

**SALT LAKE CITY
PLANNING COMMISSION MEETING
In Room 326 of the City & County Building
451 South State Street, Salt Lake City, Utah
Wednesday, October 10, 2007**

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

Present from the Planning Division were George Shaw, Planning Director, Kevin LoPiccolo, Zoning Administrator; Marilyn Lewis, Principal Planner, Lex Traughber, Senior Planner, Nole Walkingshaw, Senior Planner, and Cecily Zuck, Senior Secretary. Laura Kirwan, City Attorney, was also present.

A roll is being kept of all who attended the Planning Commission Meeting. Chairperson Wirthlin 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: Frank Algarin, Tim Chambless, Kathy Scott, Matthew Wirthlin and Mary Woodhead. Planning Staff present were: Marilyn Lewis, Ray McCandless and George Shaw.

APPROVAL OF THE MINUTES from Wednesday, September 26, 2007.

(This item was heard at 5:47 p.m.)

Vice Chairperson Woodhead made a motion to approve the minutes with noted changes. Commissioner McHugh seconded the motion. All voted 'Aye'. The minutes were approved.

REPORT OF THE CHAIR AND VICE-CHAIR

(This item was heard at 5:49 p.m.)

Chairperson Wirthlin noted it was his understanding that the Commission felt the content of the October 5, 2007, Salt Lake City Tribune article regarding the Planning Division was fairly one-sided and made exaggerated claims, and he wished to take responses from the Commissioners regarding the issues raised in said article.

Chairperson Wirthlin noted that in his experience with Planning Staff he had always found them to be professional, hard-working, responsive, and fair-minded. Chairperson Wirthlin noted that there was still room for improvement, as with any organization, but felt as though the Planning Department was moving in the right direction.

Commissioner McHugh noted that the Planning Division had been extremely understaffed lately and was still processing a great deal of City business.

Commissioner De Lay added that the Planning Division also had been extremely under funded. She stated her gratitude for the work the Planning Department had done in the past. Commissioner De Lay noted that she would like to see the Commission put forth a motion of support for the Planning Division.

Vice Chairperson Woodhead noted her appreciation for the hard work that Planning Staff put into the issues which came before the Planning Commission, and for their presence at the Commission meetings. She also noted that this hard work was quite appreciated by the Commissioners.

Commissioner Scott stated that she did not feel it was necessary that the Planning Commission make a motion, but rather, an expression of gratitude for all of the Planning Division's hard work. She furthered that the Planning Division was also under a great deal of developmental pressure, and the Planning Staff was taking the necessary measures to deal with the recent pressures, which had been brought forth by changes to state law as well as new development trends.

Commissioner Chambless noted his disappointment in the fact that the press was not present at the meeting and he hoped that in the future, the City Council would provide the Planning Division with the funding necessary to move forward with long-term planning issues that could not be addressed at this time.

Commissioner Algarin thanked Planning Staff for their dedication and positive attitudes and stated that he felt staff had been not only willing, but had responded well to the requests for more information the Commissioners had made in the past.

Chairperson Wirthlin inquired of the Commissioners if they felt a motion was necessary regarding the issue.

Vice Chairperson Woodhead noted that as everyone had spoken regarding the issue, a motion might not be necessary, but that all of the present Commissioners had gone on record to express their appreciation and support of staff.

Chairperson Wirthlin noted that he had spoken with members of the Commission who were not present and they felt the same way regarding the article; they echoed the sentiments of gratitude and appreciation for the Planning Staff and their hard work and dedication.

REPORT OF THE DIRECTOR

(This item was heard at 5:57 p.m.)

George Shaw noted that there were upcoming dates the Commission might want to keep in mind:

Mr. Shaw noted that there were three upcoming subcommittee meetings for the Planning Commission, the first of which would be held on October 16, 2007.

Mr. Shaw noted that after the next regular Planning Commission meeting on October 24, 2007, there would be a couple of items for the subcommittee to review; the Downtown Master Plan Update and the Gigante project, which was a proposed planned development for a mixed-use shopping center at approximately 600 North and Redwood Road.

Mr. LoPiccolo noted that the applicants for Gigante had recently reactivated their planned development request.

Mr. Shaw noted that the Airport Light rail project would be holding an open house at the Fair Park on October 18, 2007, at 7:00 p.m., and stated that while there still needed to be a recommendation made by the Commission, more research was required, and this open house would be held to gather more public input in regards to the proposed alignment, location of the tracks in the North Temple right-of-way and stations for the Airport Light rail route.

OTHER BUSINESS

(This item was heard at 5:59 p.m.)

Petitions 410-761 and 490-06-04, Bouck Village Planned Development – a request by Monte Yedlin for a time extension for the approval of the Bouck Village Planned Development located at approximately 1566 West 500 North in a Single Family Residential (R-1-5,000) Zoning District. The expiration date of the approval for the planned development was on May 20, 2007. The applicant recently purchased the property and is requesting that the approval date be extended

until May 10, 2008 to allow time to record the final plat. The applicant is also asking that the side yard of lot 4 be decreased from 20 feet to 15 feet to be consistent with lots 1 through 3.

