

TOOELE CITY PLANNING COMMISSION MINUTES
October 24, 2012

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:

Matt Robinson, Vice-Chair
Phil Montano
Melanie Hammer
Steve Dale
Tom Poyner
Chris Sloan

Commission Members Excused:

John Curwen
Sheldon Birch
Doug Redmond

City Employees Present:

Roger Baker, City Attorney
Jim Bolser, Community Development and Public Works Director
Councilman Brad Pratt

Excused: Rachelle Custer

Minutes prepared by Elisa Jenkins

Vice-Chairman Robinson called the meeting to order at 7:05 p.m. He welcomed Boy Scout Troop 168 to the meeting.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Vice-Chairman Robinson.

2. **Roll Call**

Chairman Curwen, Excused
Matt Robinson, Present
Phil Montano, Present
Doug Redmond, Excused
Chris Sloan, Present
Steve Dale, Present
Melanie Hammer, Present
Sheldon Birch, Excused
Tom Poyner, Present

3. **Public Hearing and Recommendation on ordinance 2012-24 an ordinance of Tooele City amending Tooele City Code §7-16-3 table 1 – table of uses, regarding group homes. Removing the outdated term “group home”.**

Presented by Roger Baker

Mr. Baker stated that one of the important roles that he has is to bring zoning, land use ordinances and policies to the Planning Commission. These ordinances and policies will help protect the city legally. They also put the city in a better position in terms of long range planning. The Planning Commission is a land use body and it is important for them to consider the legislation changes and make recommendations to the City Council. He expressed his appreciation for the work the Planning Commission does. He stated that as part of the process they allow the public to give input. The public hearings on the agenda have been advertised for 10 days.

Mr. Baker explained that on September 5th, the City Council, with the recommendations from the Planning Commission, approved changes to the ordinances regarding residential facilities for the disabled and residential facilities for the elderly. This was done to comply with the Federal Fair Housing Act and the Utah Fair Housing Act. State statute said the city could regulate these facilities in certain fairly aggressive ways; the courts of the country said that they can't. In this way, the city was alerted to the pitfalls in state law. The City changed the ordinance to avoid those pitfalls. The table of uses, which defines what you can do with land and where you can do it, has a listing for group home which is undefined in the code and listed as a conditional use. The term “group home” is an outdated, generic term for the facilities for the disabled and elderly. It is his understanding based on case law and statute, that although it may be legal to have these facilities be a conditional use, it is not legal to require the disabled to jump through hoops that that you don't require the non-disabled to jump through. If you have a house for disabled people as a conditional use you have to treat non-disabled people equally by having every other house be a conditional use. It is not practical and makes no sense to have every house in Tooele City have a conditional use. This is why houses for the disabled are a permitted use not a conditional use. If the word “group home” is left in the ordinance without definition than it raises the possibility that any type of group home, for the disabled or elderly or not, would be allowed in any residential neighborhood. They want to avoid internal conflicts in the City Code, as to what can be in neighborhoods. It is his recommendation to repeal the term “group home” based on what was enacted in September.

Vice-Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Vice-Chairman Robinson closed the public hearing at 7:12 p.m.

Commissioner Sloan moved to forward a positive recommendation to the City Council on Ordinance 2012-24, an ordinance of Tooele City amending Tooele City

Code §7-16-3 table 1 – table of uses, regarding group homes. Removing the outdated term “group home”. Commissioner Dale seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Hammer, “Aye”, Commissioner Dale, “Aye”, Commissioner Poyner, “Aye”, Commissioner Sloan, “Aye”, and Vice-Chair Robinson, “Aye”.

4. **Public Hearing and Recommendation or ordinance 2012-23 an ordinance of Tooele City amending Tooele City Code Chapter 7-5 regarding conditional uses by establishing a penalty for violations.**

Presented by Roger Baker

Mr. Baker stated that this chapter refers to conditional use permits that the Planning Commission issues after public hearings. He said that currently the city code allows the city to revoke a conditional use permit if the applicant violates the conditions of the permit established by the planning commission. But, it doesn't contain any enforcement mechanism for offenders that do not care if their permit is revoked and continue to violate the terms of their permit anyway. He is suggesting implementing a criminal penalty for violations of conditions on a conditional use permit. He is recommending a Class B Misdemeanor; the maximum penalty a judge can impose is 6 months in jail and a \$1,000 fine. The judge has the flexibility to decide what the penalty will be. He is trying to give the city an additional enforcement tool.

