

LAYTON CITY PLANNING COMMISSION WORK MEETING MINUTES

SEPTEMBER 9, 2014

MEMBERS PRESENT: Brian Bodily, Dawn Fitzpatrick, Gerald Gilbert, Wynn Hansen, Brett Nilsson, Robert Van Drunen, Dave Weaver

MEMBERS ABSENT: Randy Pulham, L.T. Weese

OTHERS PRESENT: Staff Members: Peter Matson, Kem Weaver, Tyson Willis, Julie Matthews, Councilmember Tom Day

1. THE VILLAS AT HARMONY PLACE PRUD PHASES 4, 5, 6 – FINAL APPROVAL

This 6.53 acre property is located at approximately 525 South 2500 West in an R-S PRUD zoning district. The applicant, The Adams Company, represented by Dave Adams, is proposing 33 single family residential lots (12 lots in Phase 4, 14 lots in Phase 5, and 7 lots in Phase 6).

Planner II, Kem Weaver, presented the request for final approval for the Villas at Harmony Place PRUD Phases 4, 5, 6, which is at the southern portion of the overall development. This development will connect 525 South with existing streets in Phase 3, Phases 1A and 1B. One phase, Phase 2, still remains to receive final plat approval. This phase surrounds the LDS church property.

The preliminary plat was approved by the City Council on August 6, 2009. The proposed phases contain a total of 6.53 acres. Phase 4 has 12 lots on 2.20 acres, Phase 5 has 14 lots on 2.63 acres, and Phase 6 has 7 lots on 1.70 acres. The density for the combined phases is 5.05 units per acre.

Councilmember Day asked if the fence had to be installed with the improvements. Mr. Weaver said the fence would need to be installed and that others who had not installed the fencing had been required to be compliant. Councilmember Day said that didn't happen until the home was occupied. Mr. Weaver said the situation should have been caught earlier.

There was a discussion regarding issues at Evergreen Farms. Mr. Weaver said the issues were due to a lack of communication between the developer and the entity that purchased the subdivision. He said he would make sure Evergreen Farms installed the fence.

Commissioner Fitzpatrick expressed concerns that fencing sections would not match if the specified color is taupe. Mr. Weaver will specify that new fencing must match existing fencing. Mr. Weaver also explained where the masonry wall for Layton Parkway would be required.

Mr. Weaver was asked how the future school would be accessed and said there would be a street where Fieldstone Way curves to the northwest. He also pointed out the trail system and the detention pond west of Phase 6. There was a discussion regarding detention, and Mr. Weaver said the school would have its own detention, however, there is no timetable for when the school will be built.

2. TITLE 19.18 – CHANGING FROM A BOARD OF ADJUSTMENT TO AN APPEAL AUTHORITY -- Ordinance Amendment – Title 19 (Zoning), Chapter 19.18 “Board of Adjustment” Replacing the Board of Adjustment with a Land Use Appeal Authority – Ordinance 14-09; Ordinance

Amendment – Various Sections of the Layton Municipal Code - Changing all references of “Board of Adjustment” to “Land Use Appeal Authority” – Ordinance 14-10

City Planner, Peter Matson, presented the proposed ordinance amendment to change from a Board of Adjustment to an Appeal Authority. He said other cities are making this change, and that the language in the ordinance for an appeal authority is similar to that of a board of adjustment.

Mr. Matson said the legal and land use community has several reasons for having an Appeal Authority. He said a Board of Adjustment does not meet often and may not be familiar with the most recent land use laws. If not making these decisions often, the efficacy of the decision might be in question. He said there are always changes in land use laws. He explained that usually the chair of the Board is an attorney or a land use attorney. He said there is no residency requirement for being on the Board. Mr. Matson reviewed the most recent Board of Adjustment case.

Mr. Matson said one of the reasons a lot of cities are going to an appeal authority is that the individual is independent, with no interest in the case and is not necessarily a resident. The appeal authority, usually a land use attorney, may be hired under a temporary or long-term contract.

