city ordinances should not be changed to accommodate one application. The Planning Commission is uncomfortable recommending changes to our ordinances because they have a conflict with the application. The City's enthusiasm for this application appears to be primarily motivated by saving a relatively small amount of money in comparison to the tens of millions of dollars the City will be spending on the city center.
2. The Planning Commission has only been presented with a single option in what amounts to an all-or-nothing deal. We would have liked to have been presented with additional possibilities since only one billboard is an actual development impediment.
3. The MOU is inadequate as currently presented. A net square footage reduction of 1443 equates to 2.5 billboards (at 12'x24') and is marginal at best given that 52 billboards exist in the city. The city has negotiated from a point of weakness.
4. Process and timing
 - a. The Planning Commission has been rushed to make a decision. The City informed the Planning Commission that if the Planning Commission failed to make a "timely" decision, the City would interpret the Planning Commission's action as a negative recommendation. Furthermore, the City Council has stepped outside of the normal process and begun discussing the digital billboard application before receiving the Planning Commission's decision.
 - b. The City Council has already declared their timeline for their final review and vote on this application.
 - c. The application is the result of the city's perceived need for a quick resolution for certain development impediments that the city has long known about, but failed to take timely action.
5. Lack of information and misleading or false information
 - a. The City has repeatedly stated the value of the billboard at 1333 E 3300 S as \$1.1 to \$1.3M in presentations. However, the recent restricted appraisal estimates the value of the sign and all associated rights to be \$397,500. This appraisal would have been helpful much earlier in the process.
 - b. All billboards referenced in the MOU should be appraised otherwise there is no fair market valuation basis to determine the financial strength or weakness of the MOU. The

Planning Commission needs to know these values to determine if the proposal is justified. Safeguards in code don't seem to be followed.

- c. The applicant has made misleading statements when comparing the number of sign faces removed vs new digital signs proposed.
 - d. The "comparable" sign examples (Provo, Farmington, etc.) provided by the City are distorted. These are large commercial shopping centers. No actual city centers use digital billboards (Holladay, Sugarhouse, etc.)
 - e. The city newsletter and the presentations to the community councils incorrectly stated that digital billboards were always part of the plan.
 - f. Several presentations and an Oct 14 letter from Mr. Winder stated that without the MOU, the city would need to buy 3 district signs for \$750k; this is misleading. While that figure could be the price for three digital billboards, *digital billboards were never part of the city center plan.*
6. City is a special applicant, but this means City should be held to a higher standard not a lower standard regarding presenting accurate information and gathering public input based on this accurate and complete information.