Commissioner Sloan asked if other jurisdictions impose penalties for violating conditions of the conditional use permit.

Mr. Baker said that other jurisdictions have criminal penalties. He said that some jurisdictions have even more severe penalties by allowing the city without a hearing to go to the offending business and lock the door and preclude them from continuing illegally. He is concerned with due process in that approach. He feels that this recommendation allows the city to investigate and assemble an investigative report and present it to a judge in a fair setting where both sides can be presented and then allow a judge to decide.

Commissioner Dale asked who this would be enforced against?

Mr. Baker said that it could be enforced both personally and against the corporation. Utah law allows corporations to be prosecuted criminally as well as the city code in some instances. The city would determine who the local corporate officer is and determine who the registered agent for the corporation is and serve them a summons. He doesn't think that this will happen very often. Currently the only option is for the city to sue them in civil court; this would be a better tool.

Commissioner Poyner asked Mr. Baker if he knew approximately how many revocations there have been in the past five years.

Mr. Baker said that he was unsure because they do not go through his office; he generally has not been involved. He knows that Ms. Custer has sent out many violation letters informing them that they are in violation and instructing them to come into compliance.

Commissioner Poyner verified that currently if they get to the point of revocation that is all they can do.

Mr. Baker said that they can sue in district court. The only real enforcement mechanism now is revoking the permit. Revoking the permit does not eliminate the conditional use; if they come back into compliance they can get their permit back.

Commissioner Poyner asked if that was only upon approval?

Mr. Baker said no, as long as they follow the same conditions that have been imposed. They are also trying to avoid the yo-yo effect, where someone goes out of compliance and then back in and then goes out again.

Commissioner Hammer asked if this change will be a big enough deterrent.

Mr. Baker said they hope they only have to prosecute someone once.

Commissioner Dale noted that there have been some conditional use permits revoked and they keep operating anyway.

Mr. Baker said that is what this is designed for.

Commissioner Dale asked if they continue to operate their business can the next step be taken?

Mr. Baker said they can revoke and prosecute. He said that there is an additional step recently enacted on the business license end. If the business license is a conditional use requiring a business license and they violate the terms of their conditional use permit they can revoke their business license as well. This is a new tool the city can use.

Commissioner Dale asked if there is a fine schedule associated with these violations?

Mr. Baker said that the City Code Title 1 defines fines, and it is a \$1,000 maximum fine for a Class B misdemeanor. A Class C misdemeanor is \$750.

Commissioner Dale asked if that would be determined by the court.

Mr. Baker said "yes".

Commissioner Poyner used an example if someone gets their driver's license revoked they have to go to the driver's license agency and reapply and get reinstated. He said that in adding§ 7-5-12 with a penalty, he feels that they should not automatically be able to

get their conditional use permit back. He feels that it should say in the ordinance that they have to re-apply.

Mr. Baker said that is something that they could discuss further.

Mr. Bolser said that there is a fine line that he hopes would answer Commissioner Poyner's question. He said there are two things to consider; first a conditional use and second a Conditional Use Permit. A conditional use for example would be Business "A" in Zone "B" that would be a use allowed upon certain conditions. Once the use is approved that use by state law runs with the land. The permit upon which the conditions are assigned by the Planning Commission to allow that use to occur is what gets revoked. The use runs with the land and stays on the land even if it changes ownership. If they go out of compliance the use remains with the land, and if they come back into compliance with the conditions the use remains on the land which is why the permit can become automatic. He said that with Commissioner Poyner's example of having a driving license revoked, there is nothing assigned with a person as a use does with the land.

Mr. Baker said that the Planning Commission decides to allow the conditional use, but administratively they issue the permit.

Commissioner Dale said that he understands that the use runs with the land. But, the use is subject to the conditions and when the applicant does not comply with the conditions of the use; can the use by that applicant be terminated?

