

Mayor
Kenneth Romney

**City Engineer/ Land
Use Administrator**
Kris Nilsen

**City Recorder/
Community
Development**
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 PLANNING COMMISSION WILL HOLD A REGULAR MEETING
AT 7:30 PM ON TUESDAY, FEBRUARY 9, 2021 VIA ZOOM (see info below)**

1. *The Mayor and the Planning Commission Chair have determined that due to the current COVID-19 pandemic and the physical distancing required to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present at the meetings. That risk can be substantially mitigated by holding this meeting through electronic means that allow for public participation without an anchor location.*
2. Prayer/Thought by Commission Sweat.
3. Accept Agenda.
4. Discuss Height Regulations in Residential Districts.
5. Discuss Proposed Changes to WBMC 17.60 Conditional Uses.
6. Discuss Permitted and Conditional Uses Allowed in Residential and Commercial Districts.
7. Staff report.
8. Consider Meeting Minutes from January 26, 2021.
9. Adjourn.

JOIN ZOOM MEETING

<https://us02web.zoom.us/j/84046143390>

Meeting ID: **840 4614 3390**

Or, dial by your location
+1 408 638 0968 US (San Jose)
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This notice has been sent to the Davis Journal and was posted on the State Public Notice Website and the City's website on February 5, 2021 by Cathy Brightwell, City Recorder.

West Bountiful City

January 26, 2021

Planning Commission Meeting

Posting of Agenda - The agenda for this meeting was posted on the State of Utah Public Notice website, on the West Bountiful City website on January 22, 2020.

Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, January 26, 2021 at West Bountiful City Hall, Davis County, Utah.

Those in Attendance:

Due to the Coronavirus outbreak this meeting was held electronically using Zoom.

MEMBERS ATTENDING: All attending via Zoom: Chairman Denis Hopkinson, Vice Chairman Alan Malan, Mike Cottle, Dee Vest, Corey Sweat, Laura Charchenko, and Council member Kelly Enquist.

STAFF ATTENDING: Kris Nilsen (City Engineer), Cathy Brightwell (Recorder) in house, Steve Doxey (City Attorney) and Debbie McKean (Secretary) via Zoom.

VISITORS: Via Zoom: John Janson, Gary Jacketta, Tina Ellis, Chyanne Pope, Sage ?

The Planning Commission meeting was called to order at 7:32 pm by Chairman Hopkinson. Laura Charchenko offered a thought and prayer.

1. **Chairman Denis Hopkinson read the following message:** *The Mayor and the Planning Commission Chair have determined that due to the current COVID-19 pandemic and the physical distancing required to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present at the meetings. That risk can be substantially mitigated by holding this meeting through electronic means that allow for public participation without an anchor location.*

2. Accept Agenda

Chairman Hopkinson reviewed the proposed agenda. Mike Cottle moved to approve the agenda as presented. Corey Sweat seconded the motion. Voting was unanimous in favor among all members present.

3. Discuss Proposed Changes to WBMC 17.60- Conditional Uses

Commissioner packets included a memorandum from Staff dated January 22, 2021 regarding discussion of proposed updates to conditional uses along with a draft redline copy of WBMC

17.60- Conditional Uses. Staff included a current list of Permitted and Conditional Uses in the three residential zones.

The memorandum explained that John Janson and Jake Young reviewed the City's land use code and have suggested modifications to our Conditional Use ordinance. Their proposals are intended to move us from vague concepts to standards and criteria. It is suggested that conditional uses be used more sparingly based on legislative changes that limit the city's ability to deny conditional use requests when conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use. Once language is adopted, we will want to look at the list of Uses in each zone to see if conditional use designation is really appropriate and if each Use is listed in the correct zone.

Chairman Hopkinson led the commissioners and staff through the document reading the old language and redlined changes.

17.60.010 Purpose and Intent – parts of this section are still vague and there was concern about removing the reference to "health, safety, and general welfare." Mr. Doxey stated that those issues are the overall purpose of the whole municipal code and is stated throughout so it is not necessary to repeat here unless the commission wants to.

17.60.030 Planning Commission Approval Required – currently, public meetings are required for conditional use permits and public hearings are mandatory in certain cases. Clarification will be added so that planning commission can require a hearing if they need more information after discussing an application. In cases where traffic studies may be necessary, it will be clear on the application form that it will be required.

Commissioner Malan wants the language in D. to be clear that fees other than the application fee will not be required prior to approval of the application but will be a condition of the application. He suggested "if applicable after approved" be added.

