

**LAYTON CITY PLANNING COMMISSION WORK MEETING MINUTES  
FEBRUARY 12, 2013**

**MEMBERS PRESENT:** Jeremy Davis, Sharon Esplin, Dawn Fitzpatrick Chad Harward, Wynn Hansen, Gerald Gilbert, Tim Pales, Dave Weaver

**MEMBERS ABSENT:** Brian Bodily

**OTHERS PRESENT:** Staff Members: Peter Matson, Kem Weaver, Brandon Rypien, Clint Drake, Julie Jewell, Councilmember Jory Francis

**PUBLIC REVIEW:**

**1. VAPOR LOCK – CONDITIONAL USE REQUEST FOR A RETAIL TOBACCO SPECIALTY BUSINESS**

This property is located 2010 North Main Street, Suite 506 in Antelope Square in a C-H zoning district. The property is owned by Sears represented by Tom Longaker. The applicant is Brad Parsons.

Planner I, Brandon Rypien, explained the buffer requirements for a Retail Tobacco Specialty Business (RTSB). He presented an overview of the proposed site at 2010 North Main Street, Suite 506 just north of the vacant Albertson's store. He said this site was one of only two sites available in the City for an RTSB. He said that one RTSB is inside several buffer areas and once the business discontinues, that location would no longer be in compliance for an RTSB.

Mr. Rypien pointed out Tanner Clinic to the east of the site, with Work Force Services to the north, Family Connection and a church to the north east, and another church to the northwest. All of the sites listed with the exception of the Tanner Clinic are in Clearfield City boundaries. The buffer requirements are as follows:

- RTSBs shall not be located within 600 feet of another RTSB within or outside of Layton City boundaries.
- RTSBs shall not be within 1,000 feet of a community location.
- RTSBs shall not be located within 600 feet of property used or zoned for agricultural use or residential use.
- The proximity requirements shall be measured in a straight line from the nearest entrance of the RTSB to the nearest property boundary of the community location, agricultural or residential use/zone, without regard to intervening structures or zoning districts.

City Planner, Peter Matson, said the first buffer requirements specifies both within and outside of Layton City, while the other two do not make that specification, nor does the State code. He had looked through the minutes when the ordinance was amended and didn't find any specific discussion regarding the last two requirements not specifying within or outside the City, although at the Staff level there was concern with the term "outside of Layton City" limits in relation to other cities and smoke shops in those cities. He said that the mapping showed the proposed site as an available area, and as the acting zoning administrator, he determined it was an acceptable area. He said the mapping supports the decision.

Commissioner Fitzpatrick expressed disagreement with the decision stating that an omission in the ordinance doesn't make it okay to place an RTSB at that site.

Assistant City Attorney, Clint Drake, said that the legal analysis is that the decision should be left to the zoning administrator. If there is an ambiguity in interpretation of the municipal zoning code, that should be left to the decision of the zoning administrator.

Commissioner Fitzpatrick asked if the ordinance could be re-opened for further discussion. Mr. Matson responded that Mr. Parsons (the current applicant for the Vapor Lock business) would be vested, but the ordinance could be revisited and possibly amended.

There was a discussion of what the possible intent of the State legislation was since the State law doesn't use City terminology at all. Mr. Drake said the City ordinance is currently more restrictive than the State ordinance. He said the City ordinance closely mirrors the State ordinance for RTSB's other than the City added language regarding criminal history and added "inside or outside the City" to the 600 foot buffer requirement between RTSB's. He said the State ordinance is the baseline and the City can make decisions to be more restrictive. He said additional language could be added to the other buffer requirements.

Councilmember Jory Francis said he would like to see the ordinance revisited and Mr. Drake agreed. Mr. Matson said Staff could do a border analysis.

Mr. Matson said that Staff has been relaying to the public that the proposed site is an available location based on the mapping, the wording of the ordinance, and the minutes. He said it has been one of the only locations available for an RTSB.

Commissioner Fitzpatrick asked if Staff thought about there being churches and daycares right on the City border.

Mr. Matson said there was a specific concern about the separation of RTSB's to avoid clustering. He said that didn't mean Staff thought that the community uses and separation from RTSB's were any less important or impacting. He said the mapping supports the buffer requirements. If only one spot had been left in the City that may have questionable with the public.

Commissioner Davis asked if the City has an obligation to provide a location for an RTSB use. Commissioner Fitzpatrick and Mr. Matson said there are some cities that don't allow RTSB's or have available locations.

