

**SALT LAKE CITY
PLANNING COMMISSION MEETING
In Room 326 of the City & County Building
451 South State Street, Salt Lake City, Utah
Wednesday, May 23, 2007**

Present for the Planning Commission meeting were Chairperson Peggy McDonough and Vice Chairperson Matthew Wirthlin; Commissioners Babs De Lay, Susie McHugh, Kathy Scott, Prescott Muir, Tim Chambless, and Mary Woodhead.

Present from the Planning Division were George Shaw, Planning Director; Director, Doug Wheelwright, Deputy Planning Director; Kevin LoPiccolo, Planning Programs Supervisor; Nick Norris, Principal Planner; and Tami Hansen, Planning Commission Secretary.

A roll is being kept of all who attended the Planning Commission Meeting. Chairperson McDonough called the meeting to order at 5:46 p.m. Audio recordings of Planning Commission meetings are retained in the Planning Office for an indefinite period of time.

A field trip was held prior to the meeting. Planning Commissioners present were: Tim Chambless, Peggy McDonough, Prescott Muir, Kathy Scott, Susie McHugh, and Mary Woodhead. Planning Staff present were: George Shaw, Doug Wheelwright, Nick Norris, and Kevin LoPiccolo.

APPROVAL OF THE MINUTES from Wednesday, May 9, 2007.

(This item was heard at 5:46 p.m.)

Commissioner McHugh made a motion to approve the minutes with noted changes. Commissioner Woodhead seconded the motion. Commissioners Muir abstained and Commissioner Chambless was not present for the approval of the minutes. All others voted 'Aye'. The minutes were approved.

REPORT OF THE DIRECTOR

(This item was heard at 5:48 p.m.)

Mr. George Shaw reminded the Commission that they are receiving an award from ASPA, the American Society of Public Administrators named "Boards and Commissions Award of Excellence" for 2007. He noted the award would be presented on June 1, 2007 at a luncheon and called for the final count of Commissioners that wanted to attend.

Mr. Doug Wheelwright noted that the rezoning request from the Redeemer Lutheran Church was tabled on March 14, 2007. He noted that staff had done additional research regarding this petition and it was determined that the deed that transferred the former street property to the church was in error, instead of transferring half of the street it had transferred the entire street.

He noted that the applicants request was to rezone all of the street property from open space (OS) to Institutional (I), which unsettled the neighborhood who maintained that this was not the deal, which was correct. It turned out to be that an erroneous deed was recorded. He noted the Commission will not be asked to approve what was proposed, and the petition will either be withdrawn or modified back to what was originally approved.

OTHER BUSINESS

a. Petition 400-06-37—Downtown Master Plan Amendment, status and update. Mr. Shaw introduced Mr. Lynn Pace, City attorney and noted that the Commissioners should have a copy of the Master Plan Amendment Ordinance that was approved by the City Council.

Commissioner Muir noted that it seemed that in order for the Commission to review the skybridge issues, it would have to meet multiple types of conditions, yet as originally proposed he did not see how some of those conditions could be met, due to large components of the development that have not been committed to, for example the department stores.

Mr. Shaw noted that one way to address those conditions would be to have a full plan development submittal, so that Staff and the Commission could see how the bridge would apply to the overall project. He noted that the bridge is not the only factor to look at, but also how Main Street will function, how the shops will function, the design of the perimeter of the project, and a lot of other criteria the City Council included. He noted that Staff was requesting that the developers include enough information to be able to make a recommendation to the Planning Commission on how to proceed.

Mr. Pace noted that the Planning Commission made a recommendation to the City Council that was substantially modified; there was also considerable debate amongst the Council Members about who should be the decision maker and as to whether or not the criteria for the planned development was met. The City Council decided that they should be the final decision makers; and they would like enough detailed language in the Master Plan for decisions that would be made for future developments. All of this went into the Master Plan Amendment Ordinance, which was vetoed by Mayor Rocky Anderson, and the City Council then overrode that veto.

Mr. Pace noted that there was a fair amount of detail in the ordinance to evaluate any proposed skybridge. One of the challenges identified by Staff was the sequence in which these decisions should be made, either piecemeal or as a whole development. There have already been a series of street closures that were approved to start underground parking construction for the City Creek Center development. The only piece not approved is the skybridge and the planned development.

Mr. Pace noted that the Commission was left with a large project, in which they would be making most of the decision making. However, regarding the skybridge, the Planning Commission would only be making a recommendation, subject to further decision by the City Council.

Mr. Pace noted that the challenge that faced Staff and the Commission was in trying to figure out how much information was needed from the applicant to be able to evaluate or make a recommendation for the skybridge. He noted that this information could range from the design of the skybridge and both sides of Main Street to a complete scheme of all three blocks. He noted that it is up to the Commission as to whether they feel comfortable making a decision on the skybridge before evaluating the project in its entirety, or whether they will insist on seeing the whole project all at once.

