

TOOELE CITY PLANNING COMMISSION MINUTES

Date: Wednesday, January 27, 2021

Time: 7:00pm

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

Commission Members Present:

Tyson Hamilton
Shauna Bevan
Nathan Thomas
Dave McCall
Melanie Hammer
Chris Sloan
Paul Smith
Weston Jensen

Commission Members Excused:

Matt Robinson

City Employees Present:

Andrew Aagard, City Planner
Paul Hansen, City Engineer
Roger Baker, City Attorney
Jim Bolser, Community Development Director

Council Members Present:

Council Member Melodi Gochis
Council Member Maresa Manzione

Council Member Excused:

Council Member Ed Hansen

Minutes prepared by Kelly Odermott

Chairman Hamilton called the meeting to order at 7:00 pm.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Sloan.

2. Roll Call

Tyson Hamilton, Present
Shauna Bevan, Present
Paul Smith, Present
Nathan Thomas, Present

Dave McCall, Present
Melanie Hammer, Present
Chris Sloan, Present

3. **Decision on a Conditional Use Permit request for Classic Car Co. by Fiore Belmonte to authorize the use of "Automobile Sales and Rental"**

Presented by Jim Bolser

Mr. Bolser stated there has been prior testimony and public hearings on this item. Photographs were provided to the Commissioners of the site.

Chairman Hamilton stated that the memo in the packet stated that all the citations have been cleared. Mr. Bolser stated that the photographs were taken in the afternoon prior to the meeting. In the memo, it was addressed the various paths forward with the application and it is up to the Commission to determine whether or not a compliance issue remains and make a decision.

Chairman Hamilton asked the Commission for questions or comments.

Commissioner Smith stated he has read through the memo and the compliance comes down to vehicles that are present in need of repair are not within City Code. Mr. Bolser stated the nature of compliance question is two issues. Vehicles are allowed to be onsite and there is no question with that. The vehicles are allowed for the purpose of repair or for sale. The condition that was placed on the Conditional Use Permit a year ago, specified that vehicles under repair needed to be behind the fence. It is unreasonable for vehicles for sale to be inside the fence and should be visible for the purpose of advertisement and sale. Those vehicles are allowed outside the fence. In order to sell vehicles, there must be licensure. Licensure has been demonstrated and the applicant has a permit from the state for the purpose of vehicle sales. The other issue is vehicles for repair. A vehicle can be sold that is in need of repair, however those items are not mutually exclusive, a vehicle can be for sale and under repair. If under repair per the condition placed on the Conditional Use Permit, the vehicles would need to be behind the fence, whether for sale or not. The question is based on the information provided, the testimony heard, if the Commission believes there is compliance with both aspects or not. The Commission has the full range of discretion to move forward with an approval, continue, deny as any other Conditional Use Permit.

Commissioner Smith asked if it has been proven there is a license from the state. Mr. Bolser stated the applicant demonstrated a permit from the state the day after the last hearing.

Commissioner Smith stated that he is concerned as the applicant had been approved by the City for over a year before he applied for that permit. That is concerning because within a state there are certain restrictions and there are certain restrictions within a city. There are different restrictions to avoid duplication. One of the things is it appears this was being played one against the other. The applicant wasn't getting the license because he wanted to be in compliance with the City and not the state. It takes a lot to be in line with both regulations. The concern is that it has been over a year before he applied for the license and he is still not in full compliance with it, as he would have a dealer number, and there would be different regulations. He personally does not feel it is appropriate to move forward by the City regulations to another City location until this one is

satisfied. It puts work on code enforcement and the Commissioner are here to protect the staff and City. He wants the business to go through, but he doesn't feel that there should be so much pressure on the staff until everything is taken care of at the location.

Commissioner Sloan stated that it was discussed in the last hearing and delineating sale and for repair with understanding it is possible to sell something that also needs repair. He asked that the vehicles in front of the fence need to be operable? Mr. Bolser stated the issue of operability is the typical standard used to determine what constitutes under repair and what doesn't. There can be a vehicle that doesn't run, but looks perfectly normal. There are certain aspects of inoperability that are obvious, such as missing wheels, flat tires, a hood open with no engine in it; these types of things can be clearly delineated as an operability and is the typical standard used in the enforcement practice to determine if something is inoperable or under repair or not. Commissioner Sloan stated if its missing wheels and stuff like that, it is very obvious that it is not operable. Mr. Bolser stated that is correct and that is typically the standard employed to look at a site to determine if there are inoperable vehicles or not.