Mr. Drake said the question is whether the desire of the Commission and Council is to include calculations outside the City or just within City limits. He said it would be good to include the intent of the ordinance regarding the 1000 foot buffer from a community location within or outside of the City.

The decision of the Commissioners was that they wanted to respect the boundaries of the other cities.

Mr. Matson said if the Commission disagreed with his decision as acting zoning administrator, he wanted them to know that Bill Wright, the Community Development Director, had pointed out this location as available for an RTSB.

With regard to cities not having a code for RTSB's in their ordinances, Mr. Drake said these cities would have to follow the State code.

Commissioner Pales asked if the proposed business has to follow the RTSB guidelines even though they aren't selling tobacco or paraphernalia at all. Mr. Drake said they are still categorized as an RTSB. Mr. Rypien said the tobacco definition includes electronic cigarettes.

Councilmember Francis said he believes the radius should be respected but it would not be fair to ask the proposed business to comply since they are already vested.

Commissioner Gilbert asked if a condition should be added or condition #4 revised to make sure that the electronic cigarettes and accessories are the only products sold at the store. He asked about enforcement.

Mr. Drake said the City relies on citizen complaints. In addition to the citizen complaints, he said the Community Development Department can follow up on the conditional use, and he said the City's Police Department is very proactive with regard to RTSB's.

There was a discussion of how the nicotine gets in the flavoring. Mr. Rypien said the applicant will be getting his product from China and not FDA approved.

**OTHER:**

Commissioner Davis announced that he had taken a job on the Oregon coast that was a good solid job with career progression. He said he would be resigning from the Commission. Commissioner Gilbert remarked that Commissioner Davis had been a great asset to the Commission and his insight and input has been valuable.

Commissioner Davis said he has learned and grown more on the Commission more than in any job he'd ever had. He appreciated the opportunity to get feedback and angles from other Commissioner and working with them to put together a good product.

Mr. Matson introduced Chad Harward, a new member to the Commission. Commissioner Harward, who currently lives in the Wild Horse Springs Subdivision, said he had lived in Layton for 20 years and had been on the Layton City Board of Adjustment for the past six years. He said he is a believer in planning and felt that there were a lot of important decisions in Layton's future.

Mr. Matson expressed his appreciation to the Commissioners for their sacrifices in behalf of the City.

Commissioner Gilbert remarked that he felt the Planning Division does a great job. He said he has realized from reading about other cities that Layton is on the cutting edge of planning and zoning changes and a leader in planning among the cities in Utah.

**2. SHADYBROOK PARK PHASE 5 – FINAL APPROVAL**

This 5.422 acre property is located at approximately 2400 West 850 North in an R-S (Residential Suburban) zoning district. The applicant, Ed Green, is proposing 12 single family lots.

Planner II, Kem Weaver, said this subdivision phase would provide a connection to Gordon Avenue.

**3. FOOTHILLS AT CHERRY LANE PHASE 4 – FINAL APPROVAL**

This 3.14 acre property is located at approximately 1925 East Oakridge Drive in an R-1-10 (Single Family Residential) zoning district. The applicant, Brighton Homes Utah, represented by Patrick Scott, is proposing 10 single family lots.

There were no questions or comments regarding this item.

**4. ESTATES AT MUTTON HOLLOW PHASE 4 – FINAL APPROVAL**

This 9.9 acre property is located at approximately 1550 East 250 South in an R-1-8 (Single Family Residential) zoning district. The applicant, Howard Kent, is proposing single family lots.

There were no questions or comments regarding this item.

  
Julie Jewell, Planning Commission Secretary

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Planning Commission Chair, Sharon Esplin, called the meeting to order at 7:03 p.m. The Pledge of Allegiance was recited and Chad Harward gave an invocation.

Chairman Esplin announced that Commissioner Davis would be moving from Layton and leaving the Planning Commission and expressed appreciation for the work Commissioner Davis did on the Commission.

**APPROVAL OF THE MINUTES:**

Chairman Esplin called for a motion to approve the January 22, 2013, Planning Commission and Work Meeting Minutes. Commissioner Hansen moved to adopt the minutes as written. Commissioner Gilbert seconded the motion, and the voting was unanimous.

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

**PUBLIC REVIEW:**

**1. VAPOR LOCK – CONDITIONAL USE REQUEST FOR A RETAIL TOBACCO SPECIALTY BUSINESS**

This property is located 2010 North Main Street, Suite 506 in Antelope Square in a C-H (Highway Regional Commercial) zoning district. The property is owned by Sears represented by Tom Longaker. The applicant is Brad Parsons.