Chairperson McDonough noted that she understood that when the text amendment was returned to the Commission they would be evaluating this project as a whole planned development. She noted that the skybridge has been viewed as a component within the planned development and that the ordinance language, which is in effect now, essentially prohibits review of the bridge in isolation because the requirements for its approval are so tied into the dynamics of the site and the contingent parcels.

Mr. Pace noted if that is true, the Commission would need a full design of the entire project before telling the applicant yes or no on the skybridge, but the applicant needed to be notified so they could plan accordingly.

Mr. Pace stated that suppose the Commission hypothetically made positive recommendations for the skybridge and the proposed development and forwarded them to the City Council and they denied the skybridge, would the planned development still stand, and contingencies be built in to the recommendation.

Vice Chair Wirthlin inquired if it would make sense to just go through each one of the criteria and question what the Commission would need.

Chairperson McDonough noted that it would not necessarily be a complete and comprehensive proposal.

Vice Chair Wirthlin inquired if there was anything in the City Council's deliberations that would be beneficially to have while interpreting this language.

Mr. Pace noted that the City Council was concerned about there not being enough critical mass on both sides of the street that justified a connection via skybridge.

Mr. Pace noted that criteria be dealt with through the exploration of alternatives.

Chairperson McDonough inquired if this meant that the Commission would ask the applicant to submit reasonable alternatives regarding an at grade link.

Commissioner De Lay noted that the Commission had repeatedly reminded the applicant that they would like to see designs and specific processes of arriving at the final design, rather than just showing one plan and verbalizing that something would not work.

Commissioner Woodhead agreed that it would be helpful to see the designs that were rejected to get a greater understanding of why the applicant finally decided on a design with a skybridge.

Chairperson McDonough noted that Criteria C stated that, *finding is made that compelling public interest exists through substantial demonstration of each of the following: The Proposed development contribute[s] to the objective of creating an active vibrant streetscape by connecting people easily from upper levels to the street level corridor and maximizing public movement through architectural elements such as elevators, escalators, or grand entrances.* She stated that the Commission would like to see drawings of how they are doing that.

Mr. Shaw noted that if the applicant showed enough detail on how the Main Street was going to be designed, including pathways, street furniture, facades of the buildings; Staff could decide if it would be active or vibrant based on the design.

Chairperson McDonough stated that the second criteria under C stated that, *The skywalk would be designed such that impacts on an identified view corridor would be minimal.*

Mr. Pace noted that would be determined by the actual design of the skybridge.

Chairperson McDonough noted that the third criteria under C stated that, *The proposed development utilizes urban design, architectural elements, and visual connections including pedestrian linkages that actively enhance the projects relationship to surrounding blocks and economic development opportunities for those blocks.*

Mr. Shaw noted that he suspected that would be easy for the applicant to do, they would just need to show an elevation of the ingresses and egresses from the project, and how they would be landscaped to create a sense of entry into the project.

He noted that the City Council wanted to make sure that the development was not gated in anyway, but would allow people to exit the project from the south end, as well as get out on and shop on Main Street.

Commissioner Scott noted that it was not only the blocks themselves, but the median strip landscaping as well.

Mr. Pace noted that he recalled there would be encouraged traffic between Block 75 and Block 79, but also along 100 South.

Chairperson McDonough noted that the Commission had commented that there should not be a backside to the project, so projections of how the perimeters of the project would look, would be very helpful. She noted that the Commission was more concerned about the blocks to the west of the project.

Vice Chair Wirthlin noted that the phrase, *compelling public interest*, had specific meaning that might be helpful to the Commission to be educated as to what that standard is.

Mr. Pace noted that what was intended was to set a high threshold. From a constitutional standard you could not impair free speech without a compelling governmental interest, which generally means that the standard is certainly higher than just the rational basis test, because of the infringing effects this could have on the public.

Commissioner Woodhead noted that the use of the language, *public interest*, was important because a lot of the information that was presented by the developers was that there was a compelling interest economically, but not necessarily a public interest.

Mr. Pace noted that both of those may not be entirely separate, because the public might have an interest in seeing this project go forward and succeed, which creates an overlap.

Chairperson McDonough noted that criteria D stated, *Application of street level urban design elements for an entire project enhances a primary pedestrian focus, requiring components include but not limited to all of the following: 1) Maximize permeable block faces through actions including but not limited to a) Landscape project entrances on each block face that open the block with pedestrian corridors, and b) Maximize visual permeability into a store by a legitimate display window, and c) Maximize outward facing retail on all block faces.*

Commissioner De Lay inquired if the developers would also need to supply the Commission with distances to the LDS church headquarters north of the project, as to whether or not alcohol could be served at restaurants within proximity to that location within the project.

