

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD JULY 5, 2011 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Justin Stoker, Kathy Hilton, Nathan Gedge, David McKinney, John Winn, Jesse Valenzuela, and Dan Lawes.

STAFF: Tom Burdett, Robert Thorup, Greg Mikolash, Scott Langford, Jennifer Jastremsky, Julie Davis, Mark Forsythe, and Nathan Nelson.

OTHERS: Steve Glezos, Garry Mickelsen, and Chris and Warren Borton.

The briefing meeting was called to order by Justin Stoker.

The agenda was reviewed. Required and provided parking were clarified for Item #3. The master plan for roadways was clarified as it pertains to Item #4 and additional information from the applicant was distributed.

The regular meeting was called to order at 6:00 p.m.

**1. Consent Calendar
Approve Minutes from June 21, 2011**

MOTION: Nathan Gedge moved to approve Consent Calendar Item #1 the minutes from June 21, 2011. The motion was seconded by Dan Lawes and passed 7-0 in favor.

2. Lani's Hawaiian Style Shaved Ice; 1475 West 9000 South; Temporary Use Permit (150 days); David E. Purinton (applicant) [#TUP20110029; parcel 27-03-426-090]

Jennifer Jastremsky gave an overview of the item. They are currently operating under a 30-day temporary use permit. She reviewed the hours of operation, parking, and spacing requirements, which the application meets.

Based on the findings set forth in the staff report, staff recommended that the Planning Commission grant Temporary Use Permit approval for Lani's Hawaiian Style Shaved Ice located at 1475 West 9000 South in a P-C zoning district with the conditions of approval as listed below:

Conditions of Approval:

1. Provide for a safe pedestrian standing area in the area next to the temporary stand. This area must be blocked off to prevent vehicular traffic from entering by either traffic cones or by other appropriate device, as approved by staff.
2. Dates of operation shall be from July 14, 2011 to September 30, 2011, or shall not exceed 150 consecutive days.
3. A \$300 site restoration bond shall be placed with the City. The bond will be released after the use has ceased operation and the site has been cleaned and restored to previous conditions.
4. Maintain the temporary stand in good order and keep the parking lot free of trash and debris during the extent of the temporary use.
5. The stand and all associated equipment/materials shall be removed from the site within five days of permit expiration.
6. Obtain and maintain a valid West Jordan City Business License.
7. Obtain approval from the Salt Lake County Health Department.
8. Planning Commission approvals do not include Public Safety, Fire, Building and Safety, or Engineering approval.

The applicant was not in attendance.

Further public comment was closed at this point for this item.

Nathan Gedge recommended one minor change to condition #7 regarding the name of the health department.

**MOTION: Nathan Gedge moved based on the evidence presented by the staff to approve the Temporary Use Permit for Lani's Hawaiian Style Shaved Ice; 1475 West 9000 South; David E. Purinton (applicant) with conditions of approval 1 through 8, modifying:
7. Obtain approval from the Salt Lake Valley Health Department.
The motion was seconded by John Winn and passed 7-0 in favor.**

3. Be Auto; 7586 South Redwood Road; Conditional Use Permit; C-G Zone; Be Auto/Kyle Borton (applicant) [#CUP20110009; parcel 21-27-326-018]

Jennifer Jastremsky gave an overview of the application. There are two other businesses currently on the site. The application is for used vehicle sales and minor vehicle repair. Vehicle repair is already permitted on the site, and all repair services will be conducted inside the building. The three northern most parking spaces along Redwood Road have been designated for the 'for sale' vehicles. It is anticipated that 2-3 vehicles will be sold per month. General parking is also available in front of the individual units. The proposed business is required to have six parking spaces and the existing businesses are required to have nine parking spaces. The property owner has provided all 15 required spaces on-site. A condition of approval restricts the inventory to three 'for sale' vehicles in order to maintain adequate parking. The site is legal non-conforming in the driveway width for eight of the 15 stalls. The site cannot be altered for parking, but the proposed use is not considered an extension of the non-conforming site, because they are using the existing building and parking.