In this case, Mr. Matson said it is proposed that an individual be appointed by the CEO of the City, which would be the City Manager. The appeal authority will adopt his/her own rules of procedures for conducting a meeting/hearing. Duties would be limited to appeals regarding zoning decisions, special exceptions to terms of the zoning ordinance, variances to ordinances and determination of expansion of non-conforming uses. The appeal authority would have a delegated authority from the City Council.

Mr. Matson said he went through the ordinances and searched for Board of Adjustment references. He said the section regarding flood plain decisions, which have been appealable to the Board of Adjustment, is proposed for repeal since the County has a review board for this purpose. A no longer applicable section referring to an “official map” will be removed. Please see attached ordinance for all changes.

Mr. Matson said that the State land use code (LUDMA) will be reviewed so that City code is aligned with LUDMA. A matrix will be created regarding appeals such as who can appeal what decisions, etc.

Mr. Matson said that in the future if the Planning Commission agrees that going to a land use authority to deal with these types of decisions and processes is the right choice, then the ordinance needs to be rewritten in a similar fashion as to what is outlined in Ordinance 14-09. He said the efficiency aspects of having an appeal authority versus a board of adjustment are worthy of consideration.

Commissioner Nilsson asked what would happen if the Planning Commission or City Council doesn't like the decision of the appeal authority. Mr. Matson said the Planning Commission and City Council act from either a legislative or administrative standpoint. He said the appeal authority or Board of Adjustment functions in a quasi-judicial capacity, in an impartial manner such as a judge. The appeal authority determines if the decision or request meets the law and should be independent of approval by the Planning Commission or City Council.

Associate City Attorney, Tyson Willis, said the decision of the appeal authority could be appealed to the State district court. Whoever appeals the decision to the district court must have been adversely affected by the decision.

Commissioner Fitzpatrick asked if the appeal authority could override the zoning policy. Mr. Matson said an appeal of a zone change or code change would have to go to the district court. She asked if the

citizens could have appealed the zoning to a land use authority. Mr. Matson said if they could have shown standing that the City Council decision affected them adversely, they could have brought a suit.

Commissioner Nilsson asked if the City would defend the appeal authority and support them in the legal process in the case of an appeal. Mr. Matson said the City would have the financial responsibility if the appeal went to the district court.

Commissioner Fitzpatrick asked why the appointment would be by the City Manager and not the Mayor. He said the City Attorneys felt the City Manager should make the appointment with the advice and consent of the City Council. They felt the City Manager, with years of dealing with individuals having land use expertise, would be the person to recommend the individual to the Council for review. The appointment would be done by contract rather than go before the City Council by resolution.

Commissioner Fitzpatrick asked if the person would be a City employee since they would be hired by the City Manager. Mr. Matson said they would be hired on something similar to a retainer. Staff will work to resolve the problem and land use authority would be last resort. He said the powers and duties by State law are pretty straight forward. State law outlines criteria to qualify for a variance. Appeal authority works within the guidelines of City and State law, just as the Board of Adjustment does.

He said there would still be routine and uncontested matters under very limiting circumstances. The modification would have to be very, very minor but still doesn't meet the letter of the law. These requests can be handled administratively.

Commissioner Fitzpatrick asked if someone hired by the City could be objective. Mr. Matson said the planning periodicals he receives have requests for planners who may want to act as an appeal authority. There are usually just on call. The City has a case and transmits the information to the appeal authority. They look at it like a judge would. The compensation is just for their time.

Commissioner Fitzpatrick said the Board of Adjustment is five people appointed by the Mayor. Councilmember Day asked the Commission if they preferred an appeal authority or a board of adjustment.

Commissioner Hansen said appeals that would arrive on the desk of the land use appeal authority would be the result of ordinances created by the Planning Commission and City Council. The course of appeal would be to the land use appeal authority. The decision is judicial at that point and the Planning Commission and City Council would no longer be involved.

Chairman Gilbert said the Council would approve the choice of the individual. He said he felt the City Manager is more involved day to day and has a better historical perspective.

