

**MINUTES  
OF THE REGULAR MEETING OF THE  
TOOELE COUNTY PLANNING COMMISSION  
August 3, 2022**

Chair Scott Jacobs called meeting to order at 7:00 p.m. Roll Call was taken showing himself, Jeff McNeill, John Wright, Brad Bartholomew, Toni Scott, and Craig Smith. Blair Hope was excused. Andy Stetz joined the meeting later.

Staff: Jeff Miller, Planner. Trish DuClos, Code Enforcement/Planner. Rachelle Custer, Community Development Director. Brittany Lopez, Assistant County Manager. Colin Winchester, County Attorney. Stephanie Eastburn, Building Permit Tech.

**Approval of Meeting Minutes from July 20, 2022.** Motion to approve meeting minutes from July 20, 2022, by Scott Jacobs. 2<sup>nd</sup> by Jeff McNeill. All in favor.

**TCLUO 2022-095** (continued from July 20, 2022)- Planning Commission is requesting an ordinance update to Land Use Table 15-5-3.3(c) and (d) Dwellings, living quarters and long or short-term residences. The requested changes to Accessory Dwelling Units (ADU) would change the size limit of detached ADUs along with lot acreage limits, height limit and some technical wording. Also updating the definition of an accessory use or building in Chapter 2. And adding a section (I) to Table 16-4-3.3 Dwellings, living quarters and long or short-term residences to allow internal ADUs. Some possible changes to Chapter 4 "Supplementary and Qualifying Regulations" may be needed to comply and be cohesive with the ADU changes. Trish DuClos, Planner, summarized.

Trish DuClos stated she removed the size limit on the internal ADUs. It's too hard to process and enforce. She pointed out that some homeowners may want their kids/ grandkids to have the larger portion of the home. Jeff McNeill asked if the applicant is allowed build a large addition for the ADU onto the home. Trish stated yes, as long as it is part of the main home, and the lot coverage and setback requirements are met. Craig Smith asked the state code does not allow any modifications on the size of the internal ADU? Trish stated that the state code says: "the size of the internal accessory dwelling unit in relation to the primary dwelling," so that is one restriction we can't enforce. In any zone that is primarily residential use, they're permitted. We can't regulate the size of the internal ADU in relation to the primary dwelling, the total lot size, or the street frontage. We can enforce parking, we can make the appearance match the primary dwelling, we can prohibit internal ADU on lots less than 6,000 square feet.

Trish DuClos stated that Brad Bartholomew suggested through email to strike out sections 1 and 3 (Table 15-5-3.3 #c) under internal accessory dwellings. Number 1 states: "Any separate entrance shall be located so that the appearance of a single-family dwelling is preserved." Number 3 states: "The accessory dwelling unit does not result in excessive noise, traffic, or parking congestion." Brad Bartholomew stated number one doesn't make sense. Everyone has a different house and different style. If they're doing an accessory dwelling unit inside, they should be able to use what they have. It could be cost prohibitive to make it "look good." Number 3 is redundant. We already have ordinances for excessive noise, traffic, and parking.

Scott Jacobs asked Trish's opinion on the intent of section 1. Trish stated she can't say for sure, but that it was probably to keep the look as a single-family residence to prevent the appearance of a multi-family zone. Jeff McNeill stated it's subjective. A lot of (single-family) homes, especially in the south, have two front entrances.

John Wright asked if it was required for an ADU to have a separate entrance. Trish stated that state building code doesn't require it to have its own entrance, HVAC, or a fire separation. Craig Smith pointed out that it wouldn't be very likely that an existing home that has an ADU to have an entrance on the front of the home. It will probably be new builds that include ADUs that would have the two front entrances.

Trish DuClos stated that once these (ordinances) are approved, they're permanent. They don't have to come before planning commission for approval- they are approved by staff. So whatever conditions that are listed are the only requirements the applicants have to meet.

Jeff McNeill asked if we could allow the ADU to have a separate address? Rachelle Custer, Community Development Director, stated that our addressing code will not allow it to have a separate address unless it is on another parcel. It can use the same address and have unit "a" and unit "b."

Trish DuClos stated that the state code says that in primarily residential zones we have to allow ADUs and asked Planning Commission if they would like to allow them in the MU (Multiple Use) and the A (Agricultural) zones. Scott Jacobs stated if there's a home, allow it. The smallest lot you have in an A zone is 5 acres. I think the internal ADUs will be fine as far as nuisances go- parking, etc.

Trish DuClos stated that Brad also suggested taking out the 2<sup>nd</sup> half of number 5, which requires the two parking spaces.

