LAYTON CITY PLANNING COMMISSION WORK MEETING MINUTES

TUESDAY, MARCH 9, 2010

MEMBERS PRESENT: Sharon Esplin, Kristin Elinkowski, Gerald Gilbert, Dave Pratt, Tim Pales, Blake Hazen, Dave Weaver

ALTERNATE MEMBERS PRESENT: Brian Bodily

MEMBERS ABSENT:

ALTERNATE MEMBERS ABSENT:

OTHERS PRESENT: Staff Members: Peter Matson, Amanda Jorgensen, Clint Drake, and Julie Jewell

1. **HOME AGAIN SENIOR FAMILY LIVING – CONDITIONAL USE REQUEST FOR A RESIDENTIAL FACILITY FOR ELDERLY CARE**
   This property is located at 659 North East Side Drive in an R-S (Residential Suburban) Zoning District. The applicant and property owner is Debbie Phipps.

City Planner, Amanda Jorgensen, presented the applicant's request for conditional use for a residential facility for elderly care stating that the request was similar to a previous request adjacent to North Hills Drive. Ms. Jorgensen outlined the layout of the home and said the elderly would reside on the main floor and the applicant/owner and her children would live in the basement.

Ms. Jorgensen said the applicant currently has 3 horses and 2 cows on the property and City ordinance dictates that only 1 large animal is based on the acreage of the property. She said the applicant will not be issued a business license until she is in compliance with this requirement. Commissioner Pratt asked if there were any regulations as to how close the animals could be to the house and Ms. Jorgensen replied there were not regulations governing the proximity of the animals to the home.

Ms. Jorgensen said the applicant will contract for medical professional help when necessary for the residents of the facility. Once the business becomes well-established, the applicant would like to move from the home to allow for more residents. If the applicant desires more than 3 elderly residences as proposed with this conditional use request, she will need to apply for an amended conditional use. Ms. Jorgensen said elderly residents may drive if they are capable. She also said adequate parking is available on the property.

Ms. Jorgensen said the applicant currently shares a private driveway and will be required to demonstrate than an access easement exists or create a driveway on her own property.

There was a discussion as to whether or not the residential facility for the elderly could be considered a business. Commissioner Gilbert recommended tabling the item until the Legal Department had been consulted.

Assistant City Attorney, Clint Drake, clarified City ordinance 19.06.050 "*A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility,*" and cited State Ordinance 10-9a-516(3). "*A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.*" Mr. Drake explained that the meaning of the ordinance could be clarified by adding the word "just" as follows: A residential facility for elderly persons may not be considered a business *just* because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

Commissioner Bodily reminded Staff and Commission that the facility must be owned by one of the residents or immediately family members.

Commissioner Elinkowski asked how the proposed use differs from a facility for special needs adults. Long Range Planner, Peter Matson, said that if it is a for profit facility, then it falls under an assisted living facility versus a home for the elderly. He reminded the Commission that State law requires these uses not be excluded from neighborhoods.

Chairman Esplin asked if the proposed conditional use has to be approved unless there are health or safety issues. Mr. Matson replied that there should be reasonable conditions with an approval addressing health, safety and welfare and said the residents are considered to be a protected class whether elderly or handicapped.

Commissioner Elinkowski asked if the applicant would need a business license and if Adult Protective Services would be involved, stating that the Commission needed to be consistent in the handling of all requests for conditional use for residential facilities for the elderly. Ms. Jorgensen responded that a business license and inspections would be required and that State requirements must be met as well. Mr. Matson said a business license was required since a fee would be charged and it would allow the City to coordinate inspections and licensing through the State.

There was continued discussion on the definition of a business and fees the applicant could require without the home being considered a business such as fees to recoup the cost of food for the residents, utilities and maintenance of the facility.

Commissioner Esplin suggested issuing a non-profit business license and felt a license wasn't needed if reasonable conditions are required and the facility is monitored.

Ms. Jorgensen said other similar facilities have been required to get a license. Commissioner Esplin said terminology needed to be worked out in case there was ever a court case involved with this type of use.

Ms. Jorgensen said the State of Utah requires applicants for residential care for the elderly to have a valid City business license.

Commissioner Weaver said Commissioner Gilbert brought up a point at the last meeting when he said the Commission requires conditions on some businesses but the applicant does not comply or remain in compliance with the original conditions.

Ms. Jorgensen replied that Staff is responsible for bringing the applicants into compliance and to re-inspect at regular intervals during the first year, however, with the number of conditional uses granted, it's impossible to continually inspect all of them.

Commissioner Hazen suggested that the applicant be counseled that she has to reside in the home unless one of the elderly residents is an immediate relative.

Mr. Matson remarked that the business would be considered a home occupation and Commissioner Gilbert stated that no employees are allowed with a home occupation. Mr. Matson and Ms. Jorgensen replied that the applicant can't be at the home at all times and the State requires two employees. The applicant is asking for one assistant for the times when she can't be at the home.

