

**Mayor**  
Kenneth Romney

**City Engineer/  
Zoning  
Administrator**  
Ben White

**City Recorder**  
Cathy Brightwell

# **WEST BOUNTIFUL PLANNING COMMISSION**

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**Chairman**  
Denis Hopkinson

**Commissioners**  
Laura Charchenko  
Mike Cottle  
Alan Malan  
Corey Sweat  
Dennis Vest, Alternate

## **THE WEST BOUNTIFUL PLANNING COMMISSION WILL HOLD A MEETING BEGINNING AT 7:30 PM ON TUESDAY, APRIL 10, 2018 AT THE CITY OFFICES**

Prayer/Thought by Invitation

1. Accept Agenda.
2. Public Hearing to Receive Comments on Proposed Changes to Permitted and Conditional Uses in Title 17, Residential Zones A-1, R-1-22, and R-1-10.
3. Consider Revising the Conditional Use Permit for Kyle Paget at 600 W 1000 North for a Detached Garage that is More Than Twenty Feet Tall.
4. Consider Conceptual Plan from DEV Group, LLC., for Mountain View Estates Subdivision at Approximately 2000 N 1100 West.
5. Land Use Training – Utah Risk Management Mutual Association
6. Consider Changes to Permitted and Conditional Uses in Title 17, Residential Zones.
7. Discuss Proposed Language Regarding Secondary Water Requirements for Subdivisions.
8. Discuss Land Use Fee Schedule.
9. Staff report.
10. Consider approval of minutes from March 27, 2018 meeting.
11. Adjourn.

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*Individuals needing special accommodations including auxiliary communicative aids and services during the meeting should notify Cathy Brightwell at 801-292-4486 twenty-four (24) hours before the meeting.*

*This notice has been sent to the Clipper Publishing Company and was posted on the State Public Notice website and the City's website on April 6, 2018 by Cathy Brightwell, City Recorder.*

**West Bountiful City  
Planning Commission**

**April 10, 2018**

*Posting of Agenda - The agenda for this meeting was posted on the State of Utah Public Notice website and on the West Bountiful City website on April 6, 2018 per state statutory requirement.*

**Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, April 10, 2018 at West Bountiful City Hall, Davis County, Utah.**

**Those in Attendance:**

**MEMBERS PRESENT:** Chairman Denis Hopkinson, Corey Sweat, Alan Malan, Laura Charchenko, Dee Vest (alternate), and Council member Kelly Enquist

**MEMBERS EXCUSED:** Mike Cottle

**STAFF PRESENT:** Ben White (City Engineer), Cathy Brightwell (Recorder), Debbie McKean (Secretary)

**VISITORS:** Kyle Paget, Gary Jacketta, Paul Johnson, Mark Garza

The Planning Commission Meeting was called to order at 7:30 pm by Chairman Hopkinson. Alan Malan offered a prayer.

**1. Accept Agenda**

Chairman Hopkinson reviewed the agenda. Corey Sweat moved to accept the agenda as presented. Dee Vest seconded the motion. Voting was unanimous in favor among all members.

**2. Public Hearing to Receive Comments on Proposed Changes to Permitted and Conditional Uses in Title 17, Residential Zones A-1, R-1-22, and R-1-10**

Ben introduced the proposed language changes that were suggested for Home based business for each of the three residential zones for Chapter 17.

**ACTION TAKEN:**

*Laura Charchenko moved to open the Public Hearing at 7:34 pm to receive comments on Proposed Changes to Permitted and Conditional Uses in Title 17 for Residential Zones, A-1, R-1-22 and R-1-10. Corey Sweat seconded the motion and a roll call vote was taken with all Commissioners voting Aye.*

**Public Comment:** No Public Comment

**ACTION TAKEN:**

*Corey Sweat Moved to close the Public Hearing at 7:35 pm to receive comments on Proposed Changes to Permitted and Conditional Uses in Title 17 for Residential Zones, A-1, R-1-22 and R-1-10. Dee Vest seconded the motion and voting was unanimous in favor.*

**3. Consider Revising the Conditional Use Permit for Kyle Paget at 600 West 1000 North for a Detached Garage that is More Than Twenty Feet Tall.**

Commissioners received a Memorandum from Ben White dated April 5, 2018 regarding Paget-Revised Accessory Building Conditional Use Permit 600 West 1000 North with an attached aerial view of site plan for the accessory building. The memorandum included the following information:

- A Conditional Use Permit was approved for the Paget family to construct a 24' high accessory structure in the northeast corner of the property at the March 27<sup>th</sup> Planning Commission meeting.
- Paget's would like to know if the conditions would change if they were to construct the building in the northwest corner of their property instead of the originally proposed northeast.

