

Mayor
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**City Engineer/ Land
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WEST BOUNTIFUL PLANNING COMMISSION

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Chairman
Alan Malan

Commissioners
Mike Cottle
Laura Mitchell
Corey Sweat
Dennis Vest

**THE PLANNING COMMISSION WILL HOLD A REGULAR MEETING
AT 7:30 PM ON TUESDAY, OCTOBER 26, 2021, AT THE CITY OFFICES**

AGENDA:

1. Prayer/Thought by Commissioner Vest.
2. Accept Agenda.
3. Conditional Use Application for Home Occupation Business at 963 Meadowlark Lane – John & Jessica Nelson.
4. Review Additional Options to the Housing in Certain Commercial Areas Overlay Draft Ordinance, WBMC 17.42.
5. Update on West Bountiful Public Works Building at 1410 W 1200 North.
6. Staff report.
7. Consider Meeting Minutes from September 28, 2021.
8. Training.
9. Adjourn.

This notice has been sent to the Davis Journal and was posted on the State Public Notice Website and the City's website on October 22, 2021, by Cathy Brightwell, City Recorder.

**West Bountiful City
Planning Commission Meeting**

October 26, 2021

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 October 22, 2021, per state statutory requirement.

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

Those in Attendance:

MEMBERS ATTENDING: Chairman Alan Malan, Commissioners Mike Cottle, Dee Vest, Corey Sweat, Laura Mitchell, Council member Kelly Enquist.

STAFF ATTENDING: Duane Huffman (City Administrator), Kris Nilsen (City Engineer), Cathy Brightwell (Recorder), and Debbie McKean (Secretary), Chief Erikson.

VISITORS: Council member James Bruhn, Jake Young, Lisa Young, Dale Edwards, Scott & Bonnie Jones, John and Jess Nelson, Lynne & Monte Widdison

The Planning Commission meeting was called to order at 7:30 pm by Chairman Malan.

1. **Prayer by Commissioner Vest.**
2. **Accept Agenda**

Dee Vest moved to approve the agenda as presented. Mike Cottle seconded the motion. Voting was unanimous in favor among all members present.

3. **Conditional Use Application for Home Occupation Business at 963 Meadowlark Lane-John & Jessica Nelson.**

Commissioner packets included information from staff regarding a Conditional Use Permit Request for a Home Occupation Business at 963 Meadowlark Lane (963 W 1850 N) for John & Jessica Nelson.

Duane Huffman reminded the commission that state law says a conditional use must be approved if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use. A conditional use may be denied if the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the imposition of reasonable conditions to achieve compliance with applicable standards, which is very rare.

Cathy Brightwell explained the request. The Nelson's have applied for a Home Occupation business license and associated Conditional Use permit to resell equipment such as power tools, gym equipment and weights. Their application explains that they buy wholesale goods to sell on local classified sites such as Facebook marketplace and KSL.com and buyers pick up items in person or they are delivered.

Staff explained the license requirements outlined in WBMC 5.04.010 and 5.28.010. The Nelson's were required to notify neighbors within 300 feet of their property that they have made application to operate a business from their home. They provided signatures from most of their neighbors but not all

within the 300 foot radius. They are also required to register their business with the state and obtain a Utah sales tax ID which they have not yet done.

Cathy Brightwell provided a summary of the issues that have been raised by neighbors regarding this business. The city began receiving complaints from neighbors in late 2020 claiming that the Nelson's were operating a business. Several large semi-truck deliveries were documented showing large boxes unloaded onto the street. They claim the deliveries and increased customer traffic has changed the residential character of the neighborhood. Pictures were provided.

The city contacted Mr. Nelson and told him he could not run a business out of his home without an approved license. He was provided a business license application and copy of home occupation regulations to review. He responded that they had "moved a bunch of stuff to their storage unit and would be mostly selling from there." He added that they were going to pursue finding their own retail space outside of the city.

Similar complaints continued into spring and through the summer. Mr. Nelson was again told that he needed to stop his operation or submit a business license application, which he agreed to do.