John Wright asked about C 7 for the internal ADUs, that states: "so long as the single-family dwelling is occupied by the owner of record..." We took that out. The state code, page 1, item B2, states the definition of primary dwelling is occupied as the primary residence by the owner of record. Rachelle Custer stated we do need to get that back in there, by state law. It was discussed at the last meeting.

Trish DuClos stated that the state's definition of primary dwelling says single family dwelling that is detached and is occupied as a primary residence of the owner of record. But in section 4 it says the county may prohibit the rental of an internal Accessory Dwelling Unit if the dwelling unit is not occupied as the owner's primary residence. Scott Jacobs stated we do not have to incorporate it if the state code says "may".

There was discussion about the ambiguous wording of the state code and how enforceable this part of the code is.

Colin Winchester, county attorney, stated that in his interpretation of the state code under 4J, they're recognizing that you're going to have some that are not occupied by the primary owner. You don't have to have the primary residents there.

Trish DuClos stated we will remove number 3 from the detached ADU section as well. She asked Planning Commission if they wanted to allow mobile and manufactured homes to become ADUs. John Wright stated I think manufactured homes should be taken out. Craig Smith stated that at the last meeting we decided to take out mobile home, any modular home built after June 1976 would be allowed because manufactured homes are built to current code. John Wright stated so we take out manufactured home and leave mobile or recreational vehicle in. Trish asked you want it to say that in no circumstances shall a mobile home or Recreational Vehicle? John Wright stated yes, that's correct.

Brad Bartholomew stated section d under number 7, the size of the ADU, I believe it should read: the detached accessory dwelling unit shall not exceed 75% of the primary dwelling. In no case may any combination of buildings occupy more than the required rear yard for the district in which it's located cover more than the lot maximum coverage allowed for the zoning district. Trish stated we took out occupy more than the rear yard... did you want to add it back in? Brad stated no. Jeff McNeill stated that the only issue is if you have a small home, 1800 ft home, with the way it's written now you can build a 1500 square-foot ADU. Trish stated we'll leave 7 how it is.

John Wright stated that if you go to the state code, under table c – it says only one ADU shall be allowed for each parcel. So you cannot have an internal and a detached ADU? Trish stated yes, that's correct. John asked under chapter 4, in 10, no accessory building or group of buildings may cover more than 25% of the rear yard. Trish stated we already have lot coverages listed for each zone so we can take that out.

Scott Jacobs asked if the property is three quarters of an acre but is zoned one of the R-1 zones, they cannot have a detached ADU even though they have plenty of land to do it. Trish stated yes, in the R-1 and R-M zones, we don't allow detached units. Jeff McNeill asked if instead of going by the zoning, can't we just do it by lot coverage. So if they can fit it on their lot they can do it? Toni Scott asked if we could make it a conditional use? Trish stated yes. If we want to allow detached in chapter 16, we can just duplicate the code over to 16. Scott asked if the parcel size allowed the square footage, it's allowed. Trish stated yes. Do you want to have the square foot limit for lots smaller than 6,000 square feet are not allowed? Craig Smith stated no, as long as they can meet their setbacks.

Trish DuClos asked do you want to take section 4-13 out completely? John Wright stated I think we need leave it in there. Trish stated that the intent of this section isn't for ADUs. This is for things like detached garages on the smaller lots. The setbacks for these lots are smaller, 3 feet. Trish suggested to add at the end of the sentence: "does not pertain to ADUs." It says the accessory building in an R-1 or an R-M shall not contain more than one story or 20 feet in height. Do you want to cross that out completely and allow a garage, etc., or do you want to put something at the end that says does not pertain to dwelling units? But all the garages and sheds will have to comply with the 20 feet. Jeff McNeill stated yes, that's the wording we should put on it. Trish stated that her suggestion is to take the whole thing out. John Wright asked if we take this out there is no restriction for the ADU's height. Trish stated we could do that in the ADU code. Scott Jacobs asked if we take this out, you still have a way to enforce the height restriction. Trish stated yes. Craig Smith stated that there are already height restrictions in each zone code. We don't need to put height restrictions on every little thing. Let the code take care of that. Trish stated that she will take this section out and adopt the changes for chapter 15 and add them both into 16.

Rachelle Custer stated that we can only do table 15-5-3 you will have to bring 16 and 4 back for adoption because they weren't on the agenda.

Open Public Hearing (**TCLUO 2022-095**) Motion to open public hearing made by Scott Jacobs. 2<sup>nd</sup> by Jeff McNeill. All in favor.

No public comment.

