

TOOELE CITY PLANNING COMMISSION MINUTES
May 13, 2009

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

Commission Members Present:

Ken Spence, Chair
Shawn Milne
Phil Montano
Jerald Sagers
Fran Garcia
John Curwen
Gary Searle
Steve Dale

Commission Member Excused:

Bob Gowans

City Employees Present:

Rachelle Custer, City Planner
Dave McCall, City Council Representative

Others Present:

Steve Pruden, City Council Chairman

Minutes prepared by Elisa Jenkins

Chairman Spence called the meeting to order at 7:00 p.m. Chairman Spence excused Commissioner Gowans, Roger Baker, Paul Hansen and Cary Campbell from the meeting.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Spence.

2. PUBLIC HEARING & MOTION on a conditional use permit for outdoor sales to be located at 227 N Main Street by CKJS Park Properties.

Presented by Rachelle Custer

Ms. Custer explained that the property owner is requesting a conditional use permit to allow for outdoor sales. This particular user is a produce stand. Ms. Custer stated that she has required that the property owner obtain the conditional use permit, since the conditional use permit runs with the land. This means that once the produce stand moves out and somebody else wants to move in there would be a conditional use permit already in place. She said that conditional use permits have been done incorrectly in the past they

have been tied to the business; they should be tied to the property. By having the property owner apply for the conditional use permit it gives the owner the right to use it for other businesses.

Commissioner Milne asked if the Planning Commission has any way to request that the property owner come to the City should the business change.

Ms. Custer stated that every new business is required to get a business license. They can not require a conditional use permit for every new business because it goes with the property.

Commissioner Milne noted that food vendors are very seasonal.

Ms. Custer said that the conditional use permit stays active with the property unless the conditional use has not been used for a period of one year or something on the conditional use has been violated.

Chairman Spence asked if that is the case with this conditional use permit is because it has not been used for a year.

Ms. Custer stated “yes”. Now they are asking the property owner to acquire the conditional use permit not the individual business owner. The business is required to get permission from the property owner, permission for the restrooms and to get a business license. Because the conditional use permit runs with the land they are not requiring every business that comes in for outdoor sales on this lot to get a conditional use permit any longer.

Commissioner Milne asked if this was similar to the Vorwaller conditional use permit.

Ms. Custer said “yes”. Ms. Custer also stated that staff recommends approval of the conditional use application with the following conditions:

1. Hours of operation are restricted to those of the neighboring business.
2. Sales are to be in out of the public way.
3. Sales to not be disruptive to traffic flow.
4. Sales area to not encroach into the parking lot.

Commissioner Sagers noted that having the property owner applying for the conditional use permits will set precedence for other businesses.

Ms. Custer indicated that is someone comes in for a conditional use permit for outdoor sales and there is already a conditional use for the property and it has not been more than one year, the conditional use is still in effect. The City started this requirement in the fall, that the property owner acquire the conditional use permit not the business, but this is the first application since then.

Commissioner Milne concern is that this restricts the Planning Commission's ability to impose conditions based upon the use.

Ms. Custer stated that the Planning Commission can place conditions that they think would cover various uses.

Commissioner Milne said hindsight is what concerns him. When certain businesses come in that they do not feel are appropriate and the conditional use permit has already been granted there is nothing they can do.

Commissioner Curwen asked if certain restrictions can be placed on the business license.

Ms. Custer stated that to a certain extent restrictions can be placed on a business license such as zoning restrictions. If a new business came in they would have to get a business license and she would do a site visit.

Commissioner Milne verified that as long as this conditional use permit remains current this applicant may lease or rent to a third party for them to do what they wish with this parcel of land. If it is not used for a year they would have to come back to the Planning Commission.

Ms. Custer said that was correct. They would also have to come back to the Planning Commission if the conditional use permit violated any conditions.

Commissioner Milne asked if the conditions could be specific to only include this type of retail sale for produce.

Ms. Custer said they are placing a conditional use permit on outdoor sales. City code states that outdoor sales require a conditional use permit.

Commissioner Searle stated that someone could be in direct competition with someone else who has built a building. They could sell anything outdoors.

Commissioner Milne said that this has come up to the Commission before regarding temporary auto sales.

Commissioner Montano indicated that it would be up to the public where they will go to purchase goods.

Commissioner Searle noted that a business in a building would be paying sales tax; it is hard to make sure these types of businesses are paying their sales tax. Once you approve outdoor sales they could sell anything. Outdoor sales could mean garage sales.

Commissioner Milne said when too many cars park along Main Street it becomes a traffic problem.

Commissioner Montano said that just recently they approved outdoor sales in front of Sears.

Commissioner Milne stated they also approved outdoor sales at Wal-Mart.

Commissioner Garcia noted that most outdoor sales takes place in the summer months.

Ms. Custer stated that she has seen Christmas trees for sale at this location before.

Commissioner Dale asked if Planning Commission could grant a conditional use permit specific to this use. If a different type of outdoor sales wants to come in, they would have to come in for a conditional use amendment to the prior approval. For instance, the Commission could grant approval for outdoor produce sales in this case, which would limit it to that use. If someone wanted to sale something else they would have to come back in.

Ms. Custer stated that would be a question to ask Mr. Baker. The City is trying to avoid that scenario. She said that by state law the conditional use permit runs with the land not the user.

Commissioner Dale indicated if they could limit the use on the conditional use it would eliminate some of the concerns of the Commission.

Commissioner Spence asked if they could impose the specific use as a condition.

Commissioner Milne asked if they can limit the amount of time on a conditional use permit.