Chairperson Wirthlin recognized Ray McCandless as staff representative.

Mr. McCandless noted that the proposed change to the side yard setback from 20 to 15 feet would make the side yard on lot four consistent with the other lot setbacks in the development.

Chairperson Wirthlin inquired if this was a new owner who had not been aware of the original deadline and was therefore requesting the time extension.

Mr. McCandless stated that this was accurate and the new owner wished to move forward; record the final plat and build the development.

Commissioner Chambless inquired on what date the item was originally heard.

Mr. McCandless noted that the petition was originally heard on May 10, 2006.

Commissioner Woodhead noted that the requested modification to the side yard setback had not been advertised as a public hearing and wondered if this would be a necessity in order to accept the proposed change.

Mr. McCandless noted that the issue was a minor alteration to the Planned Development, which was under the purview of the Planning Commission in any case, and the item did not need to be opened to public comment.

Chairperson Wirthlin inquired of City counsel if they had any input regarding the issue.

Ms. Kirwan stated that she did not see any issue with a minor adjustment.

Mr. McCandless stated that the applicant was willing to stay with the 20 foot setback if the minor adjustment was an issue with the Commission.

Vice Chairperson Woodhead noted that the setback itself was not an issue, but the Commission should address it properly. She stated that the applicant might need to come back to the Commission to address the issue.

Chairperson Wirthlin brought the issue back to the Commission for discussion at 6:04 p.m.

Chairperson Wirthlin stated that this was a minor adjustment and did not see any procedural issues with moving forward at this point.

Commissioner Algarin noted that he had no issue with the reduced side yard setback.

Commissioner Scott noted that if they had not requested the amended side yard setback, the time extension would have been a matter of Administrative Approval rather than coming before the Planning Commission.

Mr. McCandless noted that the applicant would still have needed to come before the Planning Commission for the time extension to be granted.

Commissioner Algarin made a motion to approve Petitions 410-761 and 490-06-04, Bouck Village Planned Development, granting a time extension to May 10, 2008, and approving the amended side yard setback, Commissioner McHugh seconded the motion. Commissioners Algarin, Chambless, De Lay, McHugh and Scott voted "Aye". Vice Chairperson Woodhead voted "Nay". The motion passed 5-1.

PUBLIC HEARING

Petitions 410-06-29 & 490-07-09, Capitol View Planned Development and Preliminary Subdivision—a request for clarification regarding the approval that the Planning Commission granted for this project on June 27, 2007, concerning the proposed average lot size and overall project density.

(This item was heard at 6:07 p.m.)

A copy of the June 27, 2007, minutes referenced throughout this hearing item is filed with the record of these minutes.

Chairperson Wirthlin recognized George Shaw for opening comments.

Mr. Shaw noted that this item had been on the September 12, 2007, Planning Commission agenda, but there were concerns that the Commission did not have a true quorum regarding the issue and had therefore been tabled. Mr. Shaw noted that if there were members who had not been present for the original hearing of the petitions on June 27, 2007, they could still vote on the matter at hand. Mr. Shaw noted that staff wished for the Commission to explain what their understanding of the density on this project had been at the original meeting and to either reaffirm that decision or to re-open the item based upon how the Commission understood the Ordinance to read.

Commissioner Scott noted that there were only two potential motions identified in the staff memorandum; to either reaffirm or reopen the petition, and noted that denying the request was not an option.

Mr. Shaw noted that the issue at hand was to either reaffirm the previous decision of the Commission or to reopen the item and reconsider the density.

Commissioner Woodhead noted that the Commission could find that their understanding of the Planned Development Ordinance was consistent with their original motion.

Mr. Shaw stated that this was also a possibility.

Chairperson Wirthlin recognized Lex Traughber as staff representative.

Commissioner McHugh noted that the letter from Polly Hart, Capitol Hill Community Council Chair, included in the staff report, stated that the land could not by definition or law be included in averaging lot sizes (referencing the common space inclusion). Commissioner McHugh stated elsewhere the ordinance indicated that except for certain special exceptions such as streets, common land was used in averaging lot sizes. Commissioner McHugh noted that in other words, the common land could be used to determine the average lot size.

Ms. Kirwan noted that in pursuance to the ordinance, this was correct. She stated that in determining average lot size, you would remove any public or private right-of-ways and the open space provided as part of a Planned Unit Development (PUD) could be calculated as part of the overall average lot size. Ms. Kirwan noted that she was not certain how the appellant reached their determination, but according to the ordinance, common space could be included in lot size calculations.

Mr. Shaw noted that just to clarify the issue, the staff report had been in error when it stated the average lot size, and the statement should have been more specific as it was not technically correct. He stated that the lot sizes do not average 5,000 square feet, however, in the ordinance, it stated that when calculating density, an applicant may incorporate the open space.

Chairperson Wirthlin inquired if open space was always included in the density calculation for a development, or if Capitol View was unique.

Mr. Traugher noted that open space was typically included in density calculations in Salt Lake City, as in other jurisdictions, and Capitol View was not a unique situation.

