

Revised and Final Decision of the West Haven Hearing Officer
Inwest Title, 3160 S Bouwhuis Drive, West Haven
November 18, 2021

This matter is reviewed in response to an appeal from a decision of the Planning Commission submitted by Scott Cope on behalf of Inwest Title (the “applicant”), on or about September 22, 2021. The property at issue is located at 3160 S. Bouwhuis Drive in West Haven City. The decision here is to grant the appeal and reverse the decision of the Planning Commission to amend a conditional use permit for outdoor storage at the above location in the City.

A hearing regarding this appeal was held at the West Haven City Hall on Wednesday, November 3, 2021. Participating were Scott Cope; Richard Terry, attorney for the Applicant; James Seamon; Amy Hugie, West Haven City Attorney; and Emily Green, West Haven City Recorder. An email exchange conducted before and after the hearing is also part of the record of this decision. The record also includes a video recording of the hearing and certain documents provided by the City and the Applicant, including the Applicant’s Administrative Hearing Officer Application; a Staff Report dated August 11, 2021 including a printed copy of Section 24.12 of the West Haven Code – Storage Unit Restrictions; aerial photograph of the site and surrounding properties; the original conditional use application, with attachments; a Staff Report dated August 25, 2021, which also included the same exhibits as attached to the August 11, 2021 staff report; minutes of the August 11, 2021 meeting of the Planning Commission; and minutes of the August 25, 2021 meeting of the Planning Commission. Also included are video tapes of the Planning Commission meetings held August 11 and August 25, 2021.

Notice of the request was published by the West Haven City Recorder as provided by ordinance. No comments were received from the public during the hearing.

STANDARD OF REVIEW

According to the West Haven City Code, at 06.03 Appeals Subsection D, “The Hearing Office shall, on appeal, presume the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. The burden of proof is on the appellant.”

Also, in the same Chapter of the Code, at 06.07, it states “In exercising the above mentioned powers, such Hearing Officer may, in conformity with this ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may take such order, requirement, decision, or determination as should be made, and shall have all the powers of the officer from whom the appeal is taken.”

BACKGROUND INFORMATION

The conditional use applied for in this instance is for “Covered RV Storage” according to the staff report provided. The staff concluded that WH Code Section 24.12 applies to this request, which states that “open storage uses, and material deviations from the above requirements, shall require a conditional use permit as provided in WHZC Chapter 34.”

The undated application was submitted at some time prior to the staff report prepared in response to the application. The staff report was dated August 11, 2021. The Planning Commission heard the matter on that date and granted the conditional use permit, with certain conditions. The time to appeal those conditions has passed and they are not at issue here.

On August 25, 2021, the Planning Commission considered an amendment to the August 11 conditional use permit, as allowed by WH Code Section 35.10. The Commission voted “to amend the conditional use permit for covered outdoor rv/boat storage to start at 800 feet from the middle of 1900 W you will be allowed to have covered storage.”

This appeal followed that decision, and only involves that August 25 amendment. The original approval on August 11, 2021 was not appealed and remains in full force and effect. The issue here is whether that permit was legally amended on August 25, 2021.

FACTS

There do not appear to be any contested facts. From the record of this appeal it appears that the relevant facts are that the property involved is, in part, located within 800 feet of the centerline of 1900 West Street “as the crow flies”. The proposed use does not involve traditional storage units, which would normally be understood to involve buildings with a roof and exterior walls. The proposed roof structures here would have no side walls. The primary use at the location would be the long-term storage of recreational vehicles such as motorhomes, trailers and boats. Some of these vehicles would be stored under canopies and some without a cover.

The WH Code provides, at Section 02.06 Interpretations: “In interpreting and applying this ordinance, the requirements are minimum. Uses not listed are not allowed as a conditional use.”

The property is located in the M-1 Zoning District. The list of permitted and conditional uses in the M-1 Zone, found in the WH Code at 24.04 and 24.06, respectively, do not include either storage units or open storage.

However, in the code section that follows those itemized lists of uses, at WH Code 24.12, a separate provision in the Code provides for storage unit restrictions. It states that “storage units shall be located only in an M1, M2, or MU zone, and also provides that “open storage uses, and material deviations from the above requirements, shall require a conditional use permit as provided in WHZC Chapter 34.” Note: It appears that the chapter referred to in this provision is now numbered as Chapter 35 in the WH Code.

If a use is not listed, according to WH Code Section 02.06, it is not allowed as a conditional use. The only place in the Code where open storage is mentioned appears to be in Section 24.12. If that does not apply, then the long-term open storage use would not be legally allowed. It is therefore concluded that Section 24.12 does indeed apply to the proposed long-term open storage uses.

The approval of the conditional use permit for the applicant here occurred on August 11, 2021. It allowed open storage across the entire property. The approval was evidently made final when the minutes of that meeting were approved on August 25, 2021.

