

SALT LAKE CITY PLANNING COMMISSION MEETING
In Room 326 of the City & County Building
451 South State Street, Salt Lake City, Utah
Wednesday, September 28, 2011

Present for the Planning Commission meeting were Chair Michael Fife, Vice Chair, Angela Dean, Commissioners, Babs De Lay, Kathleen Hill, Michael Gallegos, Matthew Wirthlin and Mary Woodhead. Commissioner Emily Drown, and Charlie Luke, were excused

A field trip was held prior to the meeting Planning Commissioners present were: Michael Fife, Mary Woodhead and Kathleen Hill. Staff members in attendance were Joel Paterson and, Ray Milliner.

A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at 5:30 p.m. Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time. Planning staff members present at the meeting were: Wilf Sommerkorn, Planning Director; Joel Paterson, Planning Manager; Doug Dansie, Senior Planner; Ray Milliner, Principal Planner; Lynn Pace, Deputy City Attorney, Paul Nielson, Land Use Attorney; and Angela Hasenberg, Senior Secretary.

Field Trip Notes taken by Joel Paterson:

PLNSUB2008-00902 Capitol Park Subdivision Amendment and Planned Development Amendment. Staff explained the request of the Capitol Park home owners to dedicate the private streets and private utilities. Staff explained how the streets are deficient compared to City standards.

5:30:20

Chairperson Fife moved the election of Chair and Vice Chair to the end of the meeting.

Report of the Chair:

Chairperson Fife read a letter from Dee's Incorporation requesting a reconsideration of the decision from the Planning Commission meeting of September 14, 2011 for item PLNSUB2011-00382 Planned Development Amendment, a request by Darlene Batatian representing Dee's Incorporated to move and alter a legal nonconforming existing sign and to allow two signs fronting Foothill Drive. (Document attached)

Commissioner Woodhead stated that she had some legal questions and wondered if they needed to go into an Executive Session to determine how to proceed.

Land Use Attorney Nielson suggested that a closed session would be in order.

Planning Director Sommerkorn suggested that the approval of the minutes could be postponed until a decision had been made.

Chairperson Fife agreed and postponed the approval of the minutes of September 14, 2011.

Public Hearings

PLNPCM2010-00032: Zoning Text Amendment, Billboards - A request by Salt Lake City Mayor Becker for a zoning text amendment to address outdoor billboards. The proposed amendment would update current regulations for outdoor billboards to make them consistent with state law. The text amendment would affect all zoning districts. (Staff Contact: Doug Dansie at 801-6182 or doug.dansie@slcgov.com)

PLNPCM2010-00717: Zoning Text Amendment, Electronic Billboards - A request by Salt Lake City Mayor Becker for a zoning text amendment to address electronic billboards. Currently, the City Zoning Ordinance does not address electronic billboards. The text amendment would affect all zoning districts. (Staff Contact: Doug Dansie at 801-6182 or doug.dansie@slcgov.com)

Chairperson Fife recognized Doug Dansie as staff representative.

Mr. Dansie stated that staff had received a lot of emails in the prior 24 hours. Mr. Dansie stated he would like to clarify the difference between electronic billboards and on- and off-premise signs.

Mr. Dansie stated that most emails received were in regard to on-premise signage. He summarized some of the comments, which were: "We purchased our sign with the intent to use full animation," Mr. Dansie answered that animation had not been allowed on any sign in Salt Lake City in any zone since 1995. He said that animation had been prohibited in specific zones as far back as 1955.

Commissioner De Lay asked why animation was on so many signs.

Mr. Dansie stated that it was not a change in policy, and the issue with the existing signs was an enforcement issue. The City has active enforcement actions against some of the most egregious violations, specifically on-premise signs that are advertising things off-premise.

Mr. Dansie reiterated that these items were not a change in policy. Animation had not been allowed for 16 years.

Mr. Dansie read a comment that questioned the eight second hold time. He said that he believed that there was confusion from many of the letter writers that

assumed that the eight second hold time was a maximum hold time, when in reality it was a minimum hold time. Mr. Dansie added that the eight seconds was an industry standard, and that was the rationale for its usage.

Mr. Dansie addressed the concern that the changes would render the business owners investment obsolete. He answered that the City was not banning electronic signs, but rather defining the parameters.

A concern was that the steady burn of the LED's would accelerate the need to repair the sign or replace the signs. Mr. Dansie clarified that the eight second hold time came from the industry, so the logic was that it would not create an unexpected increase in any repair.

Mr. Dansie stated another concern was that the changes would damage the ability to use the sign in the manner that was initially intended. Mr. Dansie responded that animation has not been a permitted use for 16 years.