Planner I, Brandon Rypien, presented the requested for conditional use for a Retail Tobacco Specialty Business (RTSB). He said the store will only sell electronic cigarettes and accessories for electronic cigarettes. He gave an overview of the location of the proposed business, which is a conditional use in the C-H zone.

Mr. Rypien said RTSBs are regulated in Chapter 19.14.100(14) and defined in Chapter 19.02.020 (46)(162)(201). An RTSB is not allowed as a Temporary or Seasonal Use. He pointed out and explained the following buffer requirements on a map:

- RTSBs shall not be located within 600 feet of another RTSB within or outside of Layton City boundaries.
- RTSBs shall not be within 1,000 feet of a community location.
- RTSBs shall not be located within 600 feet of property used or zoned for agricultural use or residential use.

- The proximity requirements shall be measured in a straight line from the nearest entrance of the RTSB to the nearest property boundary of the community location, agricultural or residential use/zone, without regard to intervening structures or zoning districts.

Mr. Rypien said the proposed location meets all of the buffer requirements.

As part of receiving a business license, Mr. Rypien said the owner is required to submit a criminal background check. The applicant, Brad Parsons, has completed the requirement and meets all business licensing requirements.

Mr. Rypien said the staff at the RTSB will train the customers on how to use the electric cigarettes and products. He said hookas will not be displayed or sold at the store.

Mr. Rypien reviewed the parking requirements and said the requirement for six parking spaces had been met. The following are the nine conditions the applicant must meet:

1. The RTSB shall not be located within the 600 foot buffer from another retail tobacco specialty business within or outside of Layton City boundaries.
2. The RTSB shall not be within one thousand (1,000) feet of a community location.
3. The RTSB shall not be within six hundred (600) feet of property used or zoned for agricultural use or residential use.
4. The RTSB shall be limited to selling electronic cigarettes and electronic cigarette accessories and shall not include hookahs and tobacco paraphernalia.
5. The RTSB shall be limited to selling liquid flavoring that is not considered a cannabinoid or any other harmful or illegal substance.
6. The RTSB shall provide six (6) parking stalls.
7. The RTSB shall comply with all regulations and requirements regarding materials that are harmful to minors. (Utah Code 26-38-2.6(1)(b)(ii))
8. Signage shall be placed in the window near the entrance that states, "No Smoking inside building or within 25 feet of the business entrances. Vaping is permitted in the building only" and "No persons under the age of 19 are allowed in building." Utah Code 26-38-2.6. Allows for the use of e-cigarettes in a business that constitutes at least 75% of the gross sales from e-cigarettes and substances.
9. The RTSB shall meet all City Staff requirements as outlined in Staff memos.

There were no questions from the Commission. The applicant, Brad Parsons, 2816 North 725 West, Layton, said he had received a copy of the conditions and that he understood and could comply with the conditions. He said he was embarking on this business to try to help people stop smoking, explaining that he had tried for 30 years to stop smoking and the electronic cigarettes really helped. He said he was leaving a 31-year career to open the RTSB.

There were no questions from the audience.

Commissioner Hansen said it was important that the minutes reflect, with the absence of specific wording in the Layton City ordinance relating to other cities bordering Layton City regarding RTSB's, that if the ordinance is reviewed and made more specific, this location would no longer be in compliance. Mr. Parson's business would be grandfathered according to current ordinance, however, if the business closed, then the location would not be an approved location.

There were no further questions or comments from the Commission or the audience.

Chairman Esplin called for a motion on the item. Commissioner Pales moved that the Planning Commission grant approval for the conditional use permit for a retail tobacco specialty business at 2010 North Main Street Suite 506, subject to the applicant meeting all Staff conditions, which are hereby adopted as requirements.

Commissioner Davis seconded the motion, and the voting was unanimous.

## **2. SHADYBROOK PARK PHASE 5 – FINAL APPROVAL**

This 5.422 acre property is located at approximately 2400 West 850 North in an R-S (Residential Suburban) zoning district. The applicant, Ed Green, is proposing 12 single family lots.

Planner II, Kem Weaver, presented the request for final approval for the final phase of the Shadybrook Park Subdivision. He said the subdivision received preliminary approval in October of 2004. Mr. Weaver gave an overview of the surrounding phases of Shadybrook Park and Swan Meadows subdivisions as well as other subdivisions in the area all of which are zoned R-S with lot averaging.

Mr. Weaver said the applicant is proposing to subdivide the property into 12 lots. 2550 West Street will connect to Gordon Avenue, which is a key link from existing subdivisions to Gordon Avenue.