Mr. Matson said that with an amendment to the current request for 3 residents that the applicant, under current State law, could not have more than 8 elderly residents.

Commissioner Gilbert asked about parking for residents, employees, families and visitors. Ms. Jorgensen said there is additional parking on a cement pad on the east side of the property that can be striped.

Ms. Jorgensen brought up the issue of the drive approach to the home not being on the applicant's property and stated that the applicant claims she has an access agreement.

Commissioner Hazen responded that both e-mails received by the Commissioners from neighbors stated the applicant did not have an access agreement.

Ms. Jorgensen said a property owner has researched and found that the property owners are liable for any incidents involving the drive access. She said the applicant could be asked to sign a waiver of liability or to put in her own driveway on her property. The placement of such a driveway was discussed.

Commissioner Gilbert asked if the driveway would encroach on the parking and Ms. Jorgensen said the applicant just needs the two-car garage parking and four additional stalls, which the applicant can provide east of the home.

The Commissioners referred to the e-mails they had received and asked for clarification as to where those homeowners lived in relation to the applicant. They reported that the homeowners are concerned about liabilities and aren't interested in giving the applicant a waiver.

There was a discussion on the responsibilities of the Planning Commission versus the City Council when it involves communication with citizens. Planning Commission members need to disclose when they've received communication from a citizen regarding an issue.

Commissioner Elinkowksi felt that visits from home health aides, Hospice, dietitians and family members could create a lot of traffic on the private drive.

Commissioner Gilbert asked if the fence, required as a condition on a previous similar conditional use backing on to North Hills Drive, had been installed. Ms. Jorgensen responded that the fence was installed but that fencing would not be required on the proposed conditional use request.

Commissioner Gilbert asked if the Planning Commission was required to approve the conditional use. Commissioner Pales said the conditional use couldn't be denied and Commissioner Pratt said required

conditions should mitigate and allow the use. Commissioner Weaver felt there were ample reasons to deny the conditional use because of the access issues. Commissioner Pales said the access would be one of the conditions to be resolved. Commissioner Weaver asked if the request could be tabled until there is resolution to the access issue. Ms. Jorgensen replied in the affirmative.

Commissioner Gilbert felt that any more than 3 residents would cause problems on the private road but Commissioner Elinkowski felt the request should not be tabled due to the access issue. Commissioner Weaver and Chair Esplin felt that if the conditional use was approved with the access easement required as a condition, it would cause a problem for the neighbors to work out and force liability on the other residents. Mr. Matson replied that it would seem there is already liability because access is already allowed for the residential use.

Commissioner Bodily asked if the applicant owned the home and Ms. Jorgensen responded that proof of ownership had been provided.

OTHER ITEMS:

Ms. Jorgensen proposed the creation of a discussion group or a committee to propose revisions to the mobile store ordinance. The committee would be comprised of a representative from the City Council, from the Planning Commission and from the Staff. A representative from the Planning Commission and from the City Council will also be needed to serve on the sign ordinance revision committee. She said the citizens sign committee would like to visit the Planning Commission on March 23 to discuss the sign ordinance.

Commissioner Elinkowski said the Citizen Review Board expressed a lot of anger about the City's sign ordinance. Commissioner Gilbert said there were positive comments from the Chamber of Commerce regarding the sign ordinance although Ms. Jorgensen reported that the meeting involved some challenging discussions.

The Commission agreed to accept the proposed alternatives for both the sign and mobile store ordinance until Committees can review the ordinances and propose changes.

Returning to the Home Again request for conditional use, Assistant City Attorney, Clint Drake, said that according to Layton ordinance even non-profit enterprises are required to obtain a business license. Mr. Drake indicated that if the applicant is not able to provide access information, it would be a critical issue and the Planning Commission should consider tabling the item so that further review could occur.

The Commissioners were informed that the City Council had remanded the request for preliminary approval for Harmony Place PRUD to the Planning Commission for further review.

The Planning Commission Work Meeting adjourned at 7:00 p.m.

By Julie K. Jewell
Julie K. Jewell, Secretary to the Planning Commission

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Planning Commission Chairman, Sharon Esplin called the meeting to order at 7:05 p.m. The Pledge of Allegiance was recited and an invocation was given by Commissioner Hazen.

Chairman Esplin called for a motion to approve the February 23, 2010 minutes. Commissioner Weaver asked for Page 5, Paragraph 4 of the regular meeting minutes to be corrected to read "Commissioner Weaver" rather than "Mr. Weaver."

Commission Weaver moved to approve the February 23, 2010 Planning Commission Meeting minutes with the correction as noted. Commissioner Pales seconded the motion and the voting was unanimous.

Chairman Esplin called for a motion to open Public Review. Commission Gilbert moved to open Public Review. Commissioner Hazen seconded the motion and the voting was unanimous.