Close Public Hearing (**TCLUO 2022-095**) Motion to close public hearing made by Scott Jacobs. 2<sup>nd</sup> by Toni Scott. All in favor.

Motion to recommend to the County Council approval of **TCLUO 2022-095** for the changes discussed to chapter 15 made by Jeff McNeill. 2<sup>nd</sup> by Toni Scott.

Toni Scott- Yes. Brad Bartholomew- Yes. John Wright- Yes. Scott Jacobs- Yes. Craig Smith- Yes. Jeff McNeill- yes. Andy Stetz- Yes.

**TCLUO 2022-138**- Planning Staff is requesting a recommendation of approval of an ordinance update to Section 17-2-3(4)(a) regarding Solar Energy Systems. Jeff Miller, Planner, summarized.

Scott Jacobs asked why this came about. Jeff Miller stated that this is in connection to the proposed rezone for a solar farm out by South Rim but is driven by staff, not the applicant. Rachelle Custer stated that this is for clarification on the 1-mile buffer. The way the current code is interpreted is that it would allow someone who owns property up to the boundary of the zoning district to rezone that to residential. This clarifies that so that everybody understands that that's the case.

Jeff McNeill clarified that if the residential zone is already there, then the solar people would have the 1-mile buffer. But if the solar is there first, then the residential zoning can go up to the boundary line? So, if you're going to buy a house and there's already a solar farm there, you know what your objections and concerns are. But we don't want the solar to crowd the residential.

Scott Jacobs asked if there is pressure to build residential close to the solar farm out there, with understanding what the impact of being so close to high energy radiation could be? As far as land use ordinance, maybe we can't do anything about it; but for health concerns, is it buyer beware? Rachelle Custer stated it's up to the buyer, just like locating next to a gravel pit or a pig or dairy farm.

Open Public Hearing (**TCLUO 2022-138**) Motion by Jeff McNeill. 2<sup>nd</sup> by Toni Scott. All in favor.

William Hogan. I own the property with my brother and our wives. We own the mile that they're talking about. Our concern is when you're talking about setbacks and they're using my property as their setback. That is a concern for me. If they need a setback, it should be on their property. That is how it works with building. It doesn't make sense when you think of it that way. The other concern is that the 3 miles makes more sense. It limits where these places can go to areas that are more open. I understand that they want to be near the power line, but that goes all through Tooele County. Where they're not a mile from rural residential or from where we want to zone as rural residential in the future. We have plenty of water to rezone to residential in our area. This wasn't a good place for this. I am for property owners doing what they want on their property. But when you're talking about that mile, that's my mile. I hope there was a really good reason for changing it from 3 miles to 1 mile. I like the amendment if we get that far.

Joyce Hogan. I am concerned about the "buyer beware" theory. We had a meeting with Mr. Miller about rezoning. Mr. Miller stated that if we apply to rezone, we will be denied because the solar project was there first. The ordinance doesn't explain why there is a buffer. Is it safe to live there? If we could rezone to develop, and there is this buyer beware, don't you think that will affect our marketing? I don't think we should have to take that hit. If they want their solar project, they should provide their own buffer. There is a buffer for a reason. There are homes and families out there that are concerned with seeing the glare instead of the mountains. On the diagrams it says to South Rim border. There are houses right up to that border. Our property is being devalued. We were told that our best defense is to come in and ask for a rezone. Is that our only option? We don't have definite plans. Last time we had to have definite plans for every phase. You are putting the burden on us. It should be on the solar company. I cannot find any reason to justify changing it from 3 miles to 1 mile. We have a lot of people that want to live out there. The buyer beware takes away from us.

Leland Hogan. If this is allowed to go ahead, the setback should be on their side of the fence, not on our side. The 3 miles was set when I was on the County Commission and the Planning/Zoning Commission. That was put there to put these kinds of developments in a rural enough place that they would not affect anyone for many years or never. The solar projects already established in the county are in a very rural place. This isn't that rural. The acreage in Rush Valley City also borders us. If you allow it to happen the setback should be on their side of the property and shouldn't interfere with what happens on the other side of the property line.

Colin Winchester. Tooele City resident, Deputy Tooele County attorney. There are 3 issues here. Number 1: there is a proposed amendment to an ordinance. Number 2: there's a request that you reconsider the 1 mile (buffer) and consider moving it back to something larger. Number 3: there is a rezone application that you have already recommended to the County Council and is pending. So the Hogan's comments tonight about not letting this go through... this has already been sent to the County Council; it's in their court now. You're done with this issue- unless the County Council kicks it back to Planning Commission for some reason. The proposed amendment to the ordinance clarifies their right to use their property. It codifies that the Hogan's right that they can come into that one-mile buffer zone if they choose to rezone to residential and develop or sell their property. I have no objection to Planning Commission reconsidering the buffer zone back to 3 miles. The current request of the solar company to rezone includes the one-mile buffer and allows the Hogan's to come into it. This amendment actually helps the Hogan's and codifies their right.