Based on the findings set forth in the staff report, staff recommended that the Planning Commission grant Conditional Use Permit approval for Be Auto located at 7586 South Redwood Road in a C-G zoning district with the conditions of approval as listed below:

Conditions of Approval:

1. Designate the parking spaces for all for sale vehicles with signage and/or striping.
2. The number of vehicles for sale will be limited to three at any one time, unless additional parking is provided on the site through an amended site plan process in order to accommodate the parking of additional vehicles.
3. No vehicles may be stored outdoors except for the three vehicles available for sale.
4. The Conditional Use Permit is subject to review and/or revocation as per City Code Section 13-7E-10.
5. Approvals do not include Public Safety, Fire, Building and Safety, or Engineering approval.

Warren Borton and Chris Borton, 8269 South Hayes, stated that the applicant, their son Kyle, was out of the country on a prior-planned trip and was unable to attend the meeting. They had nothing to add to the staff report.

Further public comment was closed at this point for this item.

MOTION: Nathan Gedge moved based on the finding set forth in the staff report to approve the Conditional Use Permit for Be Auto; 7586 South Redwood Road; Be Auto/Kyle Borton (applicant) with the conditions of approval 1 through 5 as listed in the staff report. The motion was seconded by Dan Lawes and passed 7-0 in favor.

4. Discovery Phase 3 Request for Modification of Design Standards; approximately 8600 South U-111; Request for exemption to construct 8600 South between U-111 and approximately 6800 West; R-1-8 Zone; Land Solutions, LC/Steve Glezos (applicant) [#MISC20110005; parcel 20-34-376-001]

Greg Mikolash gave an overview of the history of the Discovery subdivision that was master planned for three phases. Phase 3 never received final approval and the plat was never recorded, so all approvals expired. Today's applicant submitted for a 58-lot subdivision with a similar design as the originally approved subdivision. The application is a modification request to a design standard, which asks for an exemption from the requirement to install any infrastructure within 8600 South and the road improvements associated therein. This leads to a claim under Section 10-9a-508 of the State Code. Since the request is for a modification to a design standard to not install any improvements at all on 8600 South, staff felt that they should not comment on the takings issue and just focus solely on the modification request.

Section 8-3A-3(a) refers to modifications authorized and states, "If a unique physical condition affecting a specific subdivision, development, or building site are such that it is impossible or impractical or undesirable for the developer, builder, or property owner to fully comply with the design standards and policies contained herein, the city engineer may recommend reasonable modifications to such standards and policies for the specific subdivision, development, or building site." Staff believed that this request to waive any responsibility to construct 8600 South in whole is premature. It is believed that other avenues have been offered to the developer, and this relief should be explored. As explained to the applicant on several occasions both in writing and verbally, if there is a claim of a financial burden because of the requirements to install 8600 South and its improvements, it is possible to apply for one or more options listed on page 3 of the staff report. He reviewed those options: 1) Modification of design standard - request for a half-street. 2) Reimbursement agreement. 3) Pioneering Agreement; and 4) Modification of design standards – a request for an agreement to install roadway improvements along 8600 South to where the subdivision abuts Lot A. Mr. Mikolash reviewed the four criteria associated with a modification to design standard. Finding A isn't applicable to this type of request; however, Findings B, C, and D have not been met as explained in the staff report.

Based on the findings of the report, staff recommended that the Planning Commission forward a negative recommendation to the City Council for a Modification to Design Standards of 8-3A-3(a) -*Modifications to Design Standards* and Section 14-5-5(G) of the Subdivision Ordinance, exempting the applicant from the requirement to construct 8600 South contiguous to the southern boundary of the Discovery Phase 3 Subdivision (between U-111 and approximately 6800 West). Alternatively, staff suggests that the applicant pursue the options as explained on page 3 of the report.

Justin Stoker asked if a bond was posted for 8600 South with the construction of the first two phases.

Nathan Nelson said it was not posted for 8600 South, but for other improvements within those phases. They wouldn't usually ask for that prior to actual development of the phase.