Mr. Bolser stated that the conditions apply to the permit not to the use. The permit gets revoked. The use remains regardless of how many times they violate. The conditions allowing that use gets violated. He used as an example if he has a business and it was listed in the code as a conditional use and he comes before the Planning Commission to get a Conditional Use Permit and the Planning Commission says they will issue a permit with the condition that he is only open from 10:00 a.m. to 5:00 p.m. That use that was conditionally allowed in the code is now assigned to that property. He opens his business from 9:00 a.m. to 7:00 p.m., which means he would be in violation of the condition, but the business is allowed to remain. The permit would be revoked because he is not open when the condition allows. He would still be allowed to conduct business, but because the permit has been revoked he has to come back to those conditions. The use is still allowed. He can sell the business and if that person can meet the conditions, he is allowed to do that because the use is still assigned to the property. What is revoked and re-issued is the permit.

Commissioner Dale asked if in Mr. Bolser's example, if the business continues to be out of compliance and then comes into compliance for a few months, rather than that be an automatic renewal he asked if that conditional use permit could no longer be allowed.

Mr. Bolser said that is what this ordinance would do. If the applicant keeps playing the yo-yo effect they have the option of the next step being a penalty. This would allow the court to decide.

Commissioner Dale said that the court could say that they were done.

Mr. Bolser said “yes”.

Commissioner Sloan noted in his business as a realtor if his license is revoked he can't go back and resume business. He noted in different organizations the term “revocation” might be slightly different.

Mr. Baker said that is because of the rules of his organization. Mr. Baker said that every organization or agency has their own rules for revocation or re-instatement. This ordinance does not provide a process for re-instatement. That is something that they could look at.

Commissioner Montano said that he only knows of one permit that was revoked which is where Techna glass is now; there was a garage that used to be there that was constantly out of compliance and the City revoked their permit. He said that most people open a business and takes out a permit in good faith. He feels that this is a good tool for staff to have a penalty. He doesn't feel that it needs to go any further.

Commissioner Sloan agreed with Commissioner Montano. He said that this is a tool the city can use when a conditional use permit is violated.

Commissioner Dale said that this gives staff more tools to ensure that businesses comply with the conditional use permit.

Councilman Pratt said that this gives “teeth” to revocation of the permit. He does not see businesses wanting to have the penalty multiple times. The city needs the penalty to discourage businesses from going out of compliance.

Councilman Robinson asked if this allows a penalty for businesses that are conducting a conditional use without a permit?

Mr. Baker said “yes”. He said that you can't revoke a conditional use permit that doesn't exist. But, it allows the city to impose a penalty on the business.

Commissioner Robinson noted but this does allow the city to take action against people that should have a conditional uses permit but do not.

Vice-Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

Vice-Chairman Robinson closed the public hearing at 7:33 p.m.

Councilman Dale moved to forward a positive recommendation to the City Council an ordinance 2012-23 an ordinance of Tooele City amending Tooele City Code

Chapter 7-5 regarding conditional uses by establishing a penalty for violations.

Commissioner Hammer seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Hammer, “Aye”, Commissioner Dale, “Aye”, Commissioner Poyner, “Aye”, Commissioner Sloan, “Aye”, and Vice-Chair Robinson, “Aye”.

5. **Public Hearing and Recommendation on ordinance 2012-21 and ordinance of the Tooele City Council amending Tooele City Code Chapter 7-25 to allow A-frame signs in the downtown overlay area (100 South to Utah Avenue & 50 East to 50 West.**

Presented by Roger Baker

Mr. Baker said that he has been working on this ordinance for 14 years, and is excited to present this ordinance to the commission. He thanked Mr. Bolser for his support on this ordinance. He said that the city believes that the downtown businesses have a competitive disadvantage from other businesses that are not downtown. The other businesses that are not downtown have property between the building and the sidewalk to put a monument sign. You are able to see their signs when driving down the roads. In the downtown area the buildings are right on property lines, and there is no opportunity for a monument sign. There is opportunity for a sign on the building, but there are trees near these building and the signs are not always very effective. When he has visited other cities he has observed A-frame signs in downtown historic settings that make their businesses visible to pedestrian and car traffic. These types of A-frame signs help these businesses that do not have monument signs. This ordinance is very detailed. He said that it is detailed not because they think that the government knows exactly what kinds of signs that every business should have and they can have no other kind, it is very detailed because they are sensitive to the need to have a uniform look contribute to downtown, instead of detract from it. They care about the feel and success of the whole downtown area. That is why they have described shape, size, dimension, and color of the signs. They want a uniform look that will compliment downtown.