Mr. Nelson has explained to staff that no part of the business is conducted in the dwelling, only storage of merchandise in the attached garage. City staff inspected the property and found that no equipment appeared to be stored in the large accessory building; rather, inventory storage is limited to a portion of the attached garage.

Due to the neighbor protests and questions about the impact this business has on the neighborhood, staff determined that a conditional use application is appropriate so the planning commission can consider the issues.

Applicant comments:

Mr. Nelson was invited to take the stand. He noted that the picture displayed of merchandise in his garage is very old and he no longer has that much inventory on his property, nor does he expect to have that size of inventory in the future. He said he is willing to agree to random inspections by the city. While there was a period during COVID that their business was exceptionally busy with many customers coming to his home to pick up merchandise, he said that is no longer the case. He does not have more than 1 customer per hour during an eight-hour workday and they are usually only there for 10 minutes for a pick-up. He stated that his business is not detrimental to the neighborhood in any way. He believes he has been transparent through the whole process and was quite distraught about his family being filmed by neighbors.

Public comments:

Dale Edwards, 946 W Meadowlark Lane lives directly across the street to the east of the Nelsons. He spoke of the negative impact he feels the business has on the neighborhood. In the 20 years he has lived there, there are about 10 home businesses in the neighborhood, but none have impacted the neighborhood like the Nelson's has. He admitted to taking videos and pictures of the impact of the neighborhood to show to the city. He said that he and other neighbors have attempted to talk with Mr. Nelson about their concerns, but they have been ignored. He stated that Mr. Nelson has been very confrontational when approached about his business. He shared a time when he tried to speak with Mr. Nelson and was pushed by him. Mr. Edwards feels this business is not appropriate in a residential neighborhood especially with semi-trucks of inventory being delivered onto the street. He also raised a

concern about sales tax. The on-line ads claim sales tax is included in the price of merchandise, but he does have a sales tax id number or state registration number. He stated the city is their last hope to stop this business from continuing to negatively impact the neighborhood.

Lisa Young, 968 W 1850 N, lives directly across the street to the north of the Nelsons. She has not been happy since the city allowed the Nelsons to build the large building that he said would be used for personal gymnastics for his family. The lights on the building are a nuisance and intrusive and now he is running a full-time business that makes the neighborhood feel like a warehouse district. She reported that there have been non-stop cars in and out of his property even on Saturdays.

Scott and Bonnie Jones, 990 W Ruby Way, live behind the Nelsons. They said they have not been notified to sign the application. They do not have any emotional issues with the Nelsons but are very concerned with the size of the business and that it does not meet the city regulations for a home business. They feel the city has been turning a blind eye to the issue. Mr. Nelson is running a business without a business license or collecting state sales tax. The traffic from people coming to the home is very disruptive to the neighborhood. This type of business does not belong in a residential neighborhood.

Mr. Nelson responded that he was not aware he had to go to all homes within a radius of 300 feet of the property line. He apologized for his misunderstanding and will notify those neighbors that have not been notified.

Commissioner Comments:

There was discussion about whether the application should be tabled until proper neighbor notice is provided, and the applicant obtains a sales tax id. It was decided that discussion of proposed conditions should continue as no license will be granted until the conditional use application is fully considered, and the conditions adopted are met.

Commissioner Mitchell asked Mr. Nelson about the frequency and amount of customer traffic. He responded that people call and make an appointment to pick up merchandise. There are no open house type sales or yard sales. He admitted to some issues last year during COVID due to high demand but traffic has significantly decreased since then. They have secured two storage units, one in the city and one outside the city to hold excess inventory. Their goal is to work toward building their business into a full-time commercial business that will be operated in a retail commercial location. He said he has no problem with any of the proposed conditions and will comply with whatever the city sets up. When asked about truck deliveries, he said when he orders merchandise, he is not made aware of the size of trucks delivering product. He added that he collects rare exercise equipment for his personal use which is also delivered. He does not anticipate any future large freight loads like he had before.

There was discussion about the following conditions proposed by staff and the need for legal review and advice before they can be adopted.

1. The home occupation must meet the requirements of WBMC 5.28 – Home Occupations, including the requirements specified in these conditions to protect the residential character and lifestyle of residential zones.
2. The home occupation will be limited to a home office in the dwelling. Use of any portion of a garage or accessory structure on the property for business purposes that exceeds 25% is prohibited.