Commissioner Hammer stated she drove by this afternoon and the pickup in the picture is missing a wheel and is up on a jack. It is clearly not operable and shouldn't it be behind the fence? Mr. Bolser stated that would be vehicle that the City could say, in its current state it could not be driven down the road properly. It would be considered inoperable and under repair; according to the condition from year ago, it should be placed behind the fence.

Commissioner Thomas made some observations from the pictures. The truck on the jack is on a hydraulic jack and wouldn't be left under a car for safety for any amount of time. The picture demonstrates that the tire is missing, but probably no mechanic would leave a hydraulic jack next to a side walk without coming back and putting a tire on it soon. It looks inoperable, but is in the state of repair that could be easily remedied. Mr. Bolser stated that he is not making any statement regarding compliance or non compliance this evening. There has been discussion and the intent with the photographs was to document the state of the site for determining actions tonight. Commissioner Thomas stated that if the truck was on tree stumps or cinder blocks it might be a different story.

Chairman Hamilton asked for any further questions or comments from the Commission.

Mr. Baker reminded the Commission of their function when considering a Conditional Use Permit. State law requires the Commission to approve a Conditional Use Permit. If there are anticipated detrimental effects from that use in its context, then the Commission needs to make findings of what those are and then conditions can be addressed to mitigate those anticipated detrimental effects. The question is not whether to allow car sales as a use. The City Council has already allowed it and it is in the Code, upon which the Commission can put reasonable conditions, if it is determined those are needed.

Commissioner Thomas stated this area has provisions for car repair and car sales; the fall back is a little bit on the City staff to make sure there is code enforcement, but this can be allowed. There may be reservations for moving forward in the future, with noncompliance issues in the past, but

the Commission can move forward with a positive recommendation and have compliance used as needed.

Mr. Bolser stated that there is an additional element that makes this a little unique as the Conditional Use Permit is not for these repairing vehicles. The issue with the repairing vehicles and compliance versus non compliance is that provision of the City Code that specifies whether or not the applicant is eligible for further Land Use approvals. The Conditional Use Permit, itself, the staff is not opposed to for the Classic Car Company. The only issue at hand on that decision is whether or not there is a compliance issue that comes first.

Commissioner Sloan stated he is struggling with the past compliance and this is being discussed for the third time. Is it permissible for a condition to be on the Conditional Use Permit that repair of vehicles take place behind the fence? Mr. Baker stated that condition has already been put on the Conditional Use Permit that has already been issued, so the question would be whether there is evidence that would warrant the same condition put on the new Conditional Use Permit application? Commissioner Sloan stated it has not been asked if the truck on the jack is for sale as is or if it is being repaired and that is where he is struggling. Mr. Baker stated that the condition already imposed on the other permit, that vehicles under repair be placed behind the fence, is a reasonable condition to mitigate the visual blight and safety issues of having vehicles under repair in front of the store. He believes it is reasonable based on his understanding of Utah law. Commissioner Sloan stated that if that condition was placed, then it falls to code enforcement? Mr. Baker stated that code enforcement is a general term and could mean several things. Commissioner Sloan stated he is speaking specifically of the Compliance Officer who works for Tooele City. Mr. Baker stated that Compliance Officer in general does not deal with zoning violations, but deals with nuisances and nuisance abatement. A violation of the nuisance abatement code is not the same as a violation of the zoning code or a violation of the Conditional Use Permit. There are different kinds of violations and different kinds of enforcement, but tonight is part of the staff's enforcement to ensure conditions are followed and effects mitigated.

Commissioner Thomas motioned to approve the Conditional Use Permit by Fiore Belmonte to authorize the use of "Automobile Sales and Rental" at 30 West 100 South, application number P20-959, based on the findings and subject to the conditions listed in the Staff Report dated November 4, 2020. Commissioner McCall seconded the motion.

The vote as follows: Commissioner McCall, "Aye," Commissioner Smith, "Nay," Commissioner Bevan, "Nay," Commissioner Sloan, "Nay." Commissioner Thomas, "Aye," Commissioner Hammer, "Nay," Chairman Hamilton, "Aye." The motion does not pass.