Commissioner Montano noted on page 7-94, 7-25-14.1 (b) *Size and dimension. A-frame signs shall be 24 inches wide and between 36 and 42 inches tall.* He said that it is about 7 square feet of signage. He wondered if the signs are big enough, they could allow the signs to be 48 inches tall. He doesn't want them to be too big to clutter up the sidewalks. He said that this ordinance goes from 100 South to Utah Avenue; he was concerned about Utah Avenue South to 2nd and 3rd south if those businesses should be allowed to have these types of signs. He is not sure if they have room for other signs.

Mr. Baker said that the city has a downtown zoning overlay, and he tried to keep the same dimensions. He said that south of 1st south there is room for signs in front of their buildings.

Commissioner Dale also feels that south of 1st south there is room for monument signs. The downtown is restricted by the buildings.

Mr. Baker said the old state liquor store which has been vacant, might have a problem with a monument sign.

Commissioner Poyner noted that anyone north of Utah Avenue would be in violation of this ordinance.

Mr. Baker said they are in violation today, but the city has allowed them because they wanted to wait until there were clear regulations in place. They didn't want to do a heavy enforcement action during a time of transition.

Commissioner Hammer asked if City Council approves this if the city will begin enforcing.

Mr. Baker said it his understanding that they would begin to enforce the ordinance. They likely would first have a public relations outreach and provide every business a copy of the ordinance. They likely would also make sure that the downtown businesses would have a copy as well.

Mr. Bolser said that there is one advantage because the city is looking at the whole sign chapter. They will begin enforcement action which will be largely educational. As they continue to look at the entire sign code they will have an opportunity to evaluate how it is working. They can refine it if necessary.

Commissioner Poyner noted that there is a business on the northeast corner of 400 N and 1st south that use A-frame signs. He doesn't think that they have room for any other signs between their building and the sidewalk. They are currently in violation and they will be when this is approved. (Commissioner Poyner was referring to Java's Coffee Shop.)

Mr. Baker said that they have leased the whole parking lot so they have room for other types of signs.

Mr. Bolser also said that they do not have street trees blocking their wall signs.

Mr. Baker said that there will be isolated circumstances where they could not write the ordinance to include everyone.

Mr. Bolser said that this is addressing a single type of sign. There are multiple other opportunities to use other types of signs. A-frame signs are really geared to businesses that are severely disadvantaged because of their location. This is one type of sign option.

Commissioner Dale referenced in section (b) that the sign is allowed to be 42 inches, for safety reasons he is not sure if they should be taller than that. He is worried about them blowing over if they allow the signs to be taller should they be allowed to be a little wider.

Mr. Baker said he borrowed this dimension from another small community with a historic downtown. He also noted that the signs have to be taken in at night.

Commissioner Sloan said that 24 inches wide is a pretty standard sign.

Councilman Pratt stated that he saw a girl on the corner of Vine Street and Main almost hit by a car after stepping out from behind an A-frame sign. If the sign was much taller it would be easy for a person to hide behind the sign. He is very concerned about the safety of pedestrians and drivers vision.

Commissioner Dale asked if there is a provision in the ordinance for a corner.

Mr. Baker said that the ordinance under 7-25-14.1 (a) says that the sign has to be located in front of the business it is advertising. The corner business could have their sign on the corner. It doesn't reference the corner specifically.

Commissioner Dale said that there could be a sight distance issue.

Mr. Baker said that there is a sight triangle regulation in another part of the code. He said that they will have to look at it.

Mr. Bolser believes that the sight triangle restricts the height of bushes and other obstructions to 36". There is a provision in the code.