Mr. Dansie added that there was criteria in the ordinance for electronic changeable copy that was written in the 1970's to deal with lights. The ordinance as it currently stands, says that the image has to become visible "in full" in three seconds. The reason was that cars would not slow down or speed up in accordance to the change of the signs. This ordinance was written to allow the message to be up and readable and not have multiple messages.

Another email asked the City to not treat on- and off-premise signs in the same fashion. It asked that all of the regulation regarding on-premise signs be eliminated with the exception of the criteria for the brightness. Mr. Dansie stated that off-premise signs are not the same as on-premise signs, every business needs to have a sign, they do not necessarily need a billboard. The Supreme Court has backed that decision.

Mr. Dansie added that he received an email from the Airport, requesting that all of their signs be allowed to be 100% electronic signs.

Mr. Dansie discussed public safety and electronic signs.

Mr. Dansie discussed off-premise signage. He discussed the difference between gateway and special gateways. Special gateways consist of State Street, Main Street, 400 South, and North Temple Street. Historically these gateways function as a closed bank, meaning billboards could not be imported or exported, but billboards could be moved around within the special gateway.

Other gateways are freeways, and Foothill Blvd. Four categories were created out of these two items to better address individual needs. Mr. Dansie stated that the City would allow relocation according to State and Federal law. Moves will be allowed to the general commercial and manufacturing zones with the exclusions.

Mr. Dansie said that relocation would be limited in the Downtown and the Gateway zoning districts and on special gateway streets so that billboards could only be moved around if the sign is being converted to electronic and you are integrating into the architecture of a building.

New billboards are prohibited; only relocation is allowed. Changeable copy is defined in terms of electronic billboards, spacing is clarified, and enforcement is clarified.

Any billboard located in a residential, a CN or a CB zoning district, and all gateway streets, e.g., Foothill, those billboards could move to CG and M zoning districts and convert to electronic billboards on a 1 to 1 basis. The intent is to provide a bonus to move the billboards to less sensitive areas.

Billboards that are presently in the CG and CS would be allowed to convert to electronic, but only if they remove an equivalent billboard elsewhere. Mr. Dansie said that billboards on freeways would be allowed to convert to electronic, but only if they remove an equivalent amount of square footage from a City entry e.g., 5th and 6th South Off-ramps, or a boulevard street or in the residential or neighborhood commercial areas. From the direction of the Planning Commission, the geographic area was expanded. Special gateway streets could be converted to electronic if they remove a non-complying billboard square footage on a 2x1 basis. Special gateways consist of State Street, Main Street, 400 South and North Temple Street and if they integrate into the architecture of a building in the D-1 district.

Questions from the Commissioners:

Commissioner Wirthlin asked for clarification regarding on-premise electronic signs, specifically motion, brightness and size. He asked if the status quo was not being changed, but clarified.

Mr. Dansie responded that was accurate.

Commissioner Hill asked how many electronic signs were located within the City.

Mr. Dansie said that there may be up to 90 electronic on-premise signs, but none should be affected by the change as long as they are in compliance. He stated that the only ones that would be effected would be the ones which were non-compliant.

Deputy City Attorney Lynn Pace answered that the ordinance is prospective only. It would not affect any legal existing sign. If you have a legal sign that is different than the ordinance, it will not be impacted because the ordinance is not retroactive.

Land Use Attorney Paul Nielson added that Commissioner Gallegos had recused himself from the item due to a conflict of interest.

Comments from the Public

The following people spoke in *OPPOSITION* to the ordinance, J. Michael Place, Western Nut Company; Robert Tingey, General Council Energy Solutions Arena; Jared Johnson, YESCO; Tye Dato, Daktronics, Inc; Jeff Young, YESCO; Paul Young, YESCO, Morgan Philpot, legal counsel, Reagan Signs; Dee Park, Jeff Krantz, Robert McIntyre, Kyle Deans, Tyler Steenblik, and Michael Wardle.