Ben White explained the proposed change request from the northeast to the northwest corner of the property from the Conditional Use Permit approved last meeting.

No Commissioner had any problems with the change.

Kyle stated that part of the reason for the change is the safety factor of being farther away from the curved road abutting his property.

**ACTION TAKEN:**

*Corey Sweat moved to modify the Conditional Use Permit approved on March 27 so that the accessory building may be built on the northeast or northwest side of the property. Laura Charchenko seconded the motion and voting was unanimous in favor.*

**4. Consider Conceptual Plan from DEV Group, LLC, for Mountain View Estates Subdivision at Approximately 200 North 1100 West**

Commissioners received a Memorandum from Ben White dated April 5, 2018 regarding Mountain View Subdivision-Concept Plan with attached site plan. The memorandum included the following information:

- Bountiful Pasture, LLC has accepted an offer from DEV Group, LLC to purchase the 23.68 acre parcel of land north of the DSB canal at approximately 2000 North running east and west of the D&RG right of way to 1100 West. Kinross Subdivision borders the property to the north. This is not the same developer who submitted an application two months ago.
- The property is zoned R-1-22 (1/2 acre) and the Concept Plan includes 42 lots that appear to meet the minimum size and frontage requirement for the zone.
- Other points of interest, consist of the overhead/underground easements present a development challenge, dead-end street connection to Kinross will be reduced to just under 1000 feet in which a temporary turnaround will be required at the northeast end, storm water needs to be better defined before the preliminary plat come to us (DEV will likely partner with Kinross in this matter) and secondary water issue and current moratorium will need to be discussed at the next City Council meeting.

Ben White introduced the property layout as a Concept Plan. He noted that the storm detention would most likely be on the Hamlet ground. There will be secondary water provided on the property and they are working closely with Hamlet Development in that matter. A unique feature to the property is the proposed trail access to the south and they will need to work with the County to fulfill that concept. It could be a nice feature of the development.

Chairman Hopkinson noted that there will be approximately 42 lots (1/2 acres) with a few lots that may have a few challenges to meet that minimum requirement.

Mark Garza, DEV Grp, was invited to take the stand. He stated that he is aware of the challenges and is confident they can work through them. They are developers that will work with Custom Home builders. They feel they can meet all the City's requirements. They are working with Hamlet Homes to coordinate efforts where necessary.

Kelly Enquist asked about drainage next to the Prospector trail. Ben White stated there is an old well that will be abandoned, and proper procedures will take place to address the drainage issues.

Commissioners had no further questions at this time.

## **5. Land Use Training- Utah Risk Management Mutual Association (URMMA) by Paul Johnson**

Mr. Johnson introduced himself and his background. He gave a brief history of his Company and explained what their main purpose was in serving the Cities. The whole jest of their business is to help a city to decide what risks there are and how to decide whether or not to take the risk. He informed the Commission that there are three areas that are potentially high for large lawsuits and noted that Land Use is one of them. That issue is being addressed in the training this evening.

Paul Johnson explained that there is always risk involved and that all risk cannot be eliminated. A city must choose what is worth the risk and what isn't. He gave an example of an experience with property that the Osmond Studios used to own that was made into a Recovery Center for Addicts. Surrounding neighbors did not want it to be located there. They tried to get the Recovery Center shutdown but were unsuccessful due to the fact that this is a Recovery Unit (for disabled citizens). Facilities for the disabled are protected and cannot be denied. However, some conditions can be placed on the facility as necessary.