Mr. Traugher stated that the proposed development had designated lots and open space, and if the developer had chosen to do so, he could have included the open space in creating the lots and then the 5,000 square foot lot minimum would have been attained. Mr. Traugher noted that according to the code, the open space was included in the calculation of the gross average lot size either way.

Commissioner Woodhead noted that it was her sense the Commission was not saying that the lots were larger than stated, or redefining what the lot size was, but for the purpose of determining density, the open space could be counted as part of the calculation.

Ms. Kirwan noted that the basic question for reevaluation was whether or not the Commission had understood at the time of the original motion that the calculation for average lot size included the open space. Ms. Kirwan noted that there was concern that it had not been clear in the original staff report that this was in fact the way the calculation had been made. Ms. Kirwan noted that it had been decided that the petition should be brought back to the Planning Commission to reaffirm that the Commission understood this at the time of the original motion, or to reopen the petition if it had not.

Commissioner Scott noted that in the June 27, 2007, minutes, on page 8, the developer had noted that there were eleven homes with lots less than 5,000 square feet. She noted that the Commission had been told that more than half of the homes were under that minimum for lot size.

Chairperson Wirthlin opened the floor to comments from the Community Council at 6:15 p.m.

Polly Hart, Capitol Hill Community Council Chair, noted that the density was over 5,000 square feet per lot. It was noted in the staff report that the average lot size was 5,700 square feet but in fact the average lot size was 4,900 sq feet. Ms. Hart noted that in her appeal she had never mentioned the word density. Ms. Hart noted that the density was not misstated; the lot size had been misstated. Ms. Hart noted that two-thirds of the lots would be substandard, and any time they would come in to the City with a request for a variance, they would already have a distinct advantage in having a substandard lot; which would make them more likely to receive that requested variance.

Vice Chairperson Woodhead noted that the issue was coming before the Commission as an issue of clarification. She stated that there was certainly discussion regarding the smaller lot size, as noted in the minutes, but wished to know if Ms. Hart felt the Commission had misunderstood the situation.

Ms. Hart noted that she was surprised to hear that the developer, Jeremy Jones, had stated that eleven of the lots would be less than 5,000 square feet, as she did not recollect the mention of that fact at the June 27, 2007, meeting. She stated that she had not figured the lot size calculations until well after the original decision had been made. Ms. Hart noted that she had left that meeting with the impression that the Commission had been unclear as to the number of substandard lots which would be created.

Commissioner Chambless noted that on page 9 of the June 27, 2007, minutes, he had stated that there were some inherent flaws with the property and legitimate concerns regarding why it had not been developed in over 100 years. He noted that the parcel raised questions regarding slope and grade, and also inquired of Ms. Hart if she considered this proposal a case of 'sweating the land'.

Ms. Hart noted that she felt the Commissioners would hear that concern when the neighbors were invited forward to speak.

Commissioner McHugh noted that it was her understanding that the developer had consulted with the community and was going to give the stairs and common space to the community to attempt to compensate for the substandard lot size.

Commissioner Scott cited the June 27, 2007, minutes, page 10, noting that the Commission understood that the average lot size included the open space. She noted that the Commissioners who spoke against the petition at the original hearing had felt it was too intense of a use for the particular parcel of land. Commissioner Scott also stated that the Open Space had been strategically placed in a dry wash location that would not be conducive to development. She noted that it had been her understanding that evening that the minimum lot size could not be met partially due to the fact that the open space had been located in this strategic position.

Chairperson Wirthlin opened the floor to public comment at 6:26 p.m.

Minta Brandon, 113 West Clinton Avenue, noted her concern that the proposal under consideration looked good on paper, but was not sound, and seventeen houses on the property would affect all of the citizens residing in that neighborhood in a very negative way. She stated that Ordinances could be changed and for the safety of the neighborhood, it was up to the Commission to make the development correct to the word of the law.

Chairperson Wirthlin read two cards into the public record from constituents who did not wish to speak but opposed the proposal:

Shirley McLaughlin, 160 West Clinton Avenue, noted that the development was way out of line for the area and included too many homes.

Mary Lamb, 694 North West Capitol Street, stated that she had spoken at every meeting concerning the development and felt that the proposed density was still far too high. She requested that the Commission not confirm their original decision, and re-open the case to reconsider the density.

Karen Brisendine, 669 North West Capitol Street, stated that the density and lot size actually went hand in hand and the high number of homes made standard lot sizes impossible. Ms. Brisendine noted that the fact that eleven out of seventeen homes did not comply with the ordinance was a case of overdevelopment. Ms. Brisendine noted that she would not mind the development if it included ten homes or less, but seventeen homes was simply too many.

Commissioner Chambless noted that in the June 27, 2007, minutes, on page seven, Ms. Brisendine's testimony stated that the subject property was not developable as the only suitable access point would be from Victory Road. Commissioner Chambless stated that he had inquired on that night about the impact of the 1983 flood, and that Ms. Brisendine had gone on to state the impact had been huge, but largely averted due to drainage ditches in place on the subject property. Commissioner Chambless also noted that he had inquired about an ideal number of homes for the property and she had stated five.