Commissioner Nilsson remarked that the City Manager handles the budgets and funds.

Commissioner Weaver expressed a concern with dropping from five individuals on a board to one.

Mr. Matson said that years ago he had received a request to be a hearing officer in another county.

Mr. Willis made the comparison to a jury trial versus a bench trial. He said it seems more efficient when a judge makes the decision and it seems fairer with a jury. He said the City Council will get to approve the choice for the position.

Commissioner Hansen said that bench decisions aren't always right. Mr. Willis said neither are jury decisions always right. With an appeal authority, then it has to go to district court if appealed.

Mr. Matson said Staff is working on a couple of cases now and are trying to exhaust every avenue to resolve their issue. Sometimes it comes to the point where the applicant is told, based on the guidelines, how the appeal authority would likely look at it. He said in other jurisdictions, the appeal authority takes over when planners can't resolve the problem.

Commissioner Hansen asked if the change is made and it does not work, can it be reversed.

Mr. Matson said State law allows cities to define their appeal authority.


Julie K. Matthews, Planning Commission Secretary

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Chairman Gilbert called the meeting to order at 7:06 p.m. The Pledge of Allegiance was recited and an invocation was given by Commissioner Fitzpatrick.

Chairman Gilbert called for a motion to approve the July 22, 2014, Planning Commission and Work Meeting Minutes. Commissioner Fitzpatrick asked that the Work Meeting minutes be corrected to read that her concern was that Mr. Martinez referred several times to a 2,500 square foot facility rather than the 1,000 square foot facility specified in the Staff report.

Commissioner Nilsson moved to approve the minutes with the noted correction. Commissioner Hansen seconded the motion, and the voting was unanimous.

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

1. THE VILLAS AT HARMONY PLACE PRUD PHASES 4, 5, 6 – FINAL APPROVAL

This 6.53 acre property is located at approximately 525 South 2500 West in an R-S PRUD zoning district. The applicant, The Adams Company, represented by Dave Adams, is proposing 33 single family residential lots (12 lots in Phase 4, 14 lots in Phase 5, and 7 lots in Phase 6).

Planner II, Kem Weaver, presented the request for final approval for the Villas at Harmony Place PRUD Phases 4, 5 and 6. He said the applicant, The Adams Company, was being represented by Dave Adams.

The preliminary plat for the Villas at Harmony Place PRUD was approved in August of 2009. The proposed phases contain a total of 6.53 acres. Phase 4 has 12 lots on 2.20 acres, Phase 5 has 14 lots on 2.63 acres, and Phase 6 has 7 lots on 1.70 acres. The density for the combined phases is 5.05 units per acre.

Mr. Weaver said a portion of each phase has common area. The common area will be completed with the development of these three phases and will assist Perry Homes with the completion of the common area in Phase 1B.

Mr. Weaver said the solid vinyl fence on the south boundary must match fencing in the other phases. He said the proposed phase will extend 525 South Street further west and create a connection with Harmony Drive, which connects to the future Layton Parkway. Temporary turnarounds will only be required at the end of Phases 4 and 5, but will not be required for Phase 6 because of the existing street connections.

Mr. Weaver said Staff recommends the Planning Commission forward a positive recommendation to the City Council to grant final approval to the Villas at Harmony Place PRUD Phases 4, 5, and 6.

Commissioner Weaver asked about the location of the vinyl fencing. Mr. Weaver explained the transition from the vinyl fencing to an opening/landscape buffer to Layton Parkway and the masonry wall, which will be set back further at that location.

Commissioner Nilsson asked if Layton Parkway would cause any issues with the detention basin for these phases. Mr. Weaver said Layton Parkway will run parallel to the berming of the detention basin and cause no issues.

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

Chairman Gilbert called for a motion on the item. Commissioner Bodily moved that the Planning Commission forward a positive recommendation to the City Council to grant final approval to the Villas at Harmony Place PRUD Phases 4, 5, and 6. Commissioner Weaver seconded the motion. Commissioner Fitzpatrick asked to add a recommendation that the vinyl fencing match that in other phases of the subdivision. Mr. Weaver said he would put that recommendation in the Staff report. Commissioners Bodily and Weaver accepted the change and the voting was unanimous.