Land Use issues can be high dollar in court situations and very tricky to debate. Making foolish decisions is costly. The legislature has taken a lot of discretion from cities and put more mandates in Land Use. Cities need to incorporate these changes in their code and ordinances.

He added that in the event there is a tie in judgement, the tie goes to favor the landowner if the ordinance is not clear or is ambiguous in nature. It is very important that the language in our ordinances is clear and not not ambiguous. Ordinance needs to be in lay terms for applicants to understand; clear for them to know what is and is not allowed.

Mr. Johnson stated that subjectable languages needs to be eliminated. He offered some suggestions of language that should be stricken from ordinances:

- "in the sole discretion of"
- "Compatible with..."
- "Approve, deny or approve with conditions"
- "In keeping with the character of the neighborhood"
- "Shall not negatively impact the neighborhood"
- "Shall not significantly increase traffic, light, odors, etc."
- "Any other conditions imposed by the Planning Commission"

Other notable advice given from him was:

- Conditional Use Permits should not go to the elected body, "City Council."
- Conditional Use Permits, unless there is no way to mitigate adverse impact with reasonable conditions, cannot be denied.
- Conditions must be related to standards contained in the ordinance.
- Prefer to have permitted uses with standards and conditions built into the ordinance or make them non-permitted uses.
- Take out any language and regulations that you do not feel you would be okay to approve

#### **Group Homes:**

- Cannot be denied because they serve the disabled. Federal and state law prohibits denial. Penalties are harsh and damages are high. Reasonable conditions can be applied if necessary (limit # of people in home, etc.).

Mr. Johnson suggested the Commission research all the different types of Group Homes and list the specific regulations for each. He noted that Orem City has an ordinance that could be used; it was developed six years ago and is very good.

He explained that neighbors get to give their input when the ordinance is being reviewed and drafted in a zoning situation during the Public Hearing process. Once the ordinance is in place it must be adhered to. Ex-parte communication is allowed for legislative decisions. Reasons must be in record for why decision was made.

He gave examples of Administrative, Quasi-judicial decisions

- Conditional Use Permits,
- Subdivision plats,
- Ex-parte communications are not allowed,
- If it meets the ordinance, it must be allowed.

He encouraged the Commission to plan the City as you want it to be keeping within the legislative guidelines.

Takings:

- Physical takings are rare. Must pay for what you take.
- Regulatory takings are more common. Must compensate for use of property in proportion with the conditions.

Emails:

- Plaintiff can request all business and personal use emails in legal proceedings or GRAMA requests. Be careful what you put in your emails/text. They will be evidence in a lawsuit.

## **6. Consider Changes to Permitted and Conditional Uses in Title 17, Residential Zones.**

Ben White stated that this request to add references to Home Occupations for Kennels and Child Daycare and Nursery's in our residential zones is a stop gap approach to clarify a use that we may not want to approve while we decide what we do and don't want. Child Care and Kennels are the two that have been identified as urgent at this time.

Chairman Hopkinson stated that we as communities have the right to choose what we want. The State has made some laws that need to be incorporated into our ordinances and laws. There will continue to be language as to how to mitigate conditional use permits. Ben White gave an example of how we have changed our codes in the past to create what we as a City want in our ordinances. Definitions need to be in place to help mitigate land uses.

Ben White noted that fixing these issues will continue to be a work in process. He reiterated that today's request is just a stop gap solution to get us to the next step. Some discussion took place regarding this issue.

Commissioner Comments:

**Commissioners Sweat and Vest** agreed that this is a good place to start.

**Laura Charchenko** would like to have further discussion regarding the idea of allowing employees if needed. She is okay with approving this stop gap solution if there will continue to be discussion later regarding this matter. Some discussion took place in this regard.

**Alan Malan** agreed that the issue should be addressed regarding Day Cares and allowing employees. Cathy Brightwell stated that the Home Occupation language would need to be changed to include allowance for employees. Chairman Hopkinson noted that change could be made later after further thought and discussion. Some discussion took place in these regards.

**Cathy Brightwell** expressed her concern that if the language is left as is, commercial businesses could come into residential areas and there would not be anything we could do to stop them. This stop gap measure will protect the city as we take more time to develop better language.