Ms. Brisendine noted that the original statements were true; however, concessions needed to be made, and she felt as though a majority of the neighbors would concede to a proposal for ten homes on the parcel.

Chairperson Wirthlin closed the public hearing portion of the petition at 6:37 p.m.

Chairperson Wirthlin reminded the Commission at this time that they were considering what the original understanding regarding the project's density had been at the time of the June 27, 2007, hearing. He inquired of the Commission if they felt that there was enough information given from

the testimony heard this evening, the recollection of the individual Commissioners, the public record and the staff report to affirm the original understanding of the minimum lot size and density, or if the petition would require reopening and new consideration.

Chairperson Wirthlin noted that on page 8 of the June 27, 2007, minutes, Commissioner McDonough had inquired how many lots were under the 5,000 square foot lot requirement. He then stated that the developer had indicated that eleven of the seventeen homes did not meet that minimum requirement, and therefore felt that the Commission had been aware of the number of substandard lots.

Commissioner De Lay noted that she understood what had originally been proposed, and pointed out that the June 27, 2007, record indicated that Ms. Hart felt that there were only a few homes which did not meet the minimum requirements. Commissioner De Lay noted that there were several statements in the public record which indicated that the Commissioners; however, were aware of the number of substandard lots which would be created by the development.

Commissioner Scott noted that it should be stated that staff did not necessarily make a mistake. She stated that it was forthright in the charts included in the staff memo, and all of the data which had been included in the density calculations were legitimate. She stated that she was uncomfortable with the fact that the Commission had never asked the developer to consider decreasing the number of homes in the proposal.

Commissioner De Lay noted that she disagreed, because the issue had been through a series of subcommittee meetings in which the number of homes had been reduced from the original proposal of 21 homes.

Commissioner Scott noted that she remembered that discussion, but that the Commission had not asked him on the evening of June 27, 2007, to further reduce that number, and she felt that if the proposal had been further reduced, no Commissioner would have opposed the development.

Chairperson Wirthlin noted that this was really not the issue at hand, unless the Commission decided to reopen the item.

Commissioner McHugh made a motion to reconfirm the decision made in regards to petitions 410-06-29 & 490-07-09, the Capitol View Planned Development and Subdivision, that the Commission understood and recognized the density of seventeen single family dwelling units in the gross project area of 2.81 acres. This included the confirmation and understanding that there were individual lots that were less than 5,000 square feet in size; however, the overall gross lot size average including open or common space exceeded the 5,000 square foot minimum required by the zone. This motion also included and recognized the approval of the preliminary plat which illustrated the lot, roadway and common space configuration as a specific development and density approved by the Planning Commission at it's June 27, 2007 public hearing, based upon the evenings testimony, discussion, and the findings of fact within the staff report.

Commissioner De Lay seconded the motion. Commissioners De Lay, McHugh, Woodhead and Algarin voted, "Aye", Commissioners Chambless voted, "Nay", and Commissioner Scott abstained. The motion passed 4-1.

Discussion of the Motion:

Commissioner Woodhead noted that the minutes reflected discussion of the fact that several of the lots were under the 5,000 square foot minimum, and she did not feel that the Commission could pretend that the record was not there. She noted that the Commission probably should have pushed harder for less units at the time of the June 27, 2007, hearing; however, they had not, and she felt that once the Commission had voted on an issue and confirmed the minutes, the Commission could not simply reopen the case because they would like to, because it interfered

with the public process. Commissioner Woodhead noted that the Commission was in a position where, absent some evidence in the record that the Commission had not been aware of what was being done, or a legitimate legal basis for reopening the case, the Commission was bound to look at the record from June 27, 2007, and follow it.

Mr. Shaw noted that the Planned Development Ordinance was currently under review and that there was certainly a lack of balance in what the community had received in terms of reciprocal benefits. He noted that a text amendment would come before the Commission in the future.

Commissioner De Lay stated that she would agree with Mr. Shaw's statement about benefit to the Community. She noted that Polly Hart had raised, on record, an issue that the Commission questioned; once a lot became non-compliant the owner could come to the City with a request and would automatically have an implied hardship. Commissioner De Lay noted that there was certainly a ripple effect due to this fact and these were the type of text amendment changes which needed to be addressed. Commissioner De Lay noted that she was in agreement with Vice Chairperson Woodhead; that the record was there, the Commission understood the issue, and the Commission had to vote yes.

Petition 410-07-20, Rocky Mountain Power-Donner Way—a request for approval for a Conditional Use, to install above ground utility vaults (which will replace existing below ground vaults) at approximate locations near 900 S, 910 S, 913 S, 925 S, and 939 S. Donner Way, 895 S. Donner Circle; 3075 E. and 3125 E. Kennedy Drive. The project is in the RMF-45 (Moderate/High Density Multi-Family Residential) Zoning District.
(This item was heard at 6:47 p.m.)

Chairperson Wirthlin recognized Marilyn Lewis as staff representative.