Chairman Gilbert called for a motion to close Public Review and open the Public Hearing. Commissioner Fitzpatrick moved to close Public Review and open the Public Hearing. Commissioner Hansen seconded the motion, and the voting was unanimous.

OTHER – UPDATES FOR THE COMMISSOIN

City Planner, Peter Matson, reviewed the status of the cell tower conditional use application at Central Davis Junior High School. He said the applicant requested that the Planning Commission review be postponed to the September 23, 2014, Planning Commission agenda. Drawings have been revised to shift the tower to the south.

Mr. Matson said that Planner I, Andrew King, had taken a job with Sandy City as a senior planner. He expressed appreciation to Andrew for his work at Layton City and said he was a very good staff person.

2. TITLE 19.18 – CHANGING FROM A BOARD OF ADJUSTMENT TO AN APPEAL AUTHORITY -- Ordinance Amendment – Title 19 (Zoning), Chapter 19.18 “Board of Adjustment” Replacing the Board of Adjustment with a Land Use Appeal Authority – Ordinance 14-09; Ordinance Amendment – Various Sections of the Layton Municipal Code - Changing all references of “Board of Adjustment” to “Land Use Appeal Authority” – Ordinance 14-10

Mr. Matson presented Ordinance 14-09, which is a proposal to change Chapter 19.18 “Board of Adjustment: to replace the Board of Adjustment with a Land Use Appeal Authority. He said State law requires municipalities to establish an appeal authority to hear and decide upon the following:

- a) Appeals from zoning decisions applying to the zoning ordinance;
- b) Special exceptions to the terms of the zoning ordinance;
- c) Variances from the terms of the zoning ordinance; and
- d) Determinations regarding the nonconforming uses.

He said these tasks are currently assigned to the Board of Adjustment. Ordinance 14-09 proposes to replace the Board of Adjustment with a Land Use Appeal Authority, who would be an individual with experience in the

principles and application of state and city zoning regulations. Many cities in the State have gone the direction of an appeal authority (or hearing officer) given the fact that legal issues associated with land use and zoning decisions, appeals and interpretations have become increasingly complex. This ordinance amendment allows for the appointment of an independent professional (typically an experienced land use attorney) to hear and decide matters that have been administered through the Board of Adjustment.

He said Ordinance 14-10 replaces all references in the Municipal Code to Board of Adjustment with Land Use Appeal Authority with the exception of sections that do not apply. (See attached proposed ordinance amendment.) These references deal with flood plains, which are now administered by FEMA and the County and to a City Map, which is a reference no longer used. These sections are proposed to be repealed.

Mr. Matson said that the proposal to go from a five-member board appointed by the Mayor and City Council to an individual acting as a hearing officer and land use authority was to address a trend occurring throughout the state with municipalities with regard to the land use development act to have an individual acting in this position with expertise in land use.

Mr. Matson listed the times the Board of Adjustment had met, which amounted to approximately once per year. He said that is a good sign that City codes are written reasonably well and understood by the developers and property owners, and that Staff works with property owners to resolve problems or issues with a property so they do not have to go before the Board. All issues usually come from a property owner request for a variance or the interpretation of a code as it has been administered by the zoning administrator and his staff.

Mr. Matson said if Ordinances 14-09 or 14-10 are forwarded in a manner as presented this evening or a similar manner, the City will draft guidelines, rules and procedures for the land use appeal authority. He said the Planning staff, Legal staff and City Manager have all reviewed the proposal and are recommending the Planning Commission forward a positive recommendation to the City Council to approve Ordinances 14-09 and 14-10.

Commissioner Bodily asked about the trend in similarly sized cities. Mr. Matson said the choice cities make to appoint one appeal authority or to have a pool of experts to draw from for one appeal authority doesn't correlate with city size.