Chairperson McDonough noted that the developers might not be able to engage retailers in certain locations that the Commission might approve; when the retailers come in they might not take a designated space because they might want an entry from 100 South.

Mr. Pace noted that the City Council wanted to make sure that the outside of the project was permeable and as inviting as the interior.

Commissioner De Lay noted that the Park Café next to Liberty Park had problems getting an alcohol permit, without first determining where their main entrance was, so they could measure from that. She noted that she would like to see all of the elevations, but we will not know the retailers.

Vice Chair Wirthlin noted that the developers may not know exactly who their retailers are going to be, but the Commission can still set those conditions in place.

Mr. Shaw noted that the developer needed to show what the typical elevations were going to look like, not necessarily details on the retailers.

Commissioner Scott inquired if the City Council and the Commission could meet for joint meetings or a subcommittee to discuss all of this information together.

Mr. Shaw noted that Staff could suggest that to the City Council, however, they were only asking for a recommendation to be forwarded to them.

Mr. Pace noted that whatever the fact gathering process is, and what the Commission decides to assemble, will go to the City Council. If they feel they need more than that they will ask for supplementation.

Chairperson McDonough noted that the other criteria under D was 2) *Enhanced pedestrian amenities on all block faces on all block faces such as but not limited to shading devices, signage, and seating.* 3) *Uses on all external block faces that support pedestrian activity including but not limited to restaurants, residential, or retail uses comparable to internal commercial activity.*

She noted that these were broad enough categories to not have to know the tenants, but there does need to be some summation of where the restaurants, residential, and retail would be.

Commissioner Muir noted that the developer has pretty much stated that the internal component of the development will be shop fronts, and the land use that is missing in this development is offices, which probably will not be seen on the outside of this development. He noted that this would imply retail along the entire perimeter, which he does not think is the developer's intent.

Mr. Pace suggested that what the City Council might be asking for is ground uses for both the street and interior sides of the project, which would encourage a lot of pedestrian activity. He noted that offices will be on the upper levels, and not street level.

Commissioner Muir inquired if the Commissions approval could limit the tenant uses, knowing that they probably will not have them locked in place.

Mr. Pace noted that the developers should be able to come to the Commission and have a general sense of what areas will be residential, retail, and restaurant. He noted that he did not know how much tenant information would be disclosed or available, but he suggested that the Commission approve a plan they like, with conditions of how much latitude the developer might have to vary from that if one of the tenants falls through or they need to change the land use for that space.

Mr. Pace noted the City Council's ordinance was meant to serve as a guideline to produce comparable opening store fronts on the street side and on the internal corridor side.

Mr. Shaw noted that regardless of what kind of land use mix the developers have, if they can provide the Commission with sufficient detail for the elevations of the sidewalks, and facades, Staff and the Commission would be able to tell if the layout will generate foot traffic or not.

Commissioner Woodhead noted that she read criteria D as being a little bit less specific than C. It seemed that what the City Council was interested in was seeing what uses were going to be on the block faces and how those related to pedestrian activity, as opposed to specifically defining the uses.

Mr. Pace noted that the developers would bring the Commission drawings, and then they would have to decide how much variation could happen with Staff approval, and what they felt would need to come back before the Commission.

Chairperson McDonough referred to criteria C-2; the *skywalk would be designed such that impacts on an identified view corridor would be minimal.* She noted that it seemed this was a loose definition to judge what the developers could show the Commission. She inquired if the commission should see everything at once or could it be seen in parts with separate approval.

Mr. Pace noted that clearly the Commission would need to see a design for the skybridge, all of the block faces, and have enough information to see that what is shown on the block faces is what the developers are also planning for the internal structures.

Commissioner Scott noted that she would also like to see the anticipated mode of movement by the public from the inside to the outside of the project.

Mr. Shaw noted that obviously there would need to be enough information to cover all of these items, whether it is a planned development or not, perhaps the direction to give the applicant is to give the Commission just that. He noted that on things such as utilities; if the developers did not want to go into detail, enough information would be needed to be given to the Commission to assess all of these areas.

Chairperson McDonough noted that it seemed that the developers had a choice as to whether to submit a planned development or not, she felt that it had already been discussed that they would be submitting a planned development that was informally finalized.

Mr. Shaw noted that it would be nice to see that, but it had not been a requirement. He noted that the ordinance the Commission was looking at tonight was close to what the applicant would be giving as a planned development. He stated that if in fact the applicant could submit basic information, and then come back with a more developed plan based on whom the tenants will be, that would be helpful

Commissioner Woodhead stated that when the developers first came before the Planning Commission, they seemed to indicate that they wanted to pass the project as a full planned development, but then they asked to have it viewed piecemeal, and have the Commission make a series of individual decisions about different issues.

Chairperson McDonough recalled that the series of separate decisions were not part of the planned development requirement, but were truly separate issues that could be evaluated as such.