Ms. Lewis noted that utility cabinets were a conditional use for public or private utilities. She stated that there was a previous petition before the Planning Commission to make utility cabinets a permitted use, but the petition had not been through the City Council yet. Ms. Lewis noted that there had been a lot of power outages in this area which included numerous multi-family structures, and systems were arcing, causing power outages which lasted several hours over the last two years. Ms. Lewis noted that the proposal had gone before the East Bench Community Council on September 19, 2007, and the Community Council unanimously supported the project as long as the applicant went through the proper process to obtain private easements for the installation.

Ms. Lewis noted that she had received a few comments from the public regarding the petition. She noted that the callers were concerned with the density in the area, but certainly understood the outage issues. Ms. Lewis stated that the staff report recommended approval based upon the findings of fact and subject to the conditions of approval listed in the staff report.

Chairperson Wirthlin invited the applicant forward to comment at 6:50 p.m.

Rod Fisher, Director of Community Relations for Rocky Mountain Power; and Allene Bentley, Community Manager with Rocky Mountain Power were present to address the Commission.

Mr. Fisher noted that the situation at Donner Way was atrocious. He stated that there had been 67 prolonged outages in that area in the past two years, and due to the age of the current equipment and the types of failure that had occurred, these outages had been extended from six to ten hours each time. Mr. Fisher noted that Councilman Buhler had received complaints from constituents in the area and Mr. Buhler had forwarded these complaints on to Mr. Fisher at Rocky Mountain Power. Mr. Fisher noted that these concerns prompted a plan to be developed to improve the situation, and noted that in a residential zone, the solution required a conditional use permit. Mr. Fisher noted that the underground cable terminated in below ground vaults in the streets, and Rocky Mountain Power had experienced a substantial amount of difficulty in keeping the cable free of debris, mud, et cetera, and therefore they were proposing low profile cabinets for

the storage of the cable, which would have to be on private property as there were no public utility easements or park strips in the area.

Commissioner Chambless inquired if this was a case of too many people in a confined area and what the age of the development was.

Mr. Fisher noted that the equipment had been installed at the time of the original development 25 years ago and it was a matter of failed equipment, which was no longer capable of functioning reliably.

Commissioner Chambless noted that then, with the replacement of the equipment they could expect 25 more years of good service at this density, and after that 25 years that cable would require replacing again.

Mr. Fisher noted that the cable may need replacing in 25 years; however, the insulation technology was continuing to evolve so the new cables might last longer than that.

Chairperson Wirthlin opened the floor to public comment at 6:55 p.m.

Mike Lane Heinrich, member of the Bench Towers Association, noted that they were concerned regarding the size of the above ground vaults.

Chairperson Wirthlin noted that examples of the above ground vaults were pictured in the staff report. He stated that from the drawings they appeared to be 20 inches tall, 22 inches deep and 66 inches long.

Chairperson Wirthlin closed the public hearing at 6:56 p.m.

Commissioner De Lay made a motion to approve petition 410-07-04, in regards to Rocky Mountain Power/Donner Way, based upon the findings of fact and comments received during the public hearing and subject to the following conditions listed in the staff report:

1. **The applicant proposes to feed new cable through the existing conduit system. However, if excavation has to occur the applicant will need to provide the following information to Engineering and closely coordinate: location and run of proposed excavation, running line and footage of any trenches, and any additional information pertinent to this proposal.**
2. **The finished construction must not interfere with Public Utilities ability to maintain and operate their utilities.**
3. **The finished construction will not cause impacts to transportation corridors for sight distance setbacks of pedestrian traffic.**
4. **The applicant will be required to work closely with Engineering, Transportation and Public Utilities to coordinate the proposed work and provide ample opportunity for review and inspection of construction drawings and work at the aforementioned locations. The applicant will provide any additional information to Transportation, Public Utilities and Engineering for them to determine if there are any other impacts.**
5. **The applicant must obtain a permit to perform the proposed work in the public right of way.**
6. **The applicant must negotiate the necessary easements on private property.**

Commissioner Scott seconded the motion. All voted, "Aye". The motion passed unanimously.

Chairperson Wirthlin called for a five minute recess at this time.

Petition 400-07-19, Conditional Use— a request by the Salt Lake City Council to amend sections of the Salt Lake City Zoning Ordinance relating to Conditional Uses in general and specifically, focusing on the Table of Permitted and Conditional Uses, the criteria for which Conditional Uses are reviewed and approved and the powers and duties of the Planning Commission are relating to conditional uses. This is an Issues Only hearing Public comment will be taken at this hearing; however no final decision will be rendered at this meeting by the Planning Commission as a result of the discussion and public comment. The Planning Commission will schedule a meeting in the future to make a final decision. (On July 17, 2007, the City Council past Ordinance Number 49 of 2007 which placed a moratorium on all conditional uses in residentially zoned districts and those abutting residentially zoned areas throughout the City. This petition is in response to the moratorium.)

