

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
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, JULY 12, 2022,
AT THE CITY OFFICES, 550 N 800 WEST**

AGENDA:

1. Prayer/Thought - Commissioner Mitchell.
Pledge of Allegiance – Commissioner Malan.
2. Confirm Agenda.
3. Conditional Use Application – Janet Lee, 638 N 660 West (Flag Lot).
4. Request for Text Change - Retail Tobacco Specialty Businesses & Flavored Electronic Cigarette Products – Omar Mansour (Super Stop – 560 W 500 S)
5. Consider Meeting Minutes from June 14, 2022.
6. Staff report.
7. Adjourn.

This notice has been sent to the Davis Journal and was posted on the State Public Notice Website and the city website on July 8, 2022, by Cathy Brightwell, City Recorder.

1 **West Bountiful City**

July 12, 2022

2 **Planning Commission Meeting**

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4 **Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice website,
5 on the West Bountiful City website, and at city hall on July 8, 2022, per state statutory requirement.

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7 Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, July 12, 2022, at
8 West Bountiful City Hall, Davis County, Utah.

9 ***Those in Attendance:***

10 **MEMBERS ATTENDING:** Chairman Alan Malan, Mike Cottle, Laura Mitchell, Corey Sweat, Dee Vest.

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12 **MEMBERS EXCUSED:** Council member Kelly Enquist

13 **STAFF ATTENDING:** Kris Nilsen (City Engineer), Cathy Brightwell (Recorder) and Debbie McKean
14 (Secretary).

15 **VISITORS:** Rick and Janet Lee, Omar Mansour, and Gary Jacketta.

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

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19 **1. Prayer by Commissioner Mitchell**
20 **Pledge of Allegiance- Commissioner Malan**

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22 **2. Confirm Agenda**

23 Chairman Malan reviewed the proposed agenda. Corey Sweat moved to approve the agenda as
24 presented. Mike Cottle seconded the motion. Voting was unanimous in favor.

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26 **3. Conditional Use Application – Janet Lee, 638 N 660 West (Flag Lot).**

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28 Commissioner packets included a memorandum dated June 9, 2022, from Kris Nilsen and Cathy
29 Brightwell regarding a Conditional Use Application from Janet Lee for a flag lot at 638 N 660 West.

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31 Kris Nilsen stated that Janet Lee has requested a 2-lot subdivision on the 1-acre property located at 638
32 N 660 West. There is currently one home on the lot and a flag lot is necessary to create a second lot as
33 the total frontage is approximately 142 feet – not wide enough for two regular lots. Flag lots are a
34 conditional use in the R-1-10 zone, therefore, a Conditional Use Permit for the flag lot must be granted
35 before the city can approve the subdivision application.

36
37 Criteria for flag lots are found in WBMC 16.12.060; other conditions as decided upon by the commission
38 will need to be made, then the fire marshal will need to approve it. Mr. Nilsen pointed out that the size
39 of the Rocky Mountain Power easement still must be determined but it currently it appears that there is
40 enough buildable space for a home. Staff informed the commission that the Lee's plan on keeping the
41 larger building that exists on the rear of the property and demolishing the smaller one.

Commissioners reviewed the requirements for flag lots according to the checklist found in WBMC 16.12.060 and found the request for a flag lot at 638 North 660 West favorable.

For discussion, staff included some potential impacts and common complaints regarding flag lots and listed possible mitigating conditions to deal with the negative impacts resulting from a flag lot.

Kris Nilsen explained that it is important to determine which conditions must be met at the time the subdivision is approved and which conditions will be met at the time homes are built and impose those accordingly.

Commissioners reviewed the possible conditions recommended by staff in their memorandum and included the conditions they felt were necessary in the motion to approve.

Action Taken:

Laura Mitchell moved to accept the request for a flag lot for Janet Lee at 638 N 660 West which must meet the criteria listed in WBMC 16.12.060, and imposed the following conditions:

- a. Lighted street numbers, a minimum of four inches tall will be installed at the flag lot entrance for identification to help guide emergency vehicles and other persons to the correct address. The numbers may be lighted from solar sources.***
- b. Six foot privacy fencing will be placed along the north and south property lines of the flag lot, not including the flag lot staff to minimize noise and provide privacy to neighbors.***

Corey Sweat seconded the motion and voting was unanimous in favor.

4. Request for Text Change-Retail Tobacco Specialty Businesses & Flavored Electronics Cigarette Products- Omar Mansour (Super Stop 560 West 500 South)

Commission packets included a memorandum dated July 8, 2022, from staff regarding Flavored Electronic Cigarette Products & Retail Tobacco Specialty Businesses with an attached application to rezone/change text from Omar Mansour.

Ms. Brightwell explained that in 2014, West Bountiful adopted a prohibition on retail tobacco specialty businesses (RTSBs), as defined in state code, in all commercial and industrial zones after determining that it was not in the community's best interest to have RTSB's in the city. In 2020, state code was modified to define RTSBs to include any business that sells flavored electronic cigarette products.

Prior to 2020, Mr. Mansour's business, Super Stop, did not meet the definition of a RTSB. He claims to have sold flavored electronic cigarette products for many years before the change in 2020. The city was unaware of the 2020 state code change until it was notified by another prospective RTSB across the street in Bountiful that was deemed ineligible due to its proximity to the Super Stop.

Cathy Brightwell noted that along with the change in definition, the 2020 update to UCA 10-8-41.6 included a process for county health departments to issue permits to businesses whose licensing requirements had changed from General Tobacco Retailers to RTSBs based on the new definition.