Justin Stoker asked questions regarding ownership of the property and whether or not the applicant asked for all of this information as a due diligence process prior to purchasing the property.

Staff recommended that the questions be asked to the applicant.

Steve Glezos, 796 East 5900 South, Garry Mickelsen, 6671 Aqua Vista, were present. Mr. Glezos stated that the property is still under bank ownership, and he and Mr. Mickelsen have a contract to develop if the issues are resolved. He is not the developer of the first two phases. They came to the city to start a new application for the subdivision, because the original approvals had expired. They found that 8600 South would be required, which led to the requirement of a connection to U-111 and access permits. In the meantime, the city entered an agreement with the realignment of 8600 South to coincide with UP&L across the street. The alignment was

shifted and they completed the engineering for that change at significant expense. UDOT then told them that additional criteria had to be met if 8600 South were to connect to U-111. They had their engineers design those items in conjunction with city engineers. They then put a cost to the improvements, which is \$1.5 million. At that time they determined it wasn't reasonable to incur those costs for 58 lots. They looked at the options with the city and modification to design was the best answer the city could give them. He felt this is an unreasonable exaction. They could do the pioneering or participation agreement, but there is no guarantee that he will get the money back. He doesn't understand the requirement for 8600 South. It is a roadway that exists on the master plan, but it connects to nothing. It will be a major road in West Jordan at some point, but none of the properties to the east of the subject property were required to build it, with the exception of one small portion to access a property south of 8600 South.

Justin Stoker asked if he approached staff about the required infrastructure prior to entering into a contract to purchase the property

Steve Glezos said they met with the staff for the design criteria. They designed it, but he didn't think even staff realized that the UDOT requirements to connect to U-111 would be \$700,000.

Justin Stoker said the commission can only look at 8600 South, and it appeared that Mr. Glezos knew it would have to be constructed.

Steve Glezos said he hasn't purchased the property yet. They have spent \$50,000 in engineering fees trying to determine if the project is feasible, but for 58 lots and those kinds of costs it will not work for him or anyone else. The option for a half-street doesn't solve any problems, because they would still have the costs for U-111.

Justin Stoker asked what the UDOT improvements include.

Garry Mickelsen said it would require constructing both the east side and west sides of U-111 at a cost of \$750,000. Those improvements include the complete road design, pavement, fill, guardrail on 90% of the length, and widening for acceleration and deceleration lanes on both sides of the street.

Justin Stoker reviewed some of the costs that include storm drain, walls, etc. He asked if they asking for a waiver to the requirement for all infrastructure including utility improvements and erosion control.

Steve Glezos said those are improvements in 8600 South that have no benefit for and do not serve their 58 lots; it is just for the city's future use.

Justin Stoker asked if they had approached UDOT for a waiver or relief.

Steve Glezos said they and the city did jointly. UDOT told them that they will only accept an application from the city. But the city wants him to be the applicant for the access. They spent another \$10,000 designing it before they knew what the costs would be.

Garry Mickelsen explained that they couldn't get an accurate cost without a good design.

Justin Stoker had heard that if a traffic signal were installed instead of the acceleration and deceleration lanes it would save on the costs.

Steve Glezos said even a signal could be \$250,000 to \$400,000. He asked why Rocky Mountain Power was allowed to go in without spending anything for 8600 South and why no one east of them had to build it either.

Kathy Hilton felt that the condition to build the road was approved with the original subdivision and it is attached to the property.

Steve Glezos said he paid another \$10,000 to start the process again because all the previous approvals had expired and are irrelevant. The burden says that for him to spend \$1.5 million for off-sites for 58 lots is unreasonable for something that many, many people benefit from. He wanted to know why this burden is being put on him. The reason they are asking for the modification to design standards is that no one could tell him how to approach the issue. His response to staff has been the same; it is an unreasonable exaction, and he wants to move forward. The city's legal counsel said to schedule the item as modification of design standard.