Mr. Pace inquired if what Mr. Shaw was suggesting was the level of detail and the amount of expense required to submit the information needed for this evaluation was somehow less detailed or less expensive than what they needed for the entire planned development, that option could be offered. However, obviously the Commission does not need to see storm drainage detail and utility lines, but pedestrian corridors, elevations and landscaping would be necessary.

Chairperson McDonough noted that the Commission had reviewed other planned developments that had not shown that much detail.

Mr. Pace noted that there might be some type of process that would allow the applicant to show the Commission the plan, to get a positive recommendation from the Commission, with the stipulation that when they did have more detail they would need to come before the Commission again to get final approval.

Commissioner De Lay stated that the developer had already shown the Commission details via presentations of what they expected the developments final result to look like. So how could the Commission direct the applicant to be even more specific?

Chairperson McDonough noted that they could start speculating where the restaurants, retail, and residential would be.

Mr. Pace inquired if Mr. Shaw had enough input from the Commission to take back to the applicant and give them direction, or would the applicant need to come back to the Commission and present further.

Mr. Shaw noted he felt that enough information had been gathered, if the Commission felt strongly about the planned development it could be acted upon with a motion and moved forward.

He noted that the planned development could be approved and then changed with or without the skybridge. If the City Council decided on something different, it would need to come back before the Commission due to significant changes to that process. He stated that the Commission needed to let Staff know what they preferred and they would pursue that angle with the applicant.

Vice Chair Wirthlin noted that it did not matter to him if it was a planned development or not, he would just like to see enough detail to make a sound decision.

Mr. Pace noted that with a planned development comes additional flexibility regarding the requirements in terms of how the project is structured to enhance amenities. He noted that the Commission needed to make a decision for Staff on whether or not they wanted to view the planned development together or separate, if that did not matter, then it would be left up to the applicant to decide, which would be the most time and cost effective.

Chairperson McDonough noted that she would like to see them together.

Mr. Pace noted that quite frankly that would be more work for the applicant.

Chairperson McDonough noted that the Commission had seen a lot of the exterior facade proposals already, and would like to see more detail from the perspective of the west side of the project. She noted that there have been vague details given about the skybridge and that it is obviously an inextricable missing piece.

Commissioner Woodhead inquired if by approving the planned development as a whole, it meant that the Commission would have to include the skybridge in that decision, or could they approve one without the other.

Mr. Pace noted that realistically the Commission would be seeing a project that would be based on a skybridge connection, if the Commission denied that bridge the applicant would have to do a redesign, or stall the Commission's decision and present before the City Council.

Chairperson McDonough noted that the Commissioners collectively felt they wanted to see the planned development and the skybridge at once.

Mr. Shaw noted that Staff was fine with that, however, his understanding was that the planned development was still in a conceptual stage, and he would still want enough detail to flush out most of the Commission's issues. He noted that he did not want to see a plan that did not resolve whether or not the standards have been met.

Commissioner Muir inquired about the language from the City Council, identifying themselves as the land use authority, and wondered if that represented a shift in responsibility and had broader implications for the downtown project.

Mr. Pace noted that this was unusual in several respects. Usually broad policy directives and statements of intent are placed in the master plan and the requirements in the zoning ordinance. In this case the City Council felt that it would be best for all parties involved to have as much clarity as possible, and the only opportunity they had to add that was in the master plan. He noted that a fair amount of discussion was held; about if the decision making authority and the land use authority should be the Planning Commission or the City Council.

Mr. Pace noted he had told the City Council if they retained the decision making, it would save them a lot of time adding detail to the master plan, since it would return to them for a decision. So what they ended up doing is putting all the detail in and still kept the decision making for them.

Vice Chair Wirthlin noted that he felt that was bad policy and a bad idea generally to have a political body making land use and planning decisions, granted he was aware that the City Council made final decisions on rezones.

Mr. Pace noted that if this was a street closure it would go to the City Council anyway, He noted he understood Vice Chair Wirthlin's point, this was fully discussed and he felt it was unrealistic to treat this project like any other.

Commissioner Muir noted that he would like to have the Commission vote on this issue and send a message of concern back to the City Council about them usurping the Planning Commissions authority. He felt it was precedent.

Chairperson McDonough noted that she was also concerned about this language, and felt that an official statement of discord would be appropriate, and felt this really was the only way the Commission had to express themselves in this matter. She noted that it may be a singular circumstance, but she was concerned that it may set a precedent to be used in other portions of text amendment changes.

Mr. Pace noted that the Chair and Vice Chair should address a letter to the City Council.

Commissioner Muir noted that if Chairperson McDonough and Vice Chair Wirthlin wanted to formulate some language, he felt that would be appropriate.

Chairperson McDonough noted that they would do that.

Chairperson McDonough asked the Commissioners if there were any additional comments relating to the decision and development of the Northwest Quadrant that was discussed at the May 9, 2007 meeting.

