

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 ITS REGULAR MEETING AT 7:30 PM ON TUESDAY, MARCH 26, 2019 AT THE CITY OFFICES

Prayer/Thought by Invitation

1. Accept Agenda.
2. Discuss Group Housing Code – Duane Huffman
3. Discuss Code Enforcement for Land Use – Duane Huffman.
4. Discuss Updates to General Plan – Ben White, Cathy Brightwell.
5. Staff report.
6. Consider Approval of Minutes from the February 26, 2019 Meeting.
7. Adjourn.

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 March 21, 2019 by Cathy Brightwell, City Recorder.

**West Bountiful City
Planning Commission Meeting**

March 26, 2019

***Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice website, on the West Bountiful City website, and at city hall on March 21, 2019 per state statutory requirement.*

Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, March 26, 2019 at West Bountiful City Hall, Davis County, Utah.

Those in Attendance:

MEMBERS PRESENT: Alan Malan (Vice Chairman), Mike Cottle, Laura Charchenko, Corey Sweat, Dee Vest, Council member Enquist

STAFF PRESENT: Duane Huffman (City Administrator), Ben White (City Engineer), Cathy Brightwell (Recorder), and Debbie McKean (Secretary)

EXCUSED: Chairman Denis Hopkinson

VISITORS: Mr. and Mrs. Chadwick

The Planning Commission Meeting was called to order at 7:30 pm by Vice Chairman Malan. Councilmember Kelly Enquist offered a prayer.

1. Accept Agenda

Vice Chairman Malan reviewed the agenda. Mike Cottle moved to accept the agenda as presented and Laura Charchenko seconded the motion. Voting was unanimous in favor among all members present.

2. Discuss Group Housing Code – Duane Huffman

Commission packets included a memorandum from Duane Huffman dated March 21, 2019 regarding Group Homes Code along with a copy of a draft ordinance amending Title 17 of the West Bountiful Municipal Code. The memorandum included the following:

- Evolving case law and practices related to residential group home arrangements requires cities to regularly review land use codes to ensure they are not discriminatory. WBMC 17.84 currently sets many standards for residential facilities for persons with disabilities (e.g. no more than five residents, and full compliance with ADA), and it requires the planning commission to make determinations on reasonable accommodations. It also sets up standards for residential facilities for elderly persons, which is not necessarily something that is protected by federal law.

- In conjunction with a legal consultant that works extensively on group home issues, staff recommends that the planning commission consider the attached draft ordinance that would replace the current section 17.84. This draft ordinance takes a new approach to group homes. Instead of trying to define and regulate residential facilities for persons with disabilities, it defines a process whereby reasonable accommodations may be requested – otherwise all land use regulations apply – including the city’s definition of single-family use as “not more than four unrelated persons, living together as a single housekeeping unit.” This is a proactive effort, and not the result of any current or reasonably pending applications.
- The purpose of the discussion for the planning commission meeting on March 26th is to discuss your overall thoughts on this approach, along with noting any questions or concerns you may have for further research.

Duane Huffman stated that at a City Manager Training he attended, Dan McDonald gave a thorough presentation and identified problems that are happening in cities in regard to Group Housing. He noted that the last time our Group Housing Code was updated was in 2012. He asked Mr. McDonald to analyze our Group Home code and point out violations and issues. Mr. Huffman explained some options the city has in dealing with this code. One option would be to change the code. Another would be to eliminate it all together. Due to the difficulty associated with maintaining and updating a code for Group Homes, his preference would be to eliminate this section of the code and update our single housing code to accommodate applications for group homes that would be heard on a case by case basis and evaluated by a hearing officer who has experience in this field. He noted that it is a bit odd that we have included specific language for senior housing facilities and suggests that the language be eliminated to avoid any potential discrimination issues as it is something not necessarily protected by federal law.

There was discussion among the Commission and after careful consideration it was recommended to proceed with eliminating the current Group Home language from our city code. Mr. Huffman informed Commissioners should the need arise, that City Council and Planning Commission have the option to appeal to the hearing officer if they feel unfair treatment was rendered by the hearing officer.

Plan of Action

Mr. Huffman will investigate all the questions and concerns that the Commissioners had this evening. He will follow up with a new draft and email them the information he finds out. A public hearing will be scheduled after the review of the next draft.

3. Discuss Code Enforcement for Land Use- Duane Huffman

Commissioner packets included a memorandum dated March 21, 2019 from Duane Huffman regarding Land Use enforcement options. The memorandum included the following information:

- As a small city, West Bountiful does not have resources dedicated specifically to enforcement of the land use code. Most enforcement that takes place now is preventative in nature – staff educates residents with questions and only issues building permits or business licenses if the property and use are compliant. However, city staff is regularly made aware of violations of the land use code. These violations can be in the form of illegal buildings, non-compliance

with the farm animal regulations, unauthorized uses, and so on. In this regard, the city does not have a good track record of or tool box for enforcement.