Mr. Baker stated for nay votes there must be a record of the reasons behind and the evidence supporting it.

Commissioner Sloan asked whether each Commissioner voting Nay, against a positive recommendation, had to explain their vote? Mr. Baker clarified the denial, so not everyone needs to individual explain the vote, but collectively, as a Commission there needs to be a record as to why there are no conditions that would mitigate the adverse effect of this conditional use.

Commissioner Sloan stated that from his point of view there is currently a Conditional Use Permit with the applicant for another property. That compliance issue is well documented and this is the third meeting that it has been discussed. Rather than deal with the issues that the Planning and Zoning Commission has voiced, the evidence shows that the site is still in the same condition it has been in for the last three times. There is no demonstration that adding the same conditions to this application, that are in place on the other mitigates a problem that hasn't been solved in the first place. There is a history of a behavior and an unwillingness to make an accommodation to further their own application. The unmitigable circumstance is the ongoing and repeated ignoring the conditions on a previous Conditional Use Permit. Mr. Baker clarified that those conditions would apply to this Conditional Use Permit. Commissioner Sloan stated correct.

Commissioner Bevan stated that she has driven by several times and the Conditional Use Permit lists all of the things that could mitigate all of these problems, but the applicant has not done them in over a year. The applicant has had ample time to get everything in compliance and the applicant is not making any effort. She has driven by and there are cars out in front and on both sides that are a hazard and danger to children and residents in the area. It is unsightly and it is very clear in the Conditional Use Permit that cars under repair are supposed to be behind the fence. The vehicles she has witnessed are obviously not repaired and if the applicant will not comply then she votes nay.

Commissioner Thomas stated that the Planning Commission seems to be taking the role of the Compliance Officer and the Commission needs to make sure that there are proper conditions on the permit to handle that. True the conditions are within the Conditional Use Permit and he sees the proper conditions and sees effort being made. There is a fence, and there has been demonstrated other things the applicant has done, al be it not to the speed of the Commission's liking. The job of the Planning Commission is to put the conditions on the property instead of saying it is completely unsightly. Commissioner Thomas suggested additional monitoring and an additional condition could ask the Compliance Officer to put it on a rotating schedule or pictures could be submitted.

Commissioner Smith stated that he has seen the photos, but has also driven by. There is a truck with two flat tires and is laying on the ground. The truck is not in any condition to be driven and is under repair whether it is for sale or not. The truck with the tire missing on the jack, has been outside the fence for a number of days in that condition. The applicant is not in compliance, he did not receive a state license when he could have over a year ago, until he was required to from the City meetings. In order to have a car dealer license in the state of Utah, the applicant must be bonded and pass the state inspections, in addition to the City permit and that failed to be done. This becomes a big issue for the City staff and as a Planning Commission the job is code enforcement and supporting the staff by putting conditions on the permits. This is the Commission's chance to ensure those conditions are upheld. The Commission is an arm of the City and we should be supporting the staff. If this Commission approves another lot, when this lot is not in compliance, there is a bigger problem for staff. If this site comes into compliance, then this permit can be approved. The Planning Commission has the authority to not approve additional permits, if one already approved is out of compliance with the same owner.

Chairman Hamilton stated it appears that the vote is based on the conditions of the current Conditional Use Permit. The permit is not in compliance and the Commissioners voted no. The Conditional Use Permit that is in place currently is not in compliance.

Commissioner Thomas asked at what condition does the Commission consider a car under repair? If there is a car that is out there, that looks terrible and will the Commission say that is a pretty ugly car and the applicant is not meeting the terms of the permit. Commissioner Sloan stated rust does not make a car inoperable. Operability is not aesthetics. The fact was that a condition was put into place a year ago that is not being followed. Giving the benefit of the doubt to the applicant is reasonable, except the truck on the jack has been there for several days. It is not an aesthetics issue anymore. If the applicant had demonstrated the truck was behind the fence after the discussion two weeks ago, there would probably be a Conditional Use Permit. The unmitigable circumstance is the behavior of the applicant. Commissioner Sloan stated history is telling the Commission that the behavior cannot be mitigated. The truck on the jack is a continuing behavior and it is not the Commission's job to mitigate, it is the applicant's. He stated he would have loved to approve it, but there is nothing telling him, that it will be solved. Why should anyone follow the Conditional Use Permits, if the Commission will not uphold them.