The Davis County Health Department contacted convenience stores to let them know the law had changed and that they could apply for a RTSB permit if they wanted to continue to sell flavored e-tobacco products. Mr. Mansour submitted his application and was issued a RTSB permit the end of 2020 (without any knowledge of the city).

Staff contacted the health department in early June to find out why they issued a Permit to a business that was not allowed within our city per municipal zoning regulations. Utah code states that permits are issued by the health department but are not valid until the municipality issues a business license to the retailer. The health department said they leave the licensing up to the retailer and do not believe it is their responsibility to verify it has been done nor do they check compliance with municipal zoning regulations. Staff asked them to revoke the permit because it did not meet state or municipal regulations and was not valid in West Bountiful. Their attorneys responded that the permit would not be revoked, and the city would have to take action against the business for operating without a retail tobacco specialty license.

The city contacted Mr. Mansour and explained to him that even though he had a permit to operate as a RTSB, it was not valid because he had not received a license from the city. He responded that he thought his city business license met the requirement. When he found out his current city business license did not cover this portion of his business, he submitted the Request for Text Change asking that the city continue to allow flavored e-cigarette products as it has in years past. Mr. Mansour's application provided no further justification. He has stated that flavored electronic cigarette products have been sold at his store for years with no detrimental effect to the community.

Mr. Mansour took the stand and said he would like to continue to sell flavored e-tobacco products. He stated that it appears he is in compliance with the Davis County Health Department but not in compliance according to our city code of which he was totally unaware. He explained that his business and the products he sells has been consistent for the past 8-10 years and that a change in definition by the legislature should not force him to lose a profitable portion of this business. Of the 6 criteria listed in state code for RTSB's, the only one that he meets is *#v (flavored tobacco products)*. His sales do not meet the threshold, his products are behind the counter and out of sight, retail tobacco specialty products are not his primary business, and he does not hold himself out as a RTSB (Vape Shop). He has submitted a Request for Text Change asking the city to reconsider its ban.

He was asked by Commissioner Sweat what the portion of sales was for flavored e-tobacco items and what his profit margin is. He responded that it was about 6% of in-store sales with a profit margin for the flavored e-tobacco products of about 40%. He stated that not selling the product would not put him out of business but would negatively impact his business financially.

Mr. Mansour was asked how he complies with age restrictions, and he said he has a sign next to the door and that the health department performs frequent tests on selling to minors. He indicated that he has documentation from the health department showing that he is in compliance with their rules. Mr. Mansour pointed out that the state keeps making changes and he has always done his best to comply with state law and wishes to do so regarding city code as well.

Mr. Mansour added as a side note that he is planning to demolish the existing building next year and build a new, larger building that will be more convenient for customers and increase sales.

Staff provided several options for the Commission to consider regarding Mr. Mansour's request.

- Recommend denial of the request, finding insufficient justification, insufficient specificity, and/or that it is not in the community's interest to modify the character of the C-G zone.
- Recommend the addition of RTSB to the C-G zone as a permitted or conditional use, finding that RTSBs will not harm the zone.

- Require applicant to provide proposed language that would carve out the sale of flavored electronic cigarette products from the city's definition of RTSB. At this point, staff has concerns with diverting from state code in how these establishments are defined.

Discussion took place regarding how to solve the problem. Commissioners recalled when the ban was put in place and the city's desire to keep Vape/Smoke shops out of the city. The recent change to state law now moves something that was allowed as part of a General Tobacco license to requiring a RTSB license. The commission still does not want full Vape shops but acknowledges the impact to an existing business whose status has changed even though the products they sell have not. The city cannot change state law, but it was suggested that a simple adjustment in our code might be possible to allow convenience stores to sell a moderate amount, possibly around 15%, of flavored e-tobacco products as compared to total in-store sales, understanding that they would still need to be licensed as a RTSB.

Commissioner Sweat suggested staff contact Mr. Doxey to see if this is something that would be possible. A text change may allow businesses to continue to sell flavored e-cigarette products without opening up the city to all RTSBs.

Mr. Mansour was told that the process could take some time. If language can be developed, a public hearing will be necessary to change city code and final approval of the city council. It is likely that he will be required to stop selling flavored tobacco e-cigarette products until it is resolved. Staff will discuss the issue with legal counsel and get back to Mr. Mansour.

5. Consider Meeting Minutes from June 14, 2022.

Action Taken:

Laura Mitchell moved to approve of the minutes of the June 14, 2022, meeting as presented. Dennis Vest seconded the motion and voting was unanimous in favor.

6. Staff Report.

Kris Nilsen:

- Ivory Homes has requested two phases for their proposed development of nine lots with Phase 1 being 7 lots and the other 2 of the nine lots will be Phase 2. They are trying to work out drainage issues into Mill Creek and how best to proceed with a bridge over the creek on 1450 West that impacts the two south lots. Plans will be presented as a final plat when received and reviewed.
- 400 N well is 99% complete and still waiting for the fluoride system to be completed. Everything else is great.
- 600 North has begun complete excavations of the road on the south end.
- Public Works facility is moving forward, and they plan on completing the footings and foundation next week.

Cathy Brightwell:

- Bill Goldberg contacted the city and stated he was planning on asking that the north side of 1200 North on the west end be rezoned to some type of commercial or industrial zone. He said several of his neighbors support the idea and he plans on contacting others, such as Desert Cover and Rocky Mountain Power. He said the city's maintenance building is the catalyst on

turning this area into a more commercialized area. He wants to be able to use his property for financial gain and has not been able to do so all these years.

7. Adjourn.

Action Taken:

Laura Mitchell moved to adjourn the regular session of the Planning Commission meeting at 8:45 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 August 9, 2022 by unanimous vote of all members present.


Cathy Brightwell – City Recorder