Commissioner Montano said that he agrees that signs should be placed in front of their own business. He said that he is fine with a 24 x 32 inch sign. He also agrees that they need to be put away at night

Commissioner Hammer asked if that would be part of the education part.

Mr. Baker said "yes".

Commissioner Hammer asked Mr. Baker how he came up with the time A-frame signs are allowed to be out. She understands that these businesses don't open until later in the morning and close early.

Mr. Baker said he was trying to be as permissive as they can without affecting public safety.

Commissioner Hammer also noted that balloons cannot be attached to the signs. She wanted to be sure that was part of the education.

Commissioner Dale referenced page 7-92 (75) where it talks about "window sign" it references another ordinance that shows it is blank.

Mr. Baker said that every time they change the city code his office puts in the sections that are changed the ordinance number and date so if they need to see the history they can go back and look at it. They don't have the date; that is why it is blank.

Vice-Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue.

Mr. Wood from Erda addressed the Commission. He asked if this ordinance addresses snow removal in the winter.

Mr. Baker said that snow removal is required on all public sidewalks whether they are in front of homes or businesses. It is required by the owner of the property adjacent to the sidewalk. However, Tooele City has historically plowed the sidewalks in this downtown area. These signs can be placed on the sidewalk, which is another reason they want them taken down at night so sidewalks may be plowed at night. Also, if they water the park strips at night they won't water the signs.

Vice-Chairman Robinson closed the public hearing at 7:57 p.m.

Commissioner Dale moved to make a favorable recommendation to the City Council on ordinance 2012-21 an ordinance of the Tooele City Council amending Tooele City Code Chapter 7-25 to allow A-frame signs in the downtown overlay area (100 South to Utah Avenue & 50 East to 50 West, with one amendment to 7-25-14.1 (b) to allow up to a 24" wide sign but restrict the height to 36". Commissioner Sloan seconded the motion. The vote was as follows: Commissioner Montano, "Aye", Commissioner Hammer, "Aye", Commissioner Dale, "Aye", Commissioner Poyner, "Aye", Commissioner Sloan, "Aye", and Vice-Chair Robinson, "Aye".

6. **Public Hearing and Recommendation on ordinance 2012-25 an ordinance of Tooele City amending Tooele City Code 7-5-4 regarding conditional use permit approvals.**

Presented by Roger Baker

Mr. Baker stated that currently in the city code as part of the planning commission approval of a conditional use permit they have to make findings that the proposed use is desirable and necessary and compatible with the other land uses; the site is of sufficient size to accommodate, and other words of that nature. The courts have routinely struck down zoning ordinance that require findings of compatibility, desirability, and consistency, because those terms are not capable of careful enough definition to put the development community on notice as to what they mean. It is impossible to define the word desirable in scientific terms and have it understood the same way by all people. This came to light in a previous planning commission meeting where then-Commissioner Gary Searle started to make a finding that the proposed use was incompatible or compatible and Mr. Baker informed him that he can't use compatibility as the standard because it is not capable of definition and courts hate it. Commissioner Searle said that

City Code told him that he had to. He is suggesting that those provisions be removed from the code. He has tried to remind the planning commission when it comes to conditional use permits that they have two jobs: 1) determine what the detrimental effects of the proposed use are on neighboring property; and, 2) decide if there are reasonable conditions that will mitigate the effects. If there are detrimental effects that can be mitigated, the Commission must impose the conditions and approve the conditional use permit. These are the findings he is proposing for the code; what the detrimental effects are and what evidence shows that they exist. For example the public might say that if the conditional use permit is approved it will lower their property value, which is a detrimental effect. The Planning Commission has to find out what the evidence is that the detrimental effect might happen. In the case of property value someone would have to give the Planning Commission an appraisal that says if you approve this use the property value will go down. The other three relate to the conditions such as what conditions could be imposed that would help and what evidence does the Commission have that shows they would help. These are not as scientific, just reasonable arguments that the condition would help. He used a Utah example where a dust making operation wanted to go next to a yogurt bottling factory, and the commission imposed conditions to reduce the dust, which is reasonable. The five items suggested in the ordinance are designed to help the Planning Commission create a record that will sustain their decisions in court.