17.60.040 Determination to Issue Conditional Use Permit – current affirmative findings have been removed and replaced with a new list that is intended to be based on standards rather than vague concepts. Corey Sweat felt that the current language is not as vague as the new proposed language. Some discussion took place with Mr. Janson explaining what his objective was with the proposed changes. Mr. Doxey recommended that we should include the current legislative language as well. Mr. Sweat feels it still falls short of permitted uses and needs to be more specific and not have so many gray areas. The detrimental effects need to be clarified and added to. He pointed out that this does not help staff to understand the direction to take. Alan Malan concurred with Commissioner Sweat and added that some of the language is beyond the scope of what the city can do regarding environmental impacts. Mr. Janson stated that more detailed language could be added, but it would be a huge undertaking that would not be worth the time or effort and is not necessary to accomplish the goals and intent of the section. Additional language could be made under other areas of the code like lighting, noise,

etc. Further discussion took place regarding making the list more specific to the detrimental effects to make a clear picture of what is acceptable and what is not.

Concern was raised over several references to federal requirements. Chairman Hopkinson explained that our city does not always include federal legislative references in the land use code, but it is included in the state legislative land use regulations. Mr. Doxey said that language could be changed to create a softer clause regarding the federal legislation.

Mr. Doxey asked the commissioners to consider whether conditional uses are necessary. He noted that there are only about five different conditional uses listed in residential code that may need to continue. In most cases, language can be crafted to include specific regulations and standards for these items within the code. He noted that conditional uses can be valuable in commercial zones.

Commissioner Sweat agreed and said he believes that in most cases, conditional uses are unnecessary in residential zones. He stressed that residential zones should be either permitted or not permitted because no matter how much language is used there will always be gray area.

17.60.070 Expiration of Permit - There was discussion about expiration of permits. Ms. Brightwell stated it is extremely hard for staff to keep track of all this. It was decided that it is not necessary to have an expiration date unless the conditions are not being met. Mr. Janson noted that conditional use permits typically run with the land. Several examples were discussed where this may not be the case, for example, ADUs and farm animal permits, which now expire when the property owner sells forcing new owners to re-apply. This is intended to ensure that they understand the regulations. Mr. Jansen will check on "run with the land" issue.

17.60.080 Review and Revocation of Permit – Mr. Janson asked what the section means and if a policy is listed somewhere. Chairman Hopkinson stated that the revocation language was put in place to have a means to quickly shut down things for a maximum of 30 days that were not allowed by city code and detrimental to the health, safety, and welfare of a neighborhood. Mr. Doxey wants the section left in place but agreed more specificity can be added.

Chairman Hopkinson instructed commissioners to review the proposed redline language and the list of permitted and conditional uses and submit their suggestions to staff. Mr. Janson and Mr. Doxey will make changes as well. This will allow us to see where we agree/disagree or where the holes are.

4. Discuss Non-Commercial Structures

Commissioner packets included a memorandum from Staff dated January 22, 2021 regarding Review of Non-Commercial Structure Regulations that included the following information.

Last year, a new permitted use, Non-Commercial Structure (NCS), was added in the A-1 District. The primary reason for considering the change was to deal with multiple requests from property owners who had a need for storage structures when there was no home on the property. Zoning code at the time referred only to accessory structures, but the concept of accessory structures is to be “on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or building.”

A Non-Commercial Structure is defined as a structure that:

- (1) is not designed or used for commercial purposes.
- (2) is not designed or used as a dwelling,
- (3) is not accessory to a principal building or use on the same lot,
- (4) is not a landscape enhancement such as an arbor or trellis.

Such conditions are stipulated in a recorded agreement between the city and property owner. If a principal building or use is established on the same lot as a non-commercial structure, the non-commercial structure will be deemed an accessory structure subject to all regulations governing accessory uses, buildings, or structures.

Building permits for two non-commercial structures have been approved since the new code was established. One is a standard storage building and the other a family gathering and storage building. Agreements have been recorded on the properties of each NCS that clearly state the structure cannot be used for commercial or residential purposes.

Cathy Brightwell explained that as a result of numerous complaints about one of these buildings, the city council has asked the planning commission to review the issue to determine if changes to the ordinance are warranted. The following discussion points were presented.

- Should a Non-commercial structure continued to be allowed?
- Should a NCS be a conditional use where conditions can be imposed to mitigate reasonably anticipated detrimental effects based on the specifics of each proposed building?
- Should the structure be limited to a maximum size? For example, compared to main structures, neighboring structures, or other measurement?
- Should different setbacks be established? Currently the smaller setbacks for accessory structures are applied – not main structure setbacks.

Commissioner Comments:

Laura Charchenko feels we need to be consistent and follow code which does not limit size. Mike Cottle concurred. Dee Vest noted he has gotten many calls on the building in question. He read from another city’s code that limited size of accessory structures to a % of total lot size.

We may want to consider something similar if we think there is a problem. Corey Sweat noted that the reasons provided at the time convinced the commission there was a need to allow for this type of building on land without a primary dwelling in place. A property owner should be able to build whatever fits based on the code.