3. Delivery of merchandise will be limited to "x" size truck, "x" times per week/month, between the hours of 8 am and 7 pm.
4. Delivered merchandise may at no time be placed on the street right-of-way.
5. Customer pick-ups will be scheduled between 8 am and 7 pm with no more than one customer per hour so that neighborhood traffic is limited.
6. Sufficient off-street parking will be provided for customer vehicles when picking up merchandise.
7. Outdoor storage related to the home occupation will not be permitted (WBMC § 5.28.040.I).
8. Applicant will comply with city and state regulations by applying for and maintaining a current Home Occupation Business License, Utah State Business Registration, and obtaining a Utah Sales Tax ID number.

Mr. Nelson noted that he sells the same things that he uses personally. His accessory building is used as his family's personal gym and some of equipment may be sold if he is replacing it with a newer piece of equipment. His retail merchandise is stored in a portion of the attached garage, and he asked about how best to determine what is personal and what is business if there is overflow out of the 25% space limit.

Mr. Huffman asked that he find a solution to separating what is business and what is personal use. Mr. Nelson responded that KSL ads accurately list all the things he is selling and can be tracked accordingly. Mr. Huffman informed him that if he cannot differentiate his personal items from his business then that could be grounds for denying the conditional use permit. He also informed Mr. Nelson that all things for sale need to fit within one structure.

Mr. Nelson responded that he had been told by staff that he could use a combination of his garage and accessory building to determine the 25% total. Some discussion took place regarding the interpretation of the ordinance and the amount of space the business can occupy. Staff has determined that the code only allows a percentage of either the garage or the accessory building – not both, so Mr. Nelson will need to decide which building he intends to use for his business. Mr. Nelson stated that the accessory structure is not used for business at all; he only uses a portion of the attached garage space. He would like to be able to use up to 600 square feet of the third stall of his garage to store inventory.

Some discussion took place regarding consideration of giving more square footage for his business in the garage. Duane Huffman stated that the municipal code does not allow for flexibility and Mr. Nelson needs to pick which structure he will use for business and then comply with the regulations of the code. It was also noted that WBMC 5.28.040 of the home occupation code states that only 50% of the permitted area may be used for inventory which further limits the square footage available.

Staff will take the proposed conditions discussed this evening to legal counsel for assistance with fine-tuning appropriate conditions for the permit. A new condition will be added limiting the size of delivery trucks to 28 ft in length every 30 days; anything smaller is unlimited. The permit will also require the Nelsons to claim which structure will be used and will list the allowed usable space for that structure. Random inspections will also be added to ensure compliance with the conditions due to the prior history of non-compliance. Mr. Nelson was instructed to provide notification to all residents within a 300 square foot radius of the boundaries of his property and produce that information to the city. He was also directed by Mr. Huffman to cease all sales from his residence until the Home Occupation and Conditional Use permits are in place. It was suggested by Councilmember Enquist that a probation period be put into place given the prior history of the property.

Action Taken

Corey Sweat moved to table this agenda item until staff and the city attorney can prepare a comprehensive list of conditions for consideration by the commission. Laura Mitchell seconded the motion and voting was unanimous in favor.

Corey Sweat moved to have a 5-minute recess. Laura Mitchell seconded the motion and voting was unanimous in favor.

4. Review Additional Options to the Housing in Certain Commercial Areas Overlay Draft Ordinance, WBMC 17.42

Commissioner packets included a memorandum dated October 22, 2021, from Staff regarding suggestions from city council to add additional flexibility to the proposed Housing in Certain Commercial Areas Overlay draft ordinance, WBMC 17.42. The memorandum included the following information:

The city council has reviewed the new Housing in Certain Commercial Areas overlay ("HCCO") as recommended by planning commission. They discussed the advantages of adding more flexibility by shifting the original draft's requirements to recommendations on site and building design. As these changes impact the recommendation made by planning commission, staff was directed to present the alternate proposal for further planning commission consideration and comments.