Mike Davidson, applicant for the rezone. Mike stated the county has approved seven solar projects in the county. It is my understanding that solar is favored in Tooele County. The one-mile setback is larger than any other setbacks in the state. They have the opportunity to waive that setback. I've worked with landowners in the past that have talked about building a home on the property that still haven't done it in 5-7 years. When is this expansion actually going to happen? We have plans to develop this. The trust lands came to the County Council and spoke. This could be a taking for us and our landowners who are advocates for this project and want to see it built. In the middle of July, there was another project in Carbon County that became operational. It's a 100-megawatt solar project. In Juab County, there's an 80-megawatt project which we worked on alongside one of our competitors. There is a subdivision that is expanding/building right alongside that operational solar farm. In Juab County there is a landowner who wants to do a lease agreement on the property we were going to purchase from them to build their

home on. So, there are landowners that are interested in living next to solar. There is a lot of residential rooftop solar. We are not trying to take anybody's rights. You have a right to build on the land you own just like we have the right to build on the land that these landowners own. This is good use for the county and the public.

Close Public Hearing (**TCLUO 2022-138**) Motion by Toni Scott. 2<sup>nd</sup> by Craig Smith. All in favor.

Rachelle Custer stated that the one-mile buffer only applies when the adjacent property is zoned residential, which it is not. That is the only time the one-mile buffer comes into play. So, the solar farm can go right up to their property boundary, unless that boundary is a residential zoning district. Then they would have to stay back a mile.

Brad Bartholomew asked what the setback on their property is, or if they can build right up to the property line. Jeff Miller stated there is no setback requirement in the zone they're in.

Jeff Miller stated that one of the reasons we requested the buffer was because we didn't want too much of the developable land in the valley to be used as a solar farm. Craig Smith stated that the three-mile buffer may be too big. Even the one mile is still a big chunk of land that would be wasted. I think the way it is keeps it away from the residential area and I like the change.

Jeff McNeill stated that the buffer wasn't necessarily done for a health concern. It was so that all the development wasn't taken up by solar farms. If this was a health concern, what about all the rooftop solar panels? Solar is here to stay. If we want to do something about coal, etc. we need to start using the sun. This ordinance protects the adjacent landowners.

John Wright stated I understood it that they couldn't build within one mile of the property line. I don't think we should penalize the adjacent property owner. That was not my intent when I voted in favor of the 2018 change. The one-mile buffer on the other side of the fence doesn't work- I would've never voted for that. Rachelle Custer stated that isn't how it's written.

There was discussion about solar farms in other places that are not required to have the one-mile buffer near the residential zones.

Andy Stetz stated that the Hogan's intent was to continue developing when it is feasible to do so. They need to be awarded some type of protection for that development. I believe in property rights so how do we solve this? How do we make sure we are doing the best we can for any new residents that come into the new development? Craig Smith stated that this change does that. Their intent is to develop that property in the future. This clarifies that they can do that.

Scott Jacobs stated we can only recommend this to the County Council. We should be asking as many questions as possible to help guide their decision.

John Wright mentioned the solar farms that are close to residences and stated that the hazard probably isn't as bad as he thought it was four years ago. Craig Smith stated that there are solar panels are all over on home's roofs. They wouldn't be there if they were a safety issue.

Motion for a positive recommendation to the Tooele County Council for the proposed updates (listed below) to section 17-2-3 (4)(a) of **TCLUO 2022-138** by Scott Jacobs. 2<sup>nd</sup> by Craig Smith.

The proposed section 17-2-3(4)(a) reads as follows:

(a) No above-ground Solar Energy System facility or structure (other than access roads, gates, and fences) shall be located closer than one mile to any then existing Residential District boundary line (not including Agricultural Zoning Districts).

(1). Subsection (4)(a) does not prohibit the rezoning of property within the one-mile buffer to a Residential Zoning District and does not prohibit the development and encroachment of residential developments within the one-mile buffer.

Toni Scott- yes. Brad Bartholomew- yes. John Wright- yes. Andy Stetz- yes. Jeff McNeill- yes. Craig Smith- yes. Scott Jacobs- yes.