Commissioner Smith stated that the Commission is not against anything Mr. Belmonte is doing, but Mr. Belmonte needs to abide by the Conditional Use Permits and abide by the Code. The Commission will approve the Permits if the lots are cleaned up and following City Code. This is not a personal matter and is a business matter.

4. **Reconsideration of a Conditional Use Permit request by American West Investment to authorize the use of "Dwelling, Multi-Family" on 1.34 acres located at 145 North Broadway in the MU-B Mixed Use Broadway Zoning District.**

Presented by Jim Bolser

Mr. Bolser stated this is a reconsideration request by Tooele City Staff. Two weeks ago, this Conditional Use Permit was presented and approved with conditions, as one being from a recommended condition in the Staff Report for the Conditional Use Permit, identified a limitation of 21 dwelling units. That was based on a standard Tooele City Code provision that specifies that the residential portions on the Mixed Use zones, the MU-B Mixed Use Broadway and MU-G Mixed Use General zoning district, are as a general rule to be based on the MR-16 Multi-Family Residential zoning district, which would allow density of up to 16 units per acre. In the time since, he was working on another project with another issue, that identified a clause with a footnote in a different chapter, that specified that the residential portion in the MU-B Mixed Use Broadway zone specifically for multi-family uses is based on the MR-25 Multi-Family Residential zone. The original condition limiting to the 16 dwelling standard, while typically correct, would not have been correct for this application. The staff is requesting that for the basic zone compliance, under reconsideration, the condition that was in the Staff Report approved by the Commission be revised to allow for 32 units, which is the calculation with the MR-25 zone, or to remove that condition all together as it would be a base zoning ordinance provision that is reflected in the concept plan submitted..

Commissioner Sloan asked if the change in math affects the parking which was considered last meeting? Mr. Bolser stated that he didn't believe so, as one of the other tenants of the mixed use zone is specific to parking. It specifies that the Planning Commission has to approve any parking plan for a Multi-family residential project as part of the design standard review.

Commissioner Sloan motioned to approve the Conditional Use Permit request by American West Investments to authorize the use of "Dwelling Multi-Family" for the properties located at the southwest and southeast corners of Broadway and Date Street, application number P20-1294, based on the findings and subject to the conditions listed in the Staff Report dated January 4, 2021, striking the condition that limited the units to be built. Commissioner Hammer seconded the motion. The vote as follows: Commissioner McCall, "Aye," Commissioner Bevan, "Aye," Commissioner Smith, "Aye," Commissioner Thomas, "Aye." Commissioner Hammer, "Aye," Commissioner Sloan, "Aye," Chairman Hamilton, "Aye." The motion passes.

5. Discussion on the Tooele City Economic Development Strategic Plan.

Presented by Jared Stewart

Mr. Stewart introduced the Economic Development Strategic Plan which will be a part of the Economic Vitality element in the General Plan. This is an opportunity to build on the goals and objectives of the General Plan and give an action plan and timeline to incorporate the priorities and strategies of the City. He opened the discussion with the Commission for their ideas.

The Commission had a discussion about ideas for plan which included, developing unique businesses, capitalizing on closeness to the airport, and finding ways to bring larger more high paying jobs. There was a discussion of how to address transportation within the City.

6. City Council Reports.

Presented by Council Member Manzione

Council Member Manzione stated the Council approved the private road Resolution, and the plat for Sunset Estates Phase 9. There was a discussion about the plats for the Hidden Hollow Subdivision and the concerns brought forth by the Planning Commission were further approved by the Council to be followed up on with staff. The Council approved Mr. Weston Jensen to the Commission. In the work meeting there was a discussion about a consideration of a pending application, which will be moved forward to the Commission.

7. Review and Approval of the Planning Commission Minutes for Meeting Held on January 13, 2021.

Commissioner Sloan motioned to approve the minutes. Commissioner Bevan seconded the motion. The vote as follows: Commissioner McCall, "Aye," Commissioner Bevan, "Aye," Commissioner Smith, "Aye," Commissioner Thomas, "Aye," Commissioner Hammer, "Aye," Commissioner Sloan, "Aye," Chairman Hamilton, "Aye." The motion passes.

8. Adjourn

Chairman Hamilton declared the meeting adjourned at 8:12 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 10th day of February, 2021

Tyson Hamilton, Chairman, Tooele City Planning Commission