Mr. Weaver said the 12 lots are from 12,075 square feet to 19,000 square feet in size. He said there were some minor corrections based on the Engineering memo that will be required before the mylar can be submitted for review and recordation. Mr. Weaver said Staff recommends approval subject to the applicant meet all Staff recommendations.

There were no questions from the Commission or the audience.

Chairman Esplin called for a motion on the item. Commissioner Fitzpatrick moved that the Planning Commission forward a positive recommendation to the City Council to approve the final plat for Shadybrook Park Phase 5 subject to the applicant meeting all Staff requirements. Commissioner Weaver seconded the motion, and the voting was unanimous.

## **3. THE FOOTHILLS AT CHERRY LANE PHASE 4 – FINAL APPROVAL**

This 3.14 acre property is located at approximately 1925 East Oakridge Drive in an R-1-10 (Single Family Residential) zoning district. The applicant, Brighton Homes Utah, represented by Patrick Scott, is proposing 10 single family lots.

Mr. Weaver presented the request for preliminary approval for this portion of The Foothills at Cherry Lane in May of 2011. He gave an overview of the subdivision phases and explained that one lot in Phase 4 is double fronted and will have a required minimum rear yard setback of 35 feet. He said all lots meet the R-1-10 zoning requirements. Minor corrections will be required before the mylar can be submitted for review and recordation.

Based on this information, Mr. Weaver said Staff recommends the Planning Commission forward a positive recommendation to the City Council to grant final approval to The Foothills at Cherry Lane Phase 4 subject to the applicant meeting all Staff requirements.

There were no questions or comments from the Commission or the audience.

Chairman Esplin called for a motion on the item. Commissioner Weaver moved that the Planning Commission forward a positive recommendation to the City Council to grant final approval to The Foothills at Cherry Lane Phase 4 subject to the applicant meeting all Staff requirements. Commissioner Pales seconded the motion, and the voting was unanimous.

## **4. THE ESTATES AT MUTTON HOLLOW PHASE 4 – FINAL APPROVAL**

This 9.9 acre property is located at approximately 1550 East 250 South in an R-1-8 (Single Family Residential) zoning district. The applicant, Howard Kent, is proposing 5 single family lots.

Mr. Weaver gave an overview of the phases of The Estates at Mutton Hollow. He said the undeveloped eastern portion of the property may be one or two phases and is zoned R-1-10. As part of the annexation agreement, a City park with a regional detention basin is planned in a portion of this area.

Mr. Weaver said the developer is proposing 35 lots on 9.9 acres which provides a density of 3.53 units per acre. He said the density easily meets the density range of 3 to 4 units per acre for the R-1-8 zone, and all 35 of the proposed lots meet the frontage and area requirements of the R-1-8 zone. The development of the subdivision will have to adhere to the associated annexation agreement that was approved with the annexation of the property into Layton City by the City Council. He overviewed the connectivity of the proposed streets in the development.

Mr. Weaver said Staff recommends the Planning Commission forward a positive recommendation to the City Council subject to meeting all Staff requirements.

Commissioner Weaver asked if The Estates at Mutton Hollow Phase 4 had secondary water. Mr. Weaver said a Weber Basin water line is in Boynton Road to the east. However, the developer, Howard Kent, said Phases 1-4 do not have secondary water and they were not required to install dry lines. The phases are in the area of an irrigation company that does not have the capability or the plans at this time to provide secondary water, so the dry lines were not required.

There was a discussion regarding an ordinance stating that dry lines should be installed in areas where there is a possibility of secondary water service. However, Mr. Weaver said in the case of Phases 1-4, secondary water is not available or planned to be available. Mr. Weaver said he would talk with the Engineering Division about the secondary water requirement. City Planner, Peter Matson, said he was confident that the standard had been met. He said if anything has been overlooked regarding the standard, it will be corrected.

Commissioner Weaver spoke of the need to provide secondary water so that residents could care for their landscaping without having to use culinary water which may not have enough pressure to adequately irrigate their properties.

There were no further questions or comments.

Chairman Esplin called for a motion on the item. Commissioner Hansen moved that the Planning Commission forward a positive recommendation to the City Council to approve the final plat for The Estates at Mutton Hollow Phase 4 with a specific request to Staff that they review the requirements for secondary water. Commissioner Fitzpatrick seconded the motion, and the voting was unanimous.

Chairman Esplin called for a motion to close Public Review and adjourn the meeting. Commissioner Pales moved to close Public Review and adjourn the meeting. Commissioner Fitzpatrick seconded the motion, and the voting was unanimous. The meeting adjourned at 7:30 p.m.

  
Julie Jewell, Planning Commission Secretary