Commissioner Sloan asked about the word reasonable.

Mr. Baker said number three says reasonable conditions imposed.

Commissioner Sloan said that is ambiguous.

Mr. Baker said that the court uses the word reasonable so much that they are not offended when they use it as well. The court would look at intent.

Commissioner Sloan said that Mr. Baker has done a good job at getting rid of as much ambiguity as he can.

Mr. Bolser stated that the courts do use the word reasonable often. They would look to see if the ordinance is properly worded.

Mr. Baker said that state code says reasonable conditions.

Commissioner Dale asked if they are suggesting that all five paragraphs need to be met to establish a condition of approval or denial.

Mr. Baker said that is what he is suggesting, to the extent that they can. He said that the more extensive a record that they create of the five items, the more defensible their decisions will be. It is not all required.

Commissioner Dale is concerned about paragraphs 2 and 5 which places an undue burden on the Planning Commission to gather the evidence, or maybe it puts the burden on the city? He used as an example he had a friend that was the city engineer when the IKEA store opened in Draper. They knew traffic issues would happen and would be something that they had not encountered before, especially when it first opened. They had ideas of what the needs would be to mitigate them however, without having required a traffic study or recommendations or those types of things they would have underestimated what conditions needed to be put in place to mitigate those types of issues. As a Planning Commission they know that there would be traffic impacts that need to be mitigated but, what the steps are to mitigate them they may not have evidence in hand.

Mr. Baker said that if the Planning Commission has a big use to approve, staff would not expect them to have one meeting to understand all the impacts and address all the conditions. The staff would do all the work, and they would have all the information to the Planning Commission before they make such a decision. As commissioners he said that they need to demand the information they need. To take a smaller example, he said that the most common condition that is placed on a conditional use permit is that lighting be directed down onto the site. One of the possible detrimental effects of this business on the neighboring house is that light from the business will shine in their house. The evidence of the detrimental effect is that when a light is pointed up that is the way it will shine. The evidence of the condition is reasonable and when you point the light down it will not shine into the house. On a bigger application the staff will work to provide the information the commission needs.

Commissioner Robinson said that the conditions they have before them are usually recommended by the staff.

Commissioner Sloan said that there is nothing wrong with more information that is needed.

Mr. Bolser said that if the Planning Commission doesn't have the information that they need he encourages them to get it first.

Commissioner Poyner stated that the audience also gives input about detrimental effects.

Mr. Baker used as an example that it is not enough for someone to stand up in a public hearing and say goats stink, even though it might be true. What would be enough is for someone to say they went to a goat farm like the one in Erda and they were 100 ft. away and it stank, that would be evidence.

Vice Chairman Robinson stated that this is a public hearing if anyone would like to come forward and address this issue.

Vice Chairman Robinson closed the public hearing at 8:14 p.m.

Commissioner Sloan moved to forward a favorable recommendation to the City Council on ordinance 2012-25 an ordinance of Tooele City amending Tooele City Code §7-5-4 regarding conditional use permit approvals. Commissioner Montano seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Hammer, “Aye”, Commissioner Dale, “Aye”, Commissioner Poyner, “Aye”, Commissioner Sloan, “Aye”, and Vice-Chair Robinson, “Aye”.

7. **Review and Approval of Planning Commission minutes for meeting held October 10, 2012.**

Commissioner Poyner moved to approve the Planning Commission minutes as presented for the meeting held October 10, 2012. Commissioner Sloan seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Hammer, “Aye”, Commissioner Poyner, “Aye”, Commissioner Sloan, “Aye”, and Vice-Chair Robinson, “Aye”. Commissioner Dale abstained.

8. **Adjourn**

Commissioner Dale moved to adjourn the meeting. Commissioner Robinson seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Hammer, “Aye”, Commissioner Dale, “Aye”, Commissioner Poyner, “Aye”, Commissioner Sloan, “Aye”, and Vice-Chair Robinson, “Aye”. The meeting adjourned at 8:16 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this 9th day of January 2013

Vice Chairman Matt Robinson