**TCLUO 2022-023**- Planning Staff is requesting a recommendation of approval for Chapter 36 (Water-Efficiency Standards) of the Tooele County Land Use Ordinance. The proposed ordinance updates would be applicable to landscaping for new construction and when a property owner takes on a significant landscaping project that affects most of their existing landscaping. Planning Staff based this ordinance on principles and best practices promoted by the Conservation Garden Park in West Jordan, Utah, which recommends the installation of a LocalScapes landscaping design. LocalScapes encourages water-efficient usage of landscaping. Jeff Miller, Planner, summarized.

Toni Scott stated that she would like more time to review the comments from Linden Greenhalgh.

Jeff Miller described the steps to incorporate LocalScape's landscaping plans into a new yard. Scott Jacobs asked for clarification on the major remodel. Jeff stated that if someone is replacing all the grass on a home that isn't new construction, they would then be limited to the amount of grass they could have.

Rachelle Custer stated that in staff report b, at the end of that is the actual code chapter. The rest of the report is just examples. Jeff Miller stated that we will not be mandating how many of certain trees/plants you have, and it isn't necessarily a xeriscape type landscape. They don't typically recommend those landscapes because a lot of people scrap all their grass and don't plan out the plant layout or change the sprinkler layout which ends up wasting a lot of water.

Jeff McNeill stated that hopefully this ordinance will encourage businesses likewise to not put grass in their parking strips. Jeff Miller stated on the new commercial site plans, we've been promoting water-efficient landscaping. We should look at putting something similar to this for the commercial/ industrial developments. Rachelle Custer stated that this limits lawn areas of commercial buildings to 20% of grass, outside of recreation area.

Jeff Miller stated that one of Linden Greenhalgh's comments was about the landscaping starting to look bad. Jeff Miller stated that usually happens when there's not enough planning or they're not maintaining it. We are not mandating any plant species, but we will make recommendations.

John Wright discussed his visit to the Conservation Garden Park. He stated I was able to get in touch with Courtney, who is the director of the facility. One of the things they do with their LocalScape, they have funds to give a rebate to people who meet every requirement. Some of the funds come from Jordan Water District. The rest comes from grants, fundraising, etc. I learned a lot about the plants, about the drip system, and how critical mulch is for this type of design. I made some edits on the proposed ordinance based on what I learned. I will send that to you, Jeff (Miller). The main things I learned are like when we finish a house, the last thing we do is put in the carpet. But when we do our landscaping, we do our planters, then a few trees, then finish with grass. We need to be thoughtful in our landscaping. I went to a master gardener's tour and some of the folks had done some great things with their landscaping without this plan. As I was looking at it, I realized you can still have enough space for your kids to kick a soccer ball or whatever.

Craig Smith stated that he also went to the garden. I was mostly underwhelmed. I could tell where things had bloomed in the spring, but it was pretty bland. I don't agree with mandates, but there is a need to adopt something. Item 4 calls for 3 or 4 inches of mulch. I suggest we put gravel in there as well. In number 6, it says your lawn area should be free of trees, etc. I don't understand that because the lawn under a tree takes a lot less water. Jeff Miller stated that it's just more visibly pleasing. You can still put trees in the park strip. Craig Smith stated I agree with eliminating all grass in park strips. I don't recall seeing anything for annuals in the beds. Jeff Miller stated we could add something about leaving room for annuals in. There are a lot of plants that flower throughout summer. The lawn area says to do 250 square feet or less. Craig stated that this isn't any easier to maintain. Jeff Miller stated that one of the benefits of using the drip system in the flower beds is that you aren't watering the areas where the weeds will grow in.

John Wright stated that he asked Courtney if they used weed fabric and he said no, absolutely not. By doing the mulch, a minimum of 4 inches, it prevents germination of the seed because they can't get sunlight. Weed fabric is only good for about 2 years and it affects the plant's root system. Jeff Miller stated that underneath the paths and hard surface areas you should be using weed barrier. But they found that using weed barrier in the beds, it was killing all the microorganisms that you want in the dirt. The microorganisms that your plants need were not thriving in there. That is why they promote the mulch. John stated that the roots of the plants don't grow properly with the weed barrier either.

No Public Hearing for **TCLUO 2022-023** (Hearing was held on July 6, 2022).

Motion to table **TCLUO 2022-023** until the first meeting in September made by Jeff McNeill. 2<sup>nd</sup> by Scott Jacobs. All in favor.

Motion to adjourn made by Toni Scott. 2<sup>nd</sup> by John Wright. All in favor.

Time of Adjournment was 9:19 p.m.

THE FORGOING MINUTES ARE HEREBY APPROVED BY \_\_\_\_\_