The Following points were made:

- Hold times of 8 seconds will significantly reduce our ability to communicate meaningful messages to our customers.
- The message travel feature of signs is essential to conveying messages.
- Advertising is an essential part of business success and cannot afford to substitute other means of communication in order to convey our full message and attract business.
- Requiring that signs be turned off at night is unacceptable.
- Sales prove the value of electronic signage. Any ordinance change that would diminish the effectiveness of our electronic sign would have a significant dilatory effect on our business, even potentially to the extent of forcing us to close our doors.
- If a sign is small, and the words necessary to convey the message would not fit on the sign, it would require a purchase of a new, and larger sign in order to comply with the 8 second hold, this is not an acceptable requirement.
- Annual reporting and brightness testing is absurd. It is expensive and unfair to small businesses.
- The signs are not a safety issue, and no accidents have been attributed to many of the signs in question.
- Signs were purchased with the intent and ability to use full animation.
- A change to static images and hold times of 8 seconds will reduce the sign's value significantly.
- This change would damage our ability to advertize our products and services as a business.
- It would dramatically impact what and how we communicate to our customers, a free speech issue.
- It would tend to weaken advertising impact, requiring additional investment in other advertising media
- We reach hundreds/thousands of customers as we advertise overnight
- Invested expense in current programming would be rendered obsolete
- We have not seen any increase in accidents due to the sign at our place of business.
- We have customers making positive comments about our sign all the time, they don't have a problem with it.
- The messages we want to communicate won't fit on our current sign unless we "travel" the message and/or change the text quickly.
- If the words we want to use won't fit our sign, it could necessitate the purchase of a larger sign.
- Expensive reprogramming would be required.
- Annual reporting and brightness testing is an added expense we cannot afford to do.

- Constant “steady burn” of diodes will shorten their useful life.
- Steady burning of the LEDs would accelerate the need to repair the sign.
- Steady burning of the LEDs would accelerate the need to replace the sign in the future.
- It would damage our ability to use the sign in the way it was initially purchased.
- It would damage our ability to use the sign as it has been operated since it was installed.
- Converting to digital signs will be difficult.
- The map needs clarification.

Questions from the Commissioners:

Chairperson Fife asked CED Frank Gray if he thought the amendments would harm small businesses.

Mr. Gray detailed the City’s purpose in amending this ordinance. Mr. Gray stated that as a community, we are very supportive of small business and the City is supportive of helping people find and locate the businesses they are seeking. The sign ordinance was constructed in such a way that businesses can be identified and located.

Hundreds of millions of dollars a year are spent on roadways trying to make them safe, in that regard, the right signage, the right lanes, the right stop lights are all considered to make certain the safety of the citizens, and make sure their focus is on the road. These signs are intended to take the attention away from the road and read the sign.

Mr. Gray stated that there was an exponential proliferation of electronic signs going on. The Boulevards are becoming confusing places where individual businesses are lost because so many people are trying to get the consumers attention.

The purpose of the sign ordinance was to allow clear and specific identification of businesses, not to be advertising bulletin boards in a confusing morass that detracts from the safety of the City.

Mr. Gray addressed the specifics of the difference between on- and off-premise signs and could there be differential standards.

Mr. Gray stated that the change of the sign should be one for every car pass. Therefore, speed of the street and the change of the message could be joined together.

Chairperson Fife asked if scrolling could be allowed.

Mr. Gray answered that a scrolling sign is considered an animated sign, and therefore was not permitted.

Commissioner De Lay asked how enforcement has been handled, and how many fines and tickets had been issued.

Mr. Gray answered that the City enforces on a complain basis, when the complaint is made, the City investigates the violation and then works with the property owner to fix the violation. This is successful 80% of the time.

Commissioner De Lay asked if the signs were then taken down.

Mr. Gray responded that usually they were not animated any longer.

Commissioner De Lay asked who did the enforcement and how many employees there were.

Mr. Gray responded that there were eleven enforcement officers.

Commissioner De Lay asked who would do the annual verification.

Mr. Gray answered that the annual verification was the responsibility of the sign owner. The requirement would be a certificate issued at the time of installation, done by a registered lighting engineer. There will be a registered lighting engineer on call that could determine if there was a violation.

Commissioner De Lay questioned the expectation of having a small business have to pay for a registered lighting engineer.

Deputy City Attorney Lynn Pace added that State law requires a uniform illumination standard, regardless of what would be done with the animation and electronic issues, the lighting standard has to be uniform. There has to be an enforcement mechanism to follow up on complaints.

Commissioner De Lay asked for data regarding safety issues and accidents regarding these signs.

Mr. Gray responded that the City did not collect such data. The reason was because that was not what a police officer would ask.

Vice Chair Dean was concerned about the differences in functionality and how to maintain fairness between on- and off-premise sign regulation and not hurt small businesses.

Mr. Dansie replied that the ordinance as it is now, was created in part because of input that had been given during the whole process. The message was if the rules were for one, why weren't the rules the same for the other. The 8 second rule is based on the premise that if you drive by it once, you see the message once.

Vice Chair Dean stated that the City did not want to encourage small businesses to trade in their small signs for large ones. She added that addressing the size issue

was important in keeping signage subtle and not eye sores, while enabling small businesses to get their messages across.