Utah Code provides that “the land use applicant, a board of officer of the municipality, or an adversely affected party may, within the applicable time period” appeal a land use decision to the appeal authority. Utah Code Ann. 10-9a-703. While the City could have appealed on the basis that the Planning Commission illegally allowed outdoor storage within 800 feet of the centerline of 1900 West Street, the City did not appeal. The issuance of the original permit is now final and the permit is fully vested.

Rather than appeal, it appears that City officials engaged in other conversations about the permit outside of the public meetings of the Planning Commission. A decision was made by the City in some manner to propose an amendment to the approved conditional use permit, seeking to add a new condition which would further restrict the use of the property. The amendment included a proposed a condition that the open storage on the portion of the property which lies within 800 feet from the centerline of 1900 West could not be covered with overhead roof structures.

The Planning Commission met and considered that proposed amendment on August 25, 2021, engaging in an open discussion of the matter for about an hour during that meeting. The text of the approved amendment is “to amend the conditional use permit for covered outdoor rv/boat storage to start at 800 feet from the middle of 1900 W you will be allowed to have covered storage.” It would appear that the amendment has no effect on the previously approved long-term storage on the East side of the property, but only provided that the open storage in that part of the property cannot be covered by a roof structure.

From that decision this appeal was brought by the Applicant, challenging only the new restriction on the erection of covered structures on part of the property..

ANALYSIS

The Planning Commission provided no findings of fact or conclusions of law in the record of its decision. Under the recent Utah Supreme Court opinion, an appellate body has no ability to review the record of a decision by an administrative body such as the Planning Commission here when, in fact, there is no record of the decision.

“ . . .an administrative agency must “make findings of fact and conclusions of law that are adequately detailed so as to permit meaningful appellate review.” LaSal Oil Co. v. Dep’t of Env’tl. Quality, 843 P.2d 1045, 1047 (Utah Ct. App. 1992) (citation omitted); Adams v. Bd. of Review of Indus. Comm’n, 821 P.2d 1, 4 (Utah Ct. App. 1991); In contrast to the Council’s failure to make findings of fact, the [Planning] Commission generated a five-page document outlining its findings when it recommended approval. Valley Coal Co. v. Utah Bd. of Oil, Gas & Mining, 866 P.2d 564, 568 (Utah Ct. App. 1993) (“[T]he failure of an agency to make adequate findings of fact in material issues renders its findings ‘arbitrary and capricious’ unless the evidence is ‘clear and uncontroverted and capable of only one conclusion.’”) (alteration in original) (citation

omitted). Administrative agencies must “make additional findings of fact that resolve issues which are relevant to the legal standards that will govern the [agency]’s decision.” *Milne Truck Lines, Inc. v. Pub. Serv. Comm’n*, 720 P.2d 1373, 1380 (Utah 1986).”

McElhaney v. City of Moab, 2017 UT 65, ¶35. The WH Code, at Section 35.06 specifically requires that the Planning Commission “shall determine which standards will be considered in analyzing the possible detrimental effects that may result from a proposed conditional use.” This is mandatory language, but there is no information in the record of the August 25, 2021 to identify which conditional use standards listed in WH Code 35.06 were considered by the Commission or even which “possible detrimental effects” were at issue. The action was therefore not consistent with the WH Code.

As in *McElhaney*, where there are no findings of fact or conclusions of law provided by the Planning Commission, the normal procedure for the hearing officer would be to remand the matter back to the Commission to enter conclusions and findings. However, since the WH Code provides that the hearing officer is to assume all the powers of the officer from whom the appeal is taken, this matter will be resolved based on the record before the hearing officer. This is done in order to expedite the resolution and not impose more delays or expense on the parties, which is perhaps the purpose of giving the hearing officer that power in the Code.

CONCLUSION

As the August 25, 2021 action of the Commission to amend the conditional use permit by adding a new condition prohibiting the construction of roof structures over the open RV/boat storage on the Applicants property was not supported by the required findings of fact and conclusions of law required by state law as well as the WH Code, the decision of the Planning Commission amendment is set aside. The Applicant’s appeal from that decision is granted.

An interim decision published prior to this final decision, delivered to the parties on November 11, 2021, determined that, as provided in WH Code 06.07, the proposed amendment would be heard *de novo* by the hearing officer. On that date an opportunity was extended to the City representatives to provide evidence and argument to the hearing officer which supports the proposed amendment to the approved conditional use permit. On November 17, 2021 the City advised that it had chosen not to do so.

The West Haven Code, at Section 35.06, requires a formal analysis of the standards for review of conditional use permits and the potential detrimental effects of the proposed use. As there is no evidence or information related to that required analysis in the record of the Planning Commission or here in this *de novo* process to reconsider amending the conditional use permit, the proposed amendment is denied. The conditional use permit approved on August 11, 2021 remains in full force and effect.

Dated this 18th day of November, 2021.

/s/Craig M Call
West Haven Administrative Hearing Officer