Petition 400-05-16, Building and Site Design Review—a request by the Salt Lake City Planning Commission, requesting amendments to the zoning ordinance relating to Conditional Building and Site Design Review. In 2005, the City Council Adopted the Conditional Building and Site Design Review Process as part of the Walkable Communities Ordinance. The proposed text amendment will allow for a review of design related requests which have been previously approved through the Conditional Use process to be reviewed through the Building and Site Design Review Process. Items that are proposed to be reviewed through the Building and Site Design Review Process, rather than the conditional use process, include: additional building height, building façade materials, minimum building setbacks and first floor glass. This is an Issues Only hearing to consider and discuss the proposed text amendment. Public comment will be taken at this hearing; however no final decision will be rendered by the Planning Commission at this meeting The Planning Commission will schedule a meeting in the future to make a final decision.

(The above items were heard concurrently at 7:04 p.m.)

Chairperson Wirthlin recognized Nole Walkingshaw as staff representative.

Mr. Walkingshaw noted that a City Council initiated moratorium on conditional uses had prompted the study of these issues. Mr. Walkingshaw noted that the moratorium had been directed predominantly towards conditional uses in residential neighborhoods or regarding uses that abutted properties in residential districts. He noted that staff had taken a holistic approach to the issue and reviewed not only the conditional use tables, but also, where the word 'conditional' had appeared in the Zoning Ordinance; which brought about, in tandem, the review of Petition 400-05-16, the Building and Site Design Review process.

Mr. Walkingshaw stated that the issue at hand was the separation of conditional use issues from the Building and Site Design Review process. Mr. Walkingshaw noted that a lot of this would occur through simple text amendments to the Ordinance. He noted that an administrative process would be introduced for some approvals, with specific design criteria. Mr. Walkingshaw stated that in the event that an item would be undergoing both the Building and Site Design Review process and conditional use process, they would be reviewed concurrently.

Chairperson Wirthlin noted that this change could clarify several issues regarding the difference between the two processes.

Chairperson Wirthlin opened the floor to public comment at 7:12 p.m.

Chairperson Wirthlin noted that Esther Hunter, 1049 Norris Place, had left a card in regards to these issues, which stated that the current recommendations did not address the specific issues facing the East Central Neighborhood. She provided a list of those issues for the Commission and staff as well.

Cindy Cromer, 816 East 100 South, referenced page 5 of the staff memorandum and noted that the gas station change in the CB (Community Business) Zoning District removed it as a permitted use and replaced it as a conditional use. Ms. Cromer noted that the Purpose Statement for the CB District stated that it was intended to provide for, "the close integration of moderately sized commercial areas with adjacent residential neighborhoods". She noted that the CB zone anticipated an adjacent residential neighborhood, and that there was nothing in the proposed revisions which gave a standard for how far residential dwellings should be from a proposed gas station. Ms. Cromer noted that in her opinion, the proposed standards were as vague and worthless as the current standards. She noted that she would like to see a quantifiable, measurable and predictable standard for the development community, as well as for citizens investing in residences within the City; a standard such as a defined distance.

Ms. Cromer noted that the largest issue the Bryant Neighborhood brought before the Commission was the concentration of conditional uses in a particular area. She noted that there was nothing in the proposed changes to address the proliferation of conditional uses in particular neighborhoods, and noted that her neighborhood would continue to be dumped on under the current revisions. Ms. Cromer stated that the proposed changes seemed to concentrate on changes to gas stations and mortuaries, but did not address the issues regarding the overwhelming number of conditional uses in particular neighborhoods. Ms. Cromer also noted that the proposed changes did not address the problems associated with the transference of a conditional use; where a new property owner would obtain a parcel with a conditional use and then change that use from the original approval without any public notification. Ms. Cromer gave the example of a neighboring property which changed ownership and turned from a bed and breakfast to a law office without any notice to neighboring properties.

Commissioner Chambless noted his interest in specific recommendations from Ms. Cromer regarding this issue.

Ms. Cromer noted that one of the changes which could occur would be a survey and rezoning of her neighborhood to make broader zoning districts, because as it stood, it was a patchwork of different zones which furthered the proliferation of conditional uses and very discrepant uses on abutting properties. Ms. Cromer noted that if the ordinance stated that a conditional use was based upon the zone of the particular parcel and did not take into account the surrounding parcel and the prevailing zoning, the ordinance would be perpetuating a mess, and the City needed a different approach.

Commissioner Scott inquired of Ms. Cromer if she had attended the open house and if she had a chance to review the revised standards at that time.

Ms. Cromer noted that to a data driven person, the revised standards were no better than the current standards for review of conditional uses, noting that while they removed the 'net cumulative adverse impacts' language, they were still very vague.

Commissioner Scott noted that a distance requirement for gas stations had been mentioned and wondered if Ms. Cromer had any other suggestions regarding quantifiable standards for conditional uses.

Ms. Cromer noted that one standard she might suggest would be to limit the number of bed and breakfasts within a particular area. Ms. Cromer stated that standards could be set which the City felt were reasonable, and if they turned out to be wrong, they could be adjusted.

John Gardner, 1073 East 2100 South and a property owner in Sugarhouse, noted that he was interested in the clarification of the Building and Site Design Review process. He stated that the difference between the two processes had been quite confusing. Mr. Gardner voiced his support for the changes, noting that the two processes were actually very different and that they needed clarification.

Chairperson Wirthlin noted that there was no one else present to speak to the petition and closed the public comment portion of the Issues Only Hearing at 7:32 p.m.