There was discussion about what setbacks and height restrictions should be established for these buildings. They are currently able to use the setbacks and height regulations for accessory structures.

There was agreement that increased setbacks should apply but no specific numbers or consensus on how to deal with height. It is unreasonable to require a non-commercial or accessory structure to be smaller or shorter than a primary dwelling in the A-1 zone but does make sense in smaller residential zones. There was discussion about size as a percentage of the total lot or whether increased setbacks were sufficient to deal with the size issue. The current 35% rear yard coverage restriction only applies when a primary structure is on the lot.

Should room for a future building be required? Discussion was that it does not make sense to require that if someone only wants a non-commercial structure and no primary or accessory structure. If they decide later that they want to add a building and there is not enough room, an additional building will not be allowed.

Staff will put together some ideas and check to see when a joint meeting can be scheduled with city council to discuss these policy changes.

5. Discuss Height Regulations in Residential Districts

Commissioner packets included a memorandum dated January 22, 2021 from Staff regarding Review of Height Regulations in Residential Zones with an attached copy of the height regulations for each of the three residential zones.

BACKGROUND

In 2019, new yard regulations, including accessory building height requirements in the R-1-10, R-1-22, and A-1 residential zones were adopted. Prior to these changes, requests for additional height were presented to the planning commission as part of a conditional use application. To move away from the conditional use, a sliding scale was implemented that allowed additional height by increasing setbacks. See detail below:

- In the R-1-10 zone, height can be increased from 20 ft to a maximum of 25 ft. if the accessory structure is set back an additional 2 feet beyond the minimum setbacks for every additional foot requested.
- In the R-1-22 zone, height can be increased from 20 ft. to a maximum of 25 ft. if the accessory structure is set back an additional 1 foot beyond the minimum setbacks for every additional foot requested.

- In the A-1 zone, height can be increased to a maximum of 40 feet if the main, accessory, or non-commercial structure is set back an additional 1 foot beyond the required minimums.

Now that the new regulations have been in place for a while, staff is asking for clarification in several areas:

1. Where should the height measurement be made? Current language says it is measured from the lowest finished ground level which is not clear. What is the intent?
 - a. Lowest visible foundation, e.g., walkout basement?
 - b. Front door landing?
 - c. Top back of curb?
 - d. Lowest point of graded yard?
2. What does "minimum setbacks" mean? Currently, setbacks can be reduced from 6 ft to 3 ft if the building meets fire code standards. Does the reduced setback for fire-rating count as part of the minimum setback calculation for height? For example, if the standard setback is 6 ft. and 2 ft is added to account for additional height the total setback = 8 ft. If the reduced setback is 3 ft. due to fire-rating and 2 ft is added to account for additional height the total setback = 5 ft.
3. In the R-1-10 and R-1-22 districts, the height for accessory structures cannot be taller than the main structure. Should something similar be considered in the A-1 zone?
4. In the R-1-10 and R-1-22 districts, lighting and window regulations for accessory structures were put in place to minimize potential impacts to neighboring properties while allowing a property owner to construct a taller building. Should something similar be considered in the A-1 zone?

There was discussion on the questions. Commissioners were not in favor of the sliding scale calculation and want something with standards that include larger setbacks. Reductions for fire-rated walls should not be included in the calculation. They also do not agree that an accessory structure in the A-1 cannot be taller than the main structure.

They directed staff to come up with other options that include clear standards. Mr. Doxey cautioned them to envision the maximum of what they put into place because someone is going to build the max. He suggested a reverse sliding scale. Further discussion took place regarding possible ways to calculate height and setbacks in the various zones. Each zone will need its own regulations put into place.

Chairman Hopkinson stressed that we need to be concise and consistent in our language.

6. Staff Report

Kris Nilson:

- Beverly Estates subdivision has been approved but still waiting on final plat.
- Pickle Ball award has been made.
- 400 North Wellhouse bids are due this week.
- Signage and striping, previously discussed, are underway at the Elementary School's south exit.

Cathy Brightwell:

- Public Hearing that was scheduled for tonight will be at the February 9th meeting due to public notice issues.
- Municipal Election coming up this year for mayor and two council seats.

7. Consider Meeting Minutes from January 12, 2021

Action Taken:

Corey Sweat moved to approve of the minutes of the January 12, 2021 meeting as presented. Mike Cottle seconded the motion and voting was unanimous in favor.

8. Adjourn

Action Taken:

Laura Charchenko moved to adjourn the regular session of the Planning Commission meeting at 9:45 pm. Alan Malan seconded the motion. Voting was unanimous in favor.

The foregoing was approved by the West Bountiful City Planning Commission on February 9, 2021, by unanimous vote of all members present.

Cathy Brightwell

Cathy Brightwell – City Recorder