Duane Huffman explained that he values the opinions from the planners and the commission even though he may not agree with the structure they came up with. The city council was interested in adding more flexibility to the proposed draft that would give developers the ability to come forward with their own proposals that could be addressed as part of development agreement negotiations. The draft he is proposing changes all requirements to recommendations. Also provided was a draft from John Janson and Jake Young that added back in several requirements they believe to be important to the success of the overlay.

Jake Young explained that ordinances should be specific to ensure the intended outcome. They need to be clear so that good developments can be created and to keep a bad development out. Many of the requirements are based on industry standards that are simple and practical in terms of minimums for landscaping, heights, setbacks, etc. The intent is to keep from wasting city's time and resources sorting through a lot of ideas that may not be advantageous to the city.

Corey Sweat stated he has always supported recommendations versus requirements so that the development agreement could be flexible. He added that giving leniency creates a better product opposed to keeping things within a box. Because the whole process will need to be reviewed with the developer a better more creative product can be developed with recommendations rather than requirements. He suggested that the setbacks and dump station be kept in place as requirements.

Following review of the proposal, the following changes were made to the "Recommended" draft.

17.42.050 A.1 - setbacks will be required, height will be recommended.

17.42.A.2 – Front yard setbacks will be required to be landscaped and be a minimum of 20 feet from public right of way.

17.42.A.3 – Rear and side yard setbacks will be required.

17.42.D – Lighting shall be directed downward. The list of locations to be lighted will be required.

17.42.E – Setbacks adjacent to a residential zone shall be landscaped.

17.42.060.C.1. – Common guest parking shall not include any driveway that accesses a garage.

17.42.060.E. – Balconies will be a minimum of 60 square feet.

17.42.060.G.2 – Minimum number of parking stalls shall be required.

17.42.070 – Signs shall be governed by Chapter 17.48 except all illuminated signs shall have downward directed and shielded lighting.

Action Taken

Corey Sweat moved to resubmit the recommended changes to WBMC 17.42, listed above, to the City Council for their consideration. Mike Cottle seconded the motion and voting was unanimous in favor.

5. Update on West Bountiful Public Works Building at 1410 West 1200 North.

Duane Huffman stated that since the city will need a conditional use permit for the new public works maintenance building, he wanted to briefly update them on the site plans for the building.

Mr. Huffman showed a preliminary rough draft of the site plan. He noted the building will be 40 feet from property line, 27 feet high 80 feet wide. The city wants to create an attractive building but use cost efficient materials (metal will be used for the main structure). He further explained that:

- The outside storage areas will be 3 sided bays with roofs. They will meet all setback requirements.
- Egress and Ingress will be better than what we have currently with two entrances off 1200 N.
- Decorative gates will be installed at the front entrances with chain link surrounding the rest of the property.
- They will likely ask for a deferment of curb, gutter, and sidewalk since there is currently none on 1200 North. In the future, a possible asphalt trail may be designed in the place of sidewalk.
- A retention basin will be used for drainage.
- The area East of the building will be in concrete, and the west area will be asphalt.
- A floor plan was shown including office areas, kitchen, conference room, storage, pull through bays and work areas.
- There will be a large storage mezzanine over the office area.
- A carport-like roof will be off the back of the building to house garbage cans.
- The building is expected to be fox gray and polar white with window placement that will soften up the metal building.
- Lighting is still being planned and will be fairly limited and not intrusive.

6. Staff Report

Cathy Brightwell:

- Training will be postponed for tonight. Please report completed training completed on your own. Another hour of training is still required before the end of the year.

Kris Nilsen

- 400 North well house construction is in progress.
- Working on planning next year's major construction project which is 600 West from Porter Lane to Pages Lane.

7. Consider Meeting Minutes from September 28, 2021.

Action Taken:

Laura Mitchell moved to approve of the minutes of the September 28, 2021, meeting as presented. Corey Sweat seconded the motion and voting was unanimous in favor.

8. Training- Postponed due to length of this meeting.

9. Adjourn.

Action Taken:

Mike Cottle moved to adjourn the regular session of the Planning Commission meeting at 10:17 pm. Corey Sweat seconded the motion. Voting was unanimous in favor.

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

Cathy Brightwell
Cathy Brightwell— City Recorder