PUBLIC REVIEW:

1. **HOME AGAIN SENIOR FAMILY LIVING – CONDITIONAL USE REQUEST FOR A RESIDENTIAL FACILITY FOR ELDERLY CARE**
   This property is located at 659 North East Side Drive in an R-S (Residential Suburban) Zoning District. The applicant and property owner is Debbie Phipps.

City Planner, Amanda Jorgensen, presented the request for conditional for a residential facility for elderly care for a maximum of three individuals. The elderly residents will reside on the main level of the home and the owner and family will reside in the basement.

Ms. Jorgensen said the property is located east of Highway 89 on East Side Drive which is a collector road. The residential home is setback approximately 107 feet from the front property line. The property has fencing and landscaping that surrounds portions of the property. There are currently 3 horses and 2 cows located on the front and rear portion of the property. Section 19.06.080 (Farm Animals) of the

zoning ordinance allows this property to only have one large farm animal for the 20,000 square feet of lot area.

The applicant will contract out medical assistance such as CNA's and other medical professionals when necessary. The applicant will also have an assistant that will provide support for the needs of these elderly persons when the applicant is not available.

The applicant has indicated that she would like to relocate her family once this business is established. The applicant has been informed by staff that once she has relocated to another home, she is required to obtain an amended conditional use approval from the Planning Commission for additional elderly persons. At this time she would only be approved for 3 individuals. The applicant has also indicated that these individuals may or may not be able to drive. Due to this, the applicant is required to provide 4 additional off-street parking stalls, which will be located adjacent to the existing garage and/or the rear of the property where hard surfacing exists. The applicant is required to provide a total of 4 parking stalls to accommodate the elderly individuals along with her assistant.

The property also shares a common driveway, which is a private lane. The applicant is required to provide proof of an access easement agreement or create and record one for the use of the existing driveway.

Ms. Jorgensen said Staff recommends the Planning Commission table the request for conditional use for the residential facility for elderly due to the present lack of proof of the access easement.

Chairman Esplin explained the need for more information and the inability to adequately review information that had just been received. He said the Planning Commission may table the request in order to perform a more complete review before making a decision.

Chairman Esplin opened the meeting to comments from the public.

A resident, Roy House, 626 North East Side Drive in Layton, asked when the next meeting would be to review the conditional use request. Chairman Esplin responded that the next meeting would be held in two to four weeks pending the applicant meeting requirements. He stated the property would be posted to notify neighbors of the meeting.

Mr. House stated that he felt the property notice had not been done enough in advance. He had been out of town and had not had time to gather all the information he needed. Planning Commission Secretary, Julie Jewell, responded that the property had been posted seven days in advance as required by law as well as published on the City's website.

The applicant, Debbie Phipps, 659 North East Side Drive, said she probably should have informed the neighbors a lot sooner of her plans for the residential care of the elderly. She said she would get rid of the animals and keep up the property outside.

Chairman Esplin asked Ms. Phipps about the access easement. Ms. Phipps replied that she was unable to find a copy of the easement in her title documents and had requested it from the title company and would provide it as soon as it was received. Ms. Phipps asked if there were liability concerns about the shared driveway.

Chairman Esplin stated that the conditional use could not be granted unless the access easement was obtained or the applicant puts in her own driveway.

Commissioner Gilbert asked the applicant if she was aware that she was currently in violation due to the number of animals on the property. Ms. Phipps said she is looking into property to rent and move the animals.

Mr. House asked if he could speak for five minutes. Chairman Esplin said the time limit for individual comments would be three minutes.

Mr. House described the easement between his home and the Ernshaw home stating that he owned six feet of the roadway and the Ernshaws owned 18 feet. Mr. House said his insurance company indicated that if he allows the residential care facility to use his property for access, he would be liable. He asked the Commission not to put the burden on the surrounding property owners.

Chairman Esplin assured Mr. House that the Commission didn't want to put liability on the homeowners and said if the neighbors did not grant the easement or waiver, then Ms. Phipps would need to put in her own driveway. He felt the Commission and Staff had not had time to properly research the situation.

Commissioner Weaver recommended that Ms. Phipps work with the property owners to get input on her plans. He asked that a spokesperson be appointed to represent the property owners at the next review of the application.

There were no other questions or comments. Chairman Esplin called for a motion on the item.

Commissioner Pales moved to table the request for conditional use to an indefinite date until all information needed to make a determination has been received. Commissioner Elinkowski seconded the motion and the voting was unanimous.

Chairman Esplin called for a motion to close Public Review. Commissioner Gilbert moved to close Public Review. Commissioner Pales seconded the motion and the voting was unanimous.

Chairman Esplin called for a motion to adjourn the meeting. Commissioner Elinkowski moved to adjourn the meeting and the voting was unanimous.

The meeting was adjourned at 7:25 p.m.

By Julie K. Jewell
Julie K. Jewell, Secretary to the Planning Commission