Commissioner Woodhead asked if it would be appropriate to send the ordinance back in order to get a matrix back based on sign size and dwell time for the on-premise signs.

Deputy City Attorney Pace, said that distinguishing between locations in addition to sign size could be taken into consideration. He said that what the issue really was the electric sign technology and everyone trying to get attention for their sign. The value of having some uniformity is that it eliminates the competition of "one upping" each other on the street. The concern is that the distinctions are made depending on the character of the neighborhood and the safety of the motorists.

Mr. Gray added that they would be happy to provide a matrix of type of street, size of sign, legibility of lettering, minimum and maximum, size of lettering. What percentage of sign could be electronic, and provide some standards.

Vice Chair Dean asked for thoughts on separating the the standards for on- and off-premis signs in the ordinance.

Mr. Dansie responded that separation was where the ordinance started out, but since the idea of fairness came into play, the Commission and Staff made a conscious decision of dealing with the whole electronics issue together.

Mr. Pace added that this issue came before the legislature, and the legislature's response to this concern was to pass a bill that said that lighting standards have to be uniform.

Vice Chair Dean asked about the grandfather clause.

Mr. Pace responded that the issue was unclear in the ordinance and that it would be fixed.

7:23:03

Motion

Commissioner Dean made the motion in regard to PLNPCM2010-00032 Zoning Text amendment, Billboards and PLNPCM2010-00717 based on the staff reports, testimony and presentation of staff, I move that the Planning Commission forward a positive recommendation to the City Council to approve supplementary zone text amendments associated with petitions PLNPCM2010-00032 and PLNPCM2010-00717 as outlined in the draft ordinance. In addition, the airport zone will be added to the 100% category, and remove 7-c requirement for an annual report, and require an installation certificate to verify compliance with the ordinance, additionally upon complaint.

Commissioner Woodhead seconded the motion.

Vote: Commissioners De Lay, Hill, Wirthlin all voted “no”, Commissioners Woodhead and Dean voted “aye”. The motion failed.

Commissioner Wirthlin commented that he felt that the Planning Commission was biting off more than it could chew with this ordinance. He stated that he did not feel that the ordinance accomplished what they had wanted it to.

Commissioner Wirthlin felt that the issues should be separated and dealt with independently. He also indicated that he would like to see a PowerPoint presentation.

7:41:03

Motion

Commissioner Wirthlin made a motion to continue the matter and the discussion before the Planning Commission based on the direction given to staff to present additional information as discussed tonight.

Seconded by Commissioner Woodhead

Vote: Commissioners De Lay, Hill, Wirthlin, Woodhead, and Dean all voted “aye”. The motion passed unanimously.

7:49:05

PLNSUB2008-00902 Capitol Park Subdivision Amendment and Planned Development Amendment - The Capitol Park Home Owners Association is requesting a street dedication and a Planned Development amendment that would transfer ownership and maintenance responsibility of the following privately owned streets Capitol Park Avenue, Penny Parade Drive, Redbrick Court, Charity Cove, and Caring Cove from the homeowner’s association to the City. The subject property is located in the FR3-12,000 (Foothill Residential) zone and is located in Council District 3, represented by Stan Penfold. (Staff contact: Ray Milliner at (801) 535-7645 or ray.milliner@slcgov.com).

The Planning Commission voted to enter in to a closed session to discuss possible legal ramifications of this petition.

The Planning Commission reconvened the regular Planning Commission meeting and continued to hold the scheduled public hearing.

Chairperson Fife recognized Ray Milliner as staff representative.

** Commissioner Gallegos entered the meeting**

Mr. Milliner stated that this was an application to dedicate Capitol Park Avenue, Penny Parade Drive, Redbrick Court, Charity Cove and Caring Cove from the homeowner's association to the City. The applicant has petitioned to amend the subdivision and also amend a planned development that had been approved in 1995 in order to switch ownership of the private streets from the HOA to the City.

The process for approval was that the planned development and the three subdivision plats would all need to be amended and forward a recommendation to the City Council who would make a final recommendation.

The applicant submitted an application to amend the planned development in 2008, at the time the City did not have a policy with regard to what process or criteria should be used when the City was considering a street dedication. A work session was held with the Planning Commission, and it was decided that the policy needed to be adopted by the City Council. The Policy was adopted and is now part of chapter 14 of the City Code. The criteria from that policy have now been applied to the recommendation for this street dedication.