Ms. Custer stated that the Commission can not limit the amount of time a conditional use permit is approved for, but they can limit the time in days or months the business can operate.

Commissioner Milne recalled the Vorwaller conditional use having a time limit.

Ms. Custer stated that Mr. Vorwaller implemented restrictions on the business owner that said that the business can only operate for three weeks at a time.

Commissioner Dale said that the conditional use could say that they could only operate from April to October in this case.

Ms. Custer stated that the Planning Commission imposed certain months the outdoor sales can operate on the Wal-Mart conditional use permit.

Councilman McCall verified that the land owner is the one that has to get the conditional use permit. Could they require the land owner to come back when a new user wants to be allowed to sale?

Ms. Custer stated by law they can be specific as to what can be allowed on the conditional use permit.

Commissioner Milne said that if the property owner wanted to do something different on that property they would have to come back. If they do not conform to the conditions they have some leverage.

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

Commissioner Milne moved to close the public hearing. Commissioner Montano seconded the motion. All members present voted “Aye”. The public hearing closed at 7:18 p.m.

Commissioner Searle indicated that he is not worried about this particular use. He has a concern because the term “outdoor sales” is so general.

Commissioner Milne agreed with Commissioner Searle. He is also worried about the City’s ability to collect sales tax.

Commissioner Montano agreed with Commissioner Milne but he does not feel that is the Planning Commission’s job to worry about collecting sales tax.

Commissioner Searle indicated that because “outdoor sales” is so vague someone could set up a temporary vehicle sale.

Ms. Custer said that the City has a specific ordinance that deals with temporary vehicle sales. There are many people that set up sales without permission on the weekend and there are enforcement officers out on Saturday’s.

Commissioner Garcia noted that when someone applies for a business license the City finds out what the business is and there are guidelines that have to be followed.

Commissioner Seale asked what if they already have a business license.

Ms. Custer indicated that the business licenses are location specific unless it is a mobile service.

Commissioner Milne moved to approve a conditional use permit to allow outdoor sales at 227 N Main Street with the following conditions:

- 1. Hours of operation are restricted to those of the neighboring business.**
- 2. Sales are to be in out of the public way.**
- 3. Sales to not be disruptive to traffic flow.**
- 4. Sales area to not encroach into the parking lot.**

5. This is limited to outdoor produce sales as proposed by the property owner.

Commissioner Sagers seconded the motion. All members present voted “Aye” except for Commission Montano who voted “Nay”.

3. PUBLIC HEARING & MOTION on a conditional use permit for church related services to be located at 21 E Vine Street by David Martinez.

Presented by Rachelle Custer

Ms. Custer stated that the property owner is requesting a conditional use permit to allow bible study at 21 E Vine Street. The hours are included in the Commissioner’s packet. Church functions are a conditional use permit in any zone. Parking is provided on Vine Street as well as in the rear of the building. Staff recommends approval of the conditional use application.

Commissioner Spence stated that this is a public hearing if anyone would like to come forward and address this issue.

Cloyd George, 53 East Vine addressed the Commission. He and his wife own New Cleaners on 53 East Vine he does not have a problem with the church at this location. He asked what related services are.

Ms. Custer stated that the applicant has only requested bible studies on the permit. The Commission could make that a condition of the conditional use.

Commissioner Sagers moved to close the public hearing. Commissioner Garcia seconded the motion. All members present voted “Aye”. The public hearing closed at 7:25 p.m.

Commissioner Milne moved to approve a conditional use permit for church related services to be located at 21 E Vine Street with the condition that this location only be used for bible studies. Commissioner Garcia seconded the motion. All members present voted “Aye”.

4. PUBLIC HEARING & MOTION on conditional use permit to build a 23 ft tall RV storage building at 351 W Utah Avenue by Steve Lane.

Presented by Rachelle Custer

Ms. Custer explained that the applicant is requesting a conditional use permit to allow for the construction of a 23 ft tall RV storage building. The lot is 1.68 acres. The storage building will be 3,528 sq ft and will be open on one side. Staff recommends approval of the conditional use application with the condition that the building not be used for housing livestock.

Commissioner Milne asked if this building take over the use of the A, B, and C out buildings on his property.

Mr. Lane said not at this time. He uses the B building for animals and the other buildings are used for storage. He also indicated that the height of this building is to accommodate the air conditioner on the RV.

Chairman Spence noted the reason for this conditional use permit is because of the height.

Mr. Lane said that this building is 23' at the peak height.

Commissioner Milne noted that the applicant has a lot of acreage.

Commissioner Montano thanked the applicant for all of the detailed drawings included with their packets.

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

Commissioner Milne moved to close the public hearing. Commissioner Montano seconded the motion. All members present voted "Aye". The public hearing closed at 7:28 p.m.

Commissioner Sagers moved to approve a conditional use permit for a 23 ft tall RV storage building to be located at 251 W Utah Avenue with the condition that the building not be used for housing livestock. Commissioner Milne seconded the motion. All members present voted "Aye".

5. **REVIEW and APPROVAL of meeting minutes for Planning Commission meeting held April 22, 2009.**

Commissioner Sagers noted one change to Ms. Jenkins before the meeting. He was in attendance at the April 22, 2009 meeting but he was not on the minutes.

Commissioner Milne moved to approve the minutes with the one change noted above. Commissioner Sagers seconded the motion. All members present voted "Aye".

6. **Adjourn**

Commissioner Milne moved to adjourn the meeting. Commissioner Searle seconded the motion. All members present voted "Aye". The meeting adjourned at 7:30 p.m.

Approved this 27th day of May 2009

Chairman Spence