There were no additional comments.

UNFINISHED BUSINESS

(This item was heard at 6:48 p.m.)

- a. **Petition No. 410-06-28—(Reopen at the request of the Planning Commission on April 25, 2007)**—a request by Robert Bunnel for Conditional Use approval for a Rooming House located at approximately 149 South 900 East, in an RMF-30 (Low Density Multi-Family Residential) Zoning District. The applicant proposes to convert an existing single family residence into a Rooming House for seven tenants. The Planning Commission took action to deny this case on September 13, 2006. The Salt Lake City Land Use Appeals Board remanded the case back to the Planning Commission to reconsider and identify that either the anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated with the imposition of reasonable conditions or to approve the request with or without conditions of approval. The Planning Commission would like to reopen this petition to clarify the conditions and possibly add new conditions.

Chairperson McDonough recognized Kevin LoPiccolo as Staff representative.

Mr. LoPiccolo stated that instead of a staff report he created a memo at the request of Chairperson McDonough to reopen the case to evaluate the conditions that were originally part of the conditional use approval, and to perhaps modify the conditions.

He noted that he made an attempt through the minutes from the April 25, 2007 meeting to list conditions one through eight that the Commission approved. He noted that perhaps the language for some of these conditions could be changed and perhaps modified.

Mr. LoPiccolo noted conditions 1-3 stayed the same, however, that condition 4 had changed from what originally stated, *the rooming house is limited to a maximum occupancy of seven people*, to read only, *occupancy of seven*.

He noted that conditions 5 and 6 had stayed the same; however, the word *retaining* would be removed from the second sentence in condition 7. Also the last sentence should read, *approved by the Planning Director*, instead of *Planning Commission*.

Mr. LoPiccolo also noted that condition 8 was fairly lengthy and could be restated by removing the first part, *The applicant, pursuant to the approval of the conditional use stipulates that all necessary City Code regulations and requirements be completed within six (6) months of the Planning Commission approval*.

Chairperson McDonough called for a discussion by the Commissioners regarding the amended conditions.

Commissioner De Lay noted that she agreed with Mr. LoPiccolo's word changes to the conditions 4, 7, and 8. She proposed a ninth condition stating that, *the applicant be required to follow all state and federal housing laws in relationship to the renting of the property to prospective tenants*.

Commissioner Woodhead inquired if this would just include all applicable laws, because there are some laws established according to number of tenants, and size of the building.

Commissioner De Lay noted that yes; it would be for all *applicable* state and federal laws for the use of this property.

Commissioner Muir inquired who would judge whether or not the applicant had met federal law, because the permit counter did not seem equipped to do that.

He also questioned condition 8, inquiring if it was customary to use a conditional use as a means to comply with city ordinances.

Mr. LoPiccolo noted that it was brought up as a concern, the applicant just wanted to know if there was an end in sight as to what the Commission would finally approve.

Commissioner Muir inquired if there were other tools available to the city, or if this was the best vehicle to get this done.

Mr. LoPiccolo noted that all of the permits had been issued; the follow-up was making sure that the ADA was complying and the fire sprinklers were installed.

Commissioner Muir inquired if the applicant had completed all of the improvements and was now operating.

Chairperson McDonough noted that the hearing was still open so he would not have been starting on something new that the Commission had requested.

Mr. LoPiccolo stated that even if the petition was not reopened the applicant probably would not have pursued making changes until the appeal period was completed.

Commissioner McHugh noted that processes were not followed by the applicant, who did the construction without permits in the first place.

Mr. LoPiccolo noted that a lot of this conversation took place with the applicant and permits were pursued; however, when the permits were obtained there was no disclosure that it would be for a rooming house.

Commissioner McHugh noted that the building began being used as a rooming house without approval.

Commissioner Scott noted that her issue with the rooming house was that there were several young ladies living in a basement without a sprinkling system, and had been since last June. She noted that the language in condition 8 was because of the applicant's disregard of code ordinance and city processes, that the Commission thought it was in the best interest to shore up a condition to make sure that the work that was done and needed to be done, met the requirements in a timely manner. Therefore in the circumstance that these requirements were not met, it would strengthen the City's position to enforce.

She noted that one of the difficulties was that had citizens of the neighborhood not brought it to the attention of the City, it would never have come across the Planning Commission.

Mr. LoPiccolo noted that the requirements for the accessibility and the fire sprinklers were due to the change of the occupancy. If this was to be retained as a single family dwelling the applicant would not be required to put the sprinkling system into the building, or the accessible ramp.

Chairperson McDonough noted that the Commission was concerned about having the building occupied without having the work done, but the use permitted.

Commissioner Scott noted that if this work was done and there were other conditions required by city code for a boarding house that were not required for improvements to a single family home, and entails some tearing out and rebuilding then the six month requirement may not be long enough.