Mr. Milliner stated that the principle issue with the item is whether or not the City should accept the street for dedication and whether or not it would be appropriate for the City to do so. The question became was there a compelling reason for the City to adopt this street. Staff's finding was that there was no compelling reason to dedicate the private streets as public streets. The rationale was that in 1995 when the Planning Commission approved the planned development there was a quid pro quo; essentially the developer requested that the Planning Commission grant him a reduced lot size, reduced front yard setbacks, in exchange for not having to significant grading and re-routing of the street.

Mr. Milliner stated that the City accepted the compromise and the basic finding was that the grading would be impactful visually, and an impact on existing vegetation.

Now, the owners of the lots have accepted responsibility for the roads from the developer and they are asking for a change in the agreement.

Staff feels that although the ownership had changed, the situation had not changed in that the City gave the original developer the things that he had asked for. Staff is asking for the Planning Commission to uphold the decision made in 1995 and recommend to the City Council a negative recommendation.

Mr. Milliner stated that the streets are substandard and the fix would be hammerheads easements placed in driveways of existing homes for the fire trucks to turnaround. The concern was that those homeowners would use that space for parking, and it would be difficult to enforce.

Questions from the Commissioners:

Commissioner Gallegos asked if a property owner had offered to provide their property for the hammerheads.

Mr. Milliner stated that he believed that some property owners did offer.

Comments from the Applicant:

Justin Baer and Steven Hirschi represented the applicant. Mr. Baer stated that they had provided numerous letters and had reviewed the staff report.

Commissioner Woodhead stated that they had read the letters, but felt that the Planning Commission needed to know how the applicant had fulfilled the new criteria.

Mr. Baer stated that it was significant to point out that their application complies with every aspect of the ordinance, except a compelling public interest.

He stated that the applications were filed in December of 2008 and April of 2009 and the ordinance was adopted in October of 2010. Mr. Baer asserted that the applications were vested prior to the ordinance being passed. He said that they recognize that there are no other guidelines to address the dedication of private streets to public; he felt that it would be appropriate to review the ordinance and discuss it in conjunction with the application.

Mr. Baer stated that the appropriate departments had been contacted, and they gave suggestions for what could be changed and improved upon and the home owner's associate was willing to work with the City to make those improvements.

Mr. Baer added that it was the City's contention that the lack of compelling public interest was that nothing had changed, and they believe that was not the case.

Mr. Baer listed six reasons that are compelling public interest:

1. Staff report itself stated that the streets have been improved.
2. There have been an addition of condominiums in the area that has increased the density and use of the private streets.
3. A significant element was that there was a mixture of private and public utilities. The application not only requests the dedication of private streets, but also the dedication of private utilities that are underneath the streets.
4. A small portion of the streets is already owned by the City. The eastern edge of Penny Parade Drive is currently owned by the City, there is a mix and it would be a benefit to the City for them to combine them.
5. Emergency Services.
6. The City would receive additional State and Federal funding.

The homeowners are willing to bring the streets up to City standards, and the City would have no reason to make repair for several years.

The following people spoke in FAVOR of the application: Ruth Ann Hamilton, Ross Morgan, and John Yoon.

The following points were made:

- The criteria are ambiguous
- The PUD was approved based on preserving mature trees and visual impacts.
- The City allowed the Hospital to use the private streets for entrance and exits.
- More living units in the Meridian and the Wright property than those who live on the private streets.
- Concern over the Church property traffic increase.
- The park was to be the entrance, but it is no longer.
- HOA is willing to pay their fair share.

8:38:39

Motion:

Commissioner De Lay made the motion in regard to PLNSUB2008-00902 Capitol Park Subdivision Amendment and Planned Development Amendment, based on the testimony heard this evening and information in the staff report presented, Planning Commission forwards a negative recommendation to the City Council.

Seconded by Commissioner Gallegos.

Vote: Commissioner De Lay, Gallegos, and Hill voted "aye". Commissioners Wirthlin, Woodhead, and Dean all voted "no". Chairperson Fife voted "no". The motion failed.

Commissioner Wirthlin made the motion in regard to PLNSUB2008-00902 Capitol Park Subdivision Amendment and Planned Development Amendment moved to table to come back with recommendation for conditions for a positive recommendation.

Commissioner Woodhead seconded the motion.

Vote: Commissioner De Lay, Gallegos, Hill, Wirthlin, Woodhead, and Dean all voted "aye". The motion passed unanimously.

8:42:53

Election of Chair and ViceChair

Commissioner Angela Dean was elected as Chairperson, Commission Michael Gallegos was elected as Vice Chair.

Approval of Minutes was postponed.

8:47:03

Meeting adjourned.