Mr. LoPiccolo noted that in revising the conditional use tables and addressing the CB Zoning District, staff had added the term fuel center, which was essentially a gas station. Mr. LoPiccolo noted that the Smith's fuel center would be a permitted use under the current ordinance and a conditional use under the proposed changes. Mr. LoPiccolo noted that if the public felt that the proposed changes were still too intense, the uses could be removed. He stated that what staff had intended when revising the criteria for approval or denial of conditional uses, Standards A-K, was to tie conditional uses to the general purpose statement of a district. Mr. LoPiccolo noted that this inclusion would allow for someone who was reading the purpose statement to understand what uses could be encompassed by the zoning district.

Mr. LoPiccolo noted that Ms. Cromer's issues seemed to be regarding nonconforming uses. Mr. LoPiccolo noted that staff was reviewing Chapter 38 of the Salt Lake City Zoning Ordinance, which dealt with non-complying structures and nonconforming uses, and noted that these two things should not be confused. He stated that a nonconforming use was simply a use that at one time was legal but over time and through down zoning, it was taken out of the ordinance, and therefore became a legal nonconforming use. Mr. LoPiccolo noted that staff had made an attempt to address what they felt were high impact uses: boarding houses, gas stations in the CN (Neighborhood Commercial) Zoning District, fuel stations and gas stations in the CB Zoning District. Mr. LoPiccolo noted that staff had been told by the City Attorney's office to leave group homes as they were.

Commissioner De Lay noted that she understood this and felt that what staff had was at least a start in the right direction. She noted that this process was tantamount to a master plan for the City in her mind, and the document was becoming closer to the state law and more user-friendly, however, it would be very beneficial for the Commission to know, in much greater detail, how staff came to these decisions. She stated that she would like to see more input from the general community regarding the proposed changes, particularly from the Community Councils. She noted that the Commission would be passing along a recommendation to the City Council on a very important document for the future, and did not feel that there was enough information from City staff or the community at large at this point to do so.

Commissioner Scott stated that the City Council had put the moratorium on conditional uses in place in August, and wondered if staff had any idea of who began the Coalition for Orderly Development.

Mr. Walkingshaw noted that he did not know who had started the Coalition for Orderly Development, and had not been to any of the meetings. Mr. Walkingshaw noted that he did know that it was comprised of active members of the community, and had met with members of Community Development Staff and members of the City Council.

Mr. Walkingshaw noted that his communications with the City Council had primarily been through staff members, discussing the intents of the documents and so forth. Mr. Walkingshaw noted that the City Council had all been informed of the open houses regarding these issues, but he had not received any feedback, with the exception of discussions on mortuaries.

Mr. LoPiccolo noted that they had been proactive in providing this information to the public, but that it was possible for the Planning staff to be more proactive in obtaining assistance from the community on the issue.

Commissioner De Lay stated that she was also interested if there were any new uses which could be included in these tables such as green or environmental uses.

Commissioner Scott noted that there should also be something in the text to address the proliferation of conditional uses within the City, as mentioned earlier by Ms. Cromer.

Chairperson Wirthlin inquired if this issue of the dispersal of conditional uses could be studied by staff, and what mechanisms would be available to a municipality to control the dispersal and or concentration of such uses.

Mr. Walkingshaw noted that this dispersal of conditional uses was not contemplated in the current scheme of the language; to do that would require a density survey and a great deal of study.

Commissioner McHugh noted that this type of limitation was currently being considered by the County regarding check cashing institutions.

Mr. LoPiccolo noted that staff could reevaluate the way that the City looked at conditional uses. He stated that he had worked in four cities previous to this and the proliferation of conditional uses had never had such an impact for him before working for Salt Lake City; as conditional uses were typically a use permitted, subject to conditions in other jurisdictions. He noted that if a property were to meet those conditions, in theory, it would be no different than a permitted use. Mr. LoPiccolo stated that there may be uses in the residential districts which should, based upon the purpose statement, not be allowed at all.

Chairperson Wirthlin requested a summary of each Zoning District's Purpose Statement from staff.

Mr. Walkingshaw noted that staff could provide that for the Commissioners.

Vice Chairperson Woodhead inquired if staff was researching other municipalities and how their ordinances dealt with the issues regarding the dispersal and distances of these uses.

Mr. Walkingshaw noted that staff had been researching other ordinances; however, the issues of dispersal and distance could be dealt with through qualifying provisions, or the footnotes to the tables of permitted and conditional uses. He stated that a qualifying provision for a gas station, for example, could read that a gas station not be allowed within 100 feet of a residential property. Mr. Walkingshaw noted that this attention to detail in creating the qualifying provisions was the next necessary step in the process.

Commissioner De Lay noted that such qualifying provisions would clarify these issues greatly.

Mr. Walkingshaw noted that this issue would come back as a public hearing on November 14, 2007, and would be part of an agenda including only two issues, the review of these uses, and the Riparian Overlay Corridor.

Commissioner De Lay stated that she would much prefer that staff address all of the Community Councils with this issue before it came back as a public hearing item. Commissioner De Lay inquired if there were a way to limit the number of conditional uses granted in a particular time period or neighborhood through the text change.