Commissioner Woodhead stated that she was uncomfortable mixing some of the enforcement issues, with the Commission's land use decision. She noted that there was some indication in the record that the applicant may have behaved inappropriately by starting some of the work without the proper designated permits, but she was not sure that it put the Commission in a position to change the land use decision into an enforcement issue.

Commissioner De Lay noted that Commissioner Scott had brought up a valid point, that now the use of the building was notorious, and one of her concerns was fire sprinklers, which is frightening but how does that apply to the Commission's decision?

Commissioner Scott noted this would not change the decision, it would just add another condition to it. One of the charges as Commissioners is to provide decisions on land uses that are in the best interest of the citizens, this is clearly a safety issue.

Commissioner Woodhead inquired if there were fire sprinklers at all currently, or if there was enforcement actions going on regarding this issue.

Mr. LoPiccolo noted that it was his understanding that only three or four people were living in the house, but he was not sure, and the property owner would have to answer whether or not the sprinklers had been installed. Staff had required from the applicant a proposal because, the

expense of installing a sprinkling system is quite costly and if that cost could not be covered with this approval he may decide to withdrawal the application.

He noted that the plans were submitted to the building permits divisions and were in the review process.

Commissioner De Lay noted that there was a mention in the conditions that the applicants comply with city fire and other codes.

Commissioner McHugh noted that the applicant had been in a state of noncompliance, because a year had already passed with occupants living in the building with no sprinkling system.

Mr. LoPiccolo noted that he was not sure if the building was being conducted as a rooming house. He understood that there were only three people living in there.

Commissioner De Lay noted that it is not a rooming house, it has just been spoken of as such, so the Commission was under the general belief that it was operating as such.

Commissioner Chambless noted that yes, compliance is expensive, but so is the loss of human life.

Mr. LoPiccolo noted that the point he was trying to make was that if the applicant withdrew the application, and was no longer requesting a rooming house, and he rented the room to three people, the fire code would not require that the building contain a sprinkling system, it was because of the change of occupancy that a fire sprinkler was required.

Mr. Pace noted that the conditions identified in condition one were fairly standard, the only thing unusual he found was that the Commission was requesting this too be complied within 6 months. He noted it was standard procedure to stop the enforcement process if there is an appeal filed.

Commissioner Scott noted that she would like to add a condition 10, stating, *to make sure that the conditional use is recorded with the county*, which is ordinarily done, however, in this particular case that has been problematic, it might be a good idea to add this.

She also suggested a condition 11 that would state, *that the applicant would tie the conditional use to the title of the building*, which Mr. Wheelwright stated would be possible to do, and have the condition end with the sale of the property. She noted that ordinarily it was difficult for the city to become aware when the property changed hands, and conditional uses normally go with the property and not the ownership of the title.

Chairperson McDonough noted that she had received a speaking card on the matter from Lori Gutierrez, and noted that the Commission was not taking public testimony, due to the public hearing portion being closed at the April 25, 2007 meeting.

Mr. Pace noted that condition 10 contradicted condition 11; due to there would be no reason to put a future owner on the notice, if the conditional use expired at the sell of the property. He noted that this was a debated point of law in the state of Utah, and the city had the authority to make conditional uses personal, but state code does not address it.

He noted that the conditions should be to mitigate the potential adverse impacts, so if it is necessary for the applicant to complete all work within six months to mitigate the impacts of a boarding house, then the Commission needs to explain its reasons. If this is unrelated, than this requirement might be a stretch.

Commissioner Scott noted that Mr. Bunnel stated that he did not feel that it would be a detrimental increase in density. He stated that he would be willing to tie the conditional use to the

title. At that point he was defending the discussion going on regarding the detrimental increase in density. She noted that there were a number of people from the neighborhood that had spoken in concern about the high-density use for what was intended to be a single-family house in an RMF-30 zone.

She stated that Mr. Bunnel acknowledged that there would be up to seven cars and seven adults.

Mr. Pace inquired if when Mr. Bunnel stated he would tie the conditional use to the title, did it mean he would tie it to the owner. He stated that section 218.54.1430 of the City Code states, *an approved conditional use relates only to, and is only for the benefit of the use and lot, rather than the owner or operator of such use or lot.* He noted that this meant that conditional uses run with the land, and do not expire with the owner. He noted it would only apply if the subsequent owner wanted to continue the property as a boarding house.

Commissioner Woodhead noted that when she drafted condition 5, regarding parking, she would ask the other Commissioners if they understood that her intention was that two parking places would be available in the garage and that there would be three parking places in addition to and not more than that. She inquired if the language of condition 5 made that clear, or it needed to be clarified.

Commissioner Scott noted that it needed to be clarified.

Mr. LoPiccolo stated that the Commission was saying no more than five parking spaces, but the intent of the last meeting was to provide the property with three surface spaces, knowing that a garage did exist.