#### **ACTION TAKEN:**

*Corey Sweat moved to approve and forward to city council the new language proposed by Staff for Chapter 17 for Childcare/Nursery without the inclusion of G. Kennels under 17.16.030. Alan Malan seconded the motion and voting was unanimous in favor.*

#### **7. Discuss Proposed Language Regarding Secondary Water Requirements for Subdivisions**

Commissioners received a Memorandum from Ben White dated, April 5, 2018 regarding Secondary Water Requirements for Subdivisions. The memorandum included the following information:

- City recently imposed a six-month moratorium on new subdivision application while they take time to review the requirement for new developments to provide secondary water for irrigation purposes.
- A second draft for proposed language to be inserted in municipal code 16.20.020 Public Improvements was included in the memorandum.
- In addition, Inspection Fees were addressed since a Public Hearing has to be scheduled for the Secondary Water Language. Staff would like the opportunity to consider some housekeeping changes for 16.08.050D.

Ben White proposed some language changes for secondary water as a consideration for the Commission.

Dee Vest asked about small lot subdivisions and why they are treated the same as large subdivisions. Ben White explained that the city council has the authority to defer the requirement for small lot subdivisions if they believe it is appropriate.

Chairman Hopkinson stated that this does not need to be done this evening. Legal Council needs to review it still.

Some discussion took place suggesting some language changes. Staff took note of the suggestions and will make the necessary changes to the draft.

**Ben White** noted that inspection fees need to be reviewed and changes included in the fee changes. These fees are to cover staff time spent inspecting developments and should not result in any profit to the city. The next agenda item will cover this issue.

## **8. Discuss Land Use Fee Schedule**

Commissioners received a Memorandum from Ben White dated April 5, 2018 regarding Fee Schedule updates with an accompanying fee schedule. The memorandum included the following information:

- State law requires cities to approve their construction standards by ordinance and adopt a land use fee schedule. Admin fees, business licenses, utility bills, golf course fees are all non-land use fees. Impact fees and land use fees are land use fees. Building permits and some conditional use permits could be argued either way.
- Staff provided the entire fee schedule to the Commission in their packet but the only proposed changes from staff are for the Inspection fee calculation found on the last page of the document.
- A public hearing will need to be scheduled for this update.

A brief discussion took place regarding the items listed in the memorandum. The current 3% fee has worked well for small subdivisions but now that we are seeing larger developments, the fee is too high. Mr. White discussed staff's proposal for a graduated fee based on the total amount of the Improvement Bond. He gave the example of when we use Staff it may cost \$75/hour but the billing rate for a consultant could be \$200/hour and billed by full hours with travel added. If workload permits, the City prefers to use inhouse staff and does not want to make money for these services. Corey Sweat asked how we protect the City vs the Citizen. Ben White believes his proposed numbers will fix the problem, but they may need to be tweaked as we get more information. Further discussion took place regarding other fees that are imposed upon builders (ex: impact fees). Commissioner Sweat does not want to have any fees other than what it cost to do the work and feels that we should not make a profit on any fees we charge.

**Alan Malan** asked if building permit fees are impacted by this proposal. Ben White answered that the building permit cost is calculated by a scheduled formula and is a separate charge based on inspections of the actual construction, not the public improvements.

**Council member Kelly Enquist** asked for comparisons to other cities schedules.

Staff will bring more information to the Commission on this matter and informed the Commission that a public hearing for the Secondary Water and Fee Schedules needs to be set.

**9. Staff Report**

Ben White: No Report

Cathy Brightwell: No Report

**10. Consider Approval of Minutes from March 27, 2018.**

**ACTION TAKEN:**

*Laura Charchenko moved to approve of the minutes of the March 27, 2018 meeting as presented. Corey Sweat seconded the motion and voting was unanimous in favor.*

**11. Adjournment**

**ACTION TAKEN:**

*Alan Malan moved to adjourn the regular session of the Planning Commission meeting at 9:57pm. Laura Charchenko seconded the motion. Voting was unanimous in favor.*

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*The foregoing was approved by the West Bountiful City Planning Commission on April 24, 2018 by unanimous vote of all members present.*

  
Cathy Brightwell – City Recorder