- A summary from the city's legal counsel containing options for enforcement per our current city code which listed the following:
 1. Criminal Enforcement. Unless otherwise specified, violation of any city code is a Class B misdemeanor and could be referred to the city prosecutor for prosecution. I believe that the League of Cities and Towns highly discourages the use of criminal enforcement for land use codes, but I am seeking more information on why.
 2. Civil Action. The city can go to court to seek compliance with city code. This has been tried in the past, and the city has found the legal fees and process to be both expensive and ineffective.
 3. Private Enforcement. Any affected property owners can take their own legal action against violators. I have found that residents do not respond well to the idea of taking upon themselves the burden of enforcement when they are unhappy with their neighbors.
- In addition to these options, staff has also made use of attaching "Certificates of Non-Compliance" onto properties that have land use violations. These certificates incentivize property owners to come into compliance if they ever wish to obtain a building permit or sell the property. While useful, this solution can take a long time to bring a property into compliance.
- A resource for their review from The American Planning Association provides a chapter on land use enforcement in its on-line guidebook:
<https://www.planning.org/growingsmart/guidebook/eleven.htm>

Mr. Huffman reviewed some of the action staff has had to take this past year regarding illegal structures. Currently there are about 40 issues they have addressed. He gave a brief history of how all this has come about with people requesting building permits that were not in compliance. Historically, problems were handled on a complaint basis, but Staff felt that they needed to be fair across the board, so investigations have been done and letters have gone out making residents aware of being out of compliance.

There was discussion about the three options provided by legal counsel. He noted that the criminal option was the least favorable option, civil action has not been successful in the past, and private enforcement can work well some of the time depending on the circumstances. However, none of these options have been proven to be very useful. He explained that issuing a Certificate of Non-compliance seems to be a reasonable option. He noted that in our state, the most popular way to deal with the situation is to take administrative action that would impose fees upon the resident for not complying that would accrue until compliance is complete. Non-compliance can also be linked to revocation of conditional use permit, business licenses, or building permits as leverage. Staff would like any suggestions to help them resolve these issues.

Some scenarios were presented and discussed regarding non-compliance issues and what to do in the more difficult situations. Ben White pointed out that the non-compliance certificate works well for illegal structures, but he feels that fines would work better for land-use issues. Staff is interested in the planning commission's ideas and recommendations for further use of current tools and additional enforcement options. Such additional options could include administrative fines or integrating land use violations and nuisances (which already includes language for administrative fines).

Some discussion took place among the Commissioners.

Laura Charchenko does not want staff to be burdened with resolving these issues that require them to take time away from their regular duties. She supports the fines and penalty. Duane pointed out how costly it is use staff in this manor, but as of now the City Council is not on board with hiring a part-time code enforcement officer.

Corey Sweat agrees that our code needs teeth in it and that we need to be able to enforce it. He is not sure about implementing fines and believes it is important that code enforcement be fair and reasonable.

Alan Malan shared his feelings regarding the non-compliance certificate and possible due-process issues. He felt they must be included in our code if we are to use them. He wants the City to serve our citizens and feels we need to prioritize the situations regarding health, safety, and welfare. Mr. Huffman pointed out that it will not be possible to codify prioritization.

Mr. Malan asked about grandfathering certain structures and staff explained that it is irrelevant unless it was built before we became a City as our regulations have changed very little since that time. The notice will allow them to keep the structure until their property is sold, but any illegal structures will have to become compliant before the sale of their home to clear the title. Mr. Malan does not want the City to become heavy handed toward its citizens. He wants due process to remain intact.

Dee Vest agrees that we need to have the language in place for certificate of non-compliance. He feels it will be difficult to handle when it comes to having people tear down structures that are not in compliance.

Julie Chadwick commented on land-use compliance regarding animals and weeds. She has been subject to non-compliant animal issues for several years that are affecting her family's health, safety and welfare. She supports penalties to be imposed for not being compliant. She feels that that properties need to be inspected and brought into compliance. Ms. Chadwick feels monetary penalties will be an effective incentive.

Councilmember Enquist shared a scenario of a home that was abandoned in his neighborhood and the owner is using it to store junk. He noted that it is a real eye sore to the neighborhood and it is depreciating the value of the homes around it. He is concerned with what can be done to resolve the situation.

4. Discuss Updates to General Plan- Ben White, Cathy Brightwell

Ben White gave a brief introduction of the general plan land-use section. He would like to make updates to the things that are out of date and strip out the useless language in the document. Mr. White explained the conundrum that our state is dealing with regarding growth.

Mr. Huffman reviewed the recently adopted Senate Bill-34. In our general plan, we will need to review high density, transportation links, etc. He noted that we do not need to change our general plan, we just need to explain how we are implementing the policies that have been legislated. Mr. Huffman reviewed some of the requirements that a City will have to include in their general plan. There are many options to choose from and he is confident that we can incorporate the language and keep policies in place.

Ben White will prepare a document for their review at the next meeting.

5. Staff Report

Ben White

- No Report.

Cathy Brightwell

- Reported that there will be a Legislative Update on Land Use issues on March 30th. She will register anyone that is interested in attending.

Councilmember Enquist

- Reported on the recent meeting for Legacy Highway truck ban. The meeting served as a sounding board and did not effect any change in the decisions that was previously made to let the ban expire at the end of the year. He updated the Commission on some of the future plans UDOT has for the Legacy Highway. Dee Vest thanked Council member Enquist for the comments he made at the meeting.

Laura Charchenko asked about the property that burned on Porter Lane and if we as a city have any recourse. Mr. White responded that it is private property and the city has not say in what happens.

Dee Vest informed the Commission that Spencer Hughes and Bud Ingles were having issues regarding Mr. Hughes using the road to access his property while building his addition. Ben stated the city is aware of the situation.

6. Consider Approval of Minutes from February 26, 2019 meeting.

ACTION TAKEN:

Corey Sweat moved to approve of the minutes of the February 26, 2019 meeting as presented. Mike Cottle seconded the motion and voting was unanimous in favor.

7. Adjournment

ACTION TAKEN:

Corey Sweat moved to adjourn the regular session of the Planning Commission meeting at 9:15 pm. 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 March 21, 2019 by unanimous vote of all members present.


Cathy Brightwell – City Recorder