Chairperson McDonough noted that by stating, *no more than five spaces on the property* would be a way to make the language and intent more specific.

Vice Chair Wirthlin noted that at the end of condition 5, language could be added to read, *with final approval from the Planning Director.*

Commissioner Scott noted that condition 7 should read, *The existing cedar fence on the north side of the property will be replaced with a six foot (6') masonry wall. The proposed retaining wall design and material shall be reviewed and approved by the Planning Director prior to construction.*

Chairperson McDonough noted that the retaining wall should be solid, and suggested that *solid* be added before masonry wall.

Mr. Pace inquired of the Commission why the applicant would need to finish this petition within six months to mitigate the adverse impacts of this use.

Commissioner Scott noted that if there was not a limit put on it, it would never be completed.

Mr. Pace inquired if the logic of this request was that this was a use that would not go in until the applicant started the improvements, but this is a use that exists now and because it exist now changes need to be made quickly, therefore there needs to be a short fuse on improvement.

Commissioner Muir made a motion that the Planning Commission approves the conditional use based upon conditions 1-10 as articulated.

- 1. Standard permit plan review is required for compliances with Building Code, Fire, Engineering, Public Utilities and Transportation.**

2. **The conditional use approval is for use of rooming house only. Any subsequent permit that may be required from the city or non-city agency shall be complied with.**
1. **That the landscaping be improved and maintained in a manner that complies with Salt Lake City Ordinance, Chapter 21A.48, Landscaping.**
2. **The Rooming House is limited to a maximum occupancy of seven.**
3. **The rear yard area used for vehicle parking shall be comprised of hard surfacing, shall include no more than five parking spaces and the applicant will also provide green space in the rear yard, with final approval from the Planning Director.**
4. **If a change in use other than a conversion back to a single family dwelling occurs, the owner must make an application for a new conditional use to be heard by the Planning Commission.**
5. **The existing cedar fence on the north side of the property will be replaced with a six foot (6') masonry wall. The proposed solid wall design shall be reviewed and approved by the Planning Director.**
6. **If the code requirements are not completed within the required six (6) months, the conditional use approval shall become null and void.**
9. **The applicant will be required to comply with all applicable state and federal housing laws.**
10. **Record of the conditional use is recorded with the county.**

Vice Chair Wirthlin seconded the motion. All in favor voted, "aye" Commissioner Scott opposed the motion. The motion passed.

Chairperson McDonough inquired about Commissioner Scott's opposition.

Commissioner Scott noted that she wanted to see condition 11 included.

PUBLIC HEARINGS

(This item was heard at 7:30 p.m.).

- a. **Petition 410-768** — a request by T Mobile USA to amend a condition of approval for a wireless telecommunication facility located at approximately 1596 East Stratford Ave in a CN Neighborhood Commercial Zone. The Planning Commission granted approval of the telecommunication facility on June 14, 2006 with a condition that required the applicant to work with the adjacent property owners on obtaining access from Glenmare Street. The applicants are proposing an alternate access from Stratford Ave.

Chairperson McDonough recognized Nick Norris as Staff representative.

Mr. Norris noted that this petition was already approved with a number of conditions by the Planning Commission last year. He noted that this wireless communication would consist of an 8 foot by 10 foot shed used to house the support equipment for the antennas, which would be on a 43 foot high utility pool that is in place. The dimensions of the antennas are approximately 26 inches wide and 72 inches high.

He noted that the original conditions of approval included:

- 1) Professional engineer stamp the construction drawings.
- 2) All cables leading to the antennas are put in a conduit.
- 3) The utility pole, antennas, and conduit should be painted a flat color to match existing wood utility poles in the area.
- 4) Applicable city, county, state, and federal requirements are adhered to.
- 5) Conditional use approval is valid for one year, unless a building permit is issued.
- 6) A fence be placed around the mechanical equipment
- 7) The owner of the property shall provide access to the pole, and that T-mobile USA Incorporated shall work on an agreement with all property owners in order for the pole to be accessed from Glenmare Street, which is to the west of the subject property.

Mr. Norris noted that the applicant was requesting to amend the seventh condition for an alternative means of access, in order to install the equipment. He noted that they have an access agreement on the subject property to go through the commercial establishment to physically access the site for maintenance reasons.

He noted that Staff recommended amending the language to read, *the telecommunications facility is installed and accessed from the subject property and not accessed to cross any adjacent property.*

Chairperson McDonough invited the applicant to the table; Scott Rosevear Attorney for T-Mobile and Jerome Gourley, independent contractor for T-Mobile, approached the table.