Mr. LoPiccolo noted that this could be a very difficult situation, citing the example that all churches with Salt Lake City required conditional use permits, and the exclusion of one group over another, due to the date they applied for the permit, could easily be viewed as discriminatory.

Chairperson Wirthlin echoed his agreement with Commissioner De Lay in the importance of this issue. He noted that the fact that the text amendments really needed to be reviewed on a line-by-line basis, it would be beneficial for the Commission to form a subcommittee to review some of these issues in a more intensive process.

Mr. LoPiccolo asked for a consensus from the Commission regarding conditional uses and if the Commission was comfortable in reviewing only the residential districts or wished to review commercial and manufacturing districts as well.

Commissioner De Lay noted that she felt all of the City's Zoning Districts should be reviewed as Salt Lake was moving to mixed uses; live-work spaces. She stated that this meant more density and was not reflected in the proposed changes.

Vice Chairperson Woodhead noted that at the open house, there had been some opposition to the conditional uses for manufacturing districts, and some of those concerns could be addressed through the creation of better defined qualifying provisions for those districts as well.

Commissioner Scott noted that in the draft language for the review of conditional uses, Condition K had changed considerably in the proposed language, but "significant impact" was still extremely difficult to prove quantitatively.

Mr. Shaw noted that "significant" could certainly be objective, but sometimes a project could come through which met all of the criteria, but still didn't feel right as a use for the particular zone, and therefore, staff had felt that an additional provision was necessary. Mr. Shaw noted that the Commission would have to define what a "significant impact" was in the future.

Commissioner Algarin noted that he was in support of a subcommittee for the issue, and felt as though the issue may not need to be as subjective as the Commission felt it was.

Commissioner De Lay stated that she felt these issues could take a good deal of time to resolve and wondered if there was any way to assist those citizens who were looking for a conditional use now.

Mr. LoPiccolo noted that the moratorium on conditional uses would end in February and the process would automatically go back to business as usual.

Commissioner McHugh inquired if another moratorium could be instated.

Mr. Walkingshaw noted that there were legal takings issues with a moratorium lasting beyond six months, and did not think that the City Council could simply add on time.

Commissioner McHugh inquired if staff could find out for sure.

Mr. Shaw noted that he understood that the Commission wanted to review the issue thoroughly, and stated that the distance provision for conditional uses was an option he was interested in as well, however, the Commission needed to move along in the process. Mr. Shaw noted that some of the issues at hand were subjective; whether a use should be permitted or not permitted, and when the documents arrived before the City Council, they would be edited again. Mr. Shaw noted that there were areas in the community which needed the new ordinance as soon as possible.

Commissioner De Lay noted that there were also new uses such as live-work, which had not been addressed and needed more attention in the ordinance.

Chairperson Wirthlin noted that there would not be any reason why the Commission could continue to work on the ordinance through future amendments.

Commissioner Scott noted that she would like to get the City Council involved at this point in the subcommittee process rather than later. Commissioner Scott noted that she would like to communicate with the Coalition for Orderly Development in order to obtain their expertise and opinion on these issues.

Mr. LoPiccolo noted that he could get the Commission their contact information.

Commissioner De Lay inquired if the Commission could be comprised not only of the Planning Commissioners, but also City Council and Community Council members.

Mr. Shaw noted that Commissioner De Lay's idea regarding the subcommittee was excellent and could certainly be explored. He noted that he would like to see these text changes occur before the end of the moratorium to provide the City with more control regarding the proliferation of conditional uses in certain areas.

Chairperson Wirthlin noted that this was a first step forward on a proposal that needed greater attention in the future. He stated that he believed that a text change should be in place at the time the moratorium expired, however, there was no reason that the Commission could not continue to refine the conditional use ordinances as it was a necessary task for the City. He noted that he felt the rest of the Commission was extremely committed to this as well.

Commissioner De Lay noted that in the future she would like to see data from each Community Council regarding what conditional use impacts they were experiencing.

Mr. LoPiccolo noted that staff could compile data regarding the number of conditional uses the Planning Commission had seen over the past five years.

Commissioner De Lay inquired if there was a way to know how many conditional uses there were in a particular Community Council area currently.

Mr. LoPiccolo noted that the staff could pull from the past data for the Planning Commission and could expand the data for a number of years, then that data could be broken down by Community Council district.

Chairperson Wirthlin stated that he would like to know who from the community at large would be interested in serving on the subcommittee; including Community Council, City Council, and Coalition for Orderly Development members. He asked for volunteers from the Planning Commission who would be willing to serve on the subcommittee at this time.

Commissioners De Lay, Scott, McHugh and Chairperson Wirthlin volunteered to serve on the subcommittee.

Mr. Walkingshaw noted that finding a standard to justify the disapproval of a project solely on it's not sitting right with the community was an extremely difficult task and could not be found in any other municipality's ordinance. Mr. Walkingshaw stated that going through the tables therefore became that much more important to identify appropriate and inappropriate uses for each zoning district.

The meeting adjourned at 8:15 p.m.