Commissioner Fitzpatrick asked if the Ordinances 14-09 and 14-10 pass if it will affect the sign ordinance. Mr. Matson said the majority of the changes to the sign ordinance deal with temporary signage. If the ordinances pass, before the sign ordinance is recodified, language will be changed in the draft from Board of Adjustment to Land Use Appeal Authority.

Commissioner Bodily expressed concerns with one person appointed by the City Manager to the appeal authority to have that much authority.

Commissioner Fitzpatrick felt that reducing from a five-person board to one person was a big leap.

Commissioner Bodily asked the reasoning from going from five people to one person.

Mr. Matson said given the infrequency in which the Board meets and has met over the years, having the continuity of those five members and their ability to stay up to date on land use laws and the associated changes is the reason for proposing one person who is an expert in land use laws.

He said the goal is a separation of powers – legislative, administrative and an appeal authority, which would represent the judicial process. The authority to administer land use regulations is handed directly

from the State to local government. In the case of establishing a land use appeal authority, the city manager, planning and legal staff would get together and create a list of individuals that would meet the technical qualifications to review land use issues. Their name is not as important as their availability and experience. He said it might not be a bad idea to have a pool to draw from.

Associate City Attorney, Tyson Willis, said he felt Mr. Matson covered the issues. Staff had no remaining questions, and the audience had no questions.

Chairman Gilbert called for a motion on the item.

Commissioner Nilsson moved that the Planning Commission forward a recommendation to the City Council to adopt Ordinances 14-09 and 14-10 noting concerns of the Planning Commission regarding changing from a five-member Board to one appeal authority and recommend the Council consider a larger number of candidates on the Board of Adjustment.

Commissioner Fitzpatrick said she felt there were three other issues. She expressed concerns about an appointment by the city manager and felt it should be a mayor/city manager co-joined decision. She expressed concern about the circumstances and manner by which the appointee could be removed, and also concerns about the structure and length of the term.

Chairman Gilbert said perhaps the Commission was not ready to vote on the item and more review should have been done in Work Meeting.

Commissioner Van Drunen asked that the item be passed clean or tabled.

Commissioner Hansen recommended a motion that includes the concerns, which would take the issues directly to the Council. The Council can then act on the motion in terms of the concerns.

Commissioner Fitzpatrick said that was what she and Commissioner Nilsson were trying to do.

Commissioner Van Drunen said he was in favor of the motion but didn't agree with the concerns. He recommended that the Commission either vote on the ordinance as presented or table it and discuss the issues and have the ordinance reflect those concerns.

Commissioner Nilsson said he would withdraw the motion and make a motion to table the item for a future date.

Mr. Willis said the motion could be withdrawn if no vote had been taken.

Mr. Matson asked for the withdrawing of the motion to be clearly stated for the record.

Mr. Willis said specific concerns should be listed in the motion to table the item. He also said that with regard to removing a Board of Adjustment member, any member may be removed for cause if the request for removal is filed in writing to the chief officer.

The following are the concerns the Commission asked to be included in the tabling of the item:

1. Reduction from a five-member to an individual with variations allowed for example, a three-member board.
2. Consideration of a pool of candidates
3. City manager appointment versus the mayor

4. Appeal authority – specify structure and guidelines of removal by the city manager. Should the Council be involved?
5. Structure of the term
6. Bylaws the appeal authority would follow
7. Planning Commission relinquishing rights and interest in an appeal issue to an authority that has final decision and inability to revisit as a city or citizen unless willing to take it to court. Recommending an additional option before Planning Commission relinquishes rights to Staff or the City Council. Mr. Matson said that what happens after a decision may specifically be dictated by State law.

Commissioner Nilsson moved that the matter be tabled to the October 14, 2014, Planning Commission meeting for more discussion on the items listed above and any other concerns.

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

Chairman Gilbert called for a motion to close the Public Hearing and adjourn the meeting. Commissioner Bodily moved to close the Public Hearing and adjourn the meeting. Commissioner Hansen seconded the motion, and the voting was unanimous.

The meeting adjourned at 7:57 p.m.



Julie K. Matthews, Planning Commission Secretary