Mr. Gourley noted that this petition was focus primarily on access. It is a review of a request for an amendment to condition 7, *The owner of the property shall provide access to the pole, and T-Mobile shall work on an agreement with all property owners in order for the pole to be accessed from Glenmare Street.*

Mr. Gourley noted that the applicant felt that this was restrictive, so they appealed it to the LUAB, which was denied. He noted that T-Mobile then engaged an independent commercial real estate appraiser, and had the individual easements appraised. Their value was established at \$2,000 each. T-Mobile then negotiated with each of the land owners and purchased four of the five easements, to which all of the land owners were paid in full and have signed easements in perpetuity.

He noted that T-mobile negotiated with Mr. Makris and Mr. White, co-owners of lot number 1908, he noted the owners were offered twice the appraised value of the easement. They refused the offer and counter offered at \$150,000. He noted that would include \$5,000 per year for thirty (30) years. Feeling that this price was unreasonable, T-Mobile sought legal remedy and initiated condemnation proceedings in third district court. He noted that because the city had not issued T-Mobile a building permit, the court held that the condemnation was not valid and denied the order for immediate occupancy.

Mr. Gourley noted that T-Mobile subsequently appealed back to the Planning and Zoning Staff, to review this condition. The applicant determined that this site could be constructed and maintained, with out obtaining any easement from any adjacent property owners, by simply employing a crane to lift the 8x10 tuff shed over the 13 foot high barber shop, and through use of the shop the ground equipment could be assembled behind the shop.

He noted that all utility hook-ups could be accomplished by Rocky Mountain Power and Qwestar, both of which have utility easements to this property and do not require permission from any land owners. T-Mobile has continuous access to the site as part of the terms and conditions of the underlying lease, with the property owner Mr. LeRoy Pulos. He noted it is T-Mobiles position that

they have complied with the spirit and the language of condition 7. They have, *worked to obtain an agreement with all property owners*, and have done so with the exception of the owners Mr. White and Mr. Makris.

Mr. Gourley noted that T-Mobile respectfully requested approval of the request for an amendment of the condition, so they could proceed with the construction of this site, which has been unreasonably withheld for almost a year.

Commissioner De Lay recused herself from the meeting.

Commissioner Scott inquired about why the applicant appealed the Planning Commissions decision to LUAB.

Mr. Gourley noted that they argued that the applicant already had sufficient easement across the property that existed at the time the alleyway was vacated. He noted that the applicant felt that access already existed and there was no reason to work with the abutting land owners to obtain access, because they already had it.

Mr. LeRoy Pulos (property owner) noted that he had owned the property for fifty years. He noted that he had made an agreement with the applicant approximately a year ago and would like to see the Commission pass this. He noted that he had granted the applicant an easement.

Chairperson McDonough inquired if the easement expired with the sale of the property.

Mr. Pulos noted they had not discussed that.

Mr. Gourley noted that it was an underlying easement granted in the lease, and would run for the term of the lease, access for thirty years.

Chairperson McDonough opened the public portion of the hearing.

Ted Makris (property owner) noted that T-Mobile is leasing the space and those figures over 30 years seems like a lot of money. He noted that the applicant was taking approximately 250 feet for the building. They had asked to cross his property to take approximately 216 feet. He noted that he felt it should be an annual lease.

He noted that he bought surveillance equipment to monitor the late night activities of the applicant, which he felt would still be accessing his property out of convenience.

Jeff White (property owner) noted that T-Mobile had mentioned that they would need ten days to construct the tower, and would want to visit the tower twelve times a year. He noted that to do so they would have to go overhead with a crane, he felt that in the middle of the winter the hassle of going through Mr. Pulos' building for access would be by passed for convenience of accessing the tower from his property.

Debra Mayo (2549 S. Glenmare Street) noted she was very against this tower.

Mr. Pulos noted that he would like to see this matter settled.

Mr. Gourley noted that he felt that Mr. White and Mr. Makris had made this process more difficult than needed. He noted that the original installation of the shed would be the only time that a crane would be employed for this site. He noted that Mr. Pulos had given the applicant a key to his property, which would be used as access to the site, there is no need for a technician to drive a truck to the site.

Chairperson McDonough closed the public portion of the meeting.

Commissioner Scott made a motion regarding Petition 410-768 based on the findings, staff recommendation, and the testimony heard before the Commission, to specifically modify condition 7 to read, *the telecommunication facility is installed and access from the subject property and not accessed across any adjacent property.* Conditions of approval 1-6 would remain applicable to this petition and would not be altered by the amendment to condition of approval 7.

Commissioner Scott noted that she would strongly recommend that T-Mobile continue to have conversation with the property owners, stating that it seems ludicrous to be lifting tuff sheds over buildings when an agreement could be reached.

Commissioner McHugh seconded the motion.

Vice Chair Wirthlin inquired if the recommendation was a condition of the motion.

Commissioner Scott noted that it was not.

All in favor voted, "aye" and the motion passed unanimously.

There was no unfinished business.

The meeting was adjourned at 7:57 p.m.

Tami Hansen