David McKinney asked the city attorney if conditions of approval that go with a development plan become conditions that run with the land even if ownership of the land later changes.

Robert Thorup said yes and no, but in this situation there is a complete expiration of the subdivision that had the condition attached to it. This should be treated as a clean piece of land, and just like any other property in the city it has a requirement to develop roads adjacent to the land.

David McKinney asked if the obligations to make improvements in the original conditions of approvals or intent of the conditions would still apply to the development itself.

Robert Thorup said this situation is that the application and filed subdivision that would burden the land had expired because no action was ever taken. It is as if this land is no longer part of Discovery subdivision, even though the applicant is calling it Discovery Phase 3. As a matter of legal issue, it is a plain piece of land that is newly being applied for. It is staff's position that regardless of what was imposed in Discovery 1 or 2, this is a piece of land just like any other that is going to be developed in the city that if there is a scheduled road that is adjacent it is provided by that developer.

Dan Lawes asked Mr. Glezos if his comment was that their subdivision didn't benefit from the improvements.

Steve Glezos said he stated that they don't need it for ingress or egress or access or utilities. None of the utilities in 8600 South are used in Phase 3. The ingress and egress are through Phases 1 and 2. He has no benefit. He realized that it is needed in the future, and it requires 1.5 acres of land that he will deed to the city for if and when the city builds 8600 South.

Dan Lawes referred to 8-3B-3A that states, "The developer will also be required to install off-site or oversized public improvements reasonably necessary to extend, expand, or improve the city infrastructure beyond that which is necessary to serve or benefit the particular development."

Steve Glezos said "that are reasonable", but under State Law it is an unreasonable exaction for him to be required to spend more money than he is getting the benefit for, and \$1.5 million for 58 lots is not reasonable.

Dan Lawes said only a portion of that is required by the city code.

Garry Mickelsen said that is correct, but 8600 South is still a trigger for UDOT that requires the intersection to be built. They city is requiring that they obtain permits from UDOT, and UDOT is requiring the acceleration and deceleration lanes. He realizes what the code says, but the numbers aren't there and the project will never get built if the numbers don't work. Therefore, the road will never get built.

The proposed ingress and egress points were shown, which are in the existing subdivision. Reaction times for emergency personnel will be the same as for the existing subdivision.

Justin Stoker asked why 8600 South to the east hasn't been constructed.

Greg Mikolash said Wasatch Pacific filed for a development agreement that included a trigger point as to when that would be constructed at a future date, but they aren't alleviated from the requirement.

Steve Glezos asked for specifics on when that would occur and if it is a half-road or full road.

Tom Burdett thought it was a half-road, but he said they could view the development agreement.

Jesse Valenzuela asked Mr. Glezos if he felt that 8600 South would be required if this piece of property were phase 1 of a new development without any other adjacent development.

Steve Glezos said the answer is no, because the development to the east (Oaks at Jordan Hills Villages) had been there for some time already so the connections would have come through that development instead of through the existing Discovery subdivision. He said all of the utilities that are feeding this subdivision are coming from the north.

Jesse Valenzuela asked if he wouldn't be required to install 8600 South, according to city code, if this area were not yet developed.

Steve Glezos said no assuming everything to the east existed. He asked the commission to keep in mind that one of the reasons so much is required for U-111 is that 8600 South is designed as a major collector road for the city and it will eventually be a highly traveled road. UDOT said the same thing in their meeting. UDOT will improve U-111 before 8600 South ever gets built and connects, so some point in time the requirement for all the improvements on U-111 will go away because UDOT will improve them. He thinks it is in their 5-year plan.

Further public comment was closed at this point for this item.

David McKinney said based on the discussion it still appeared to him that findings B, C, and D are not met in order for the applicant to appropriately request a modification to the design standards. He felt it was clear that the primary reason is economic, but the improvements are required by the code. Regarding Finding B, that is not true in this case, because the property can still be developed as it is. Finding C isn't met either, because granting the modification will be detrimental to public safety. In the very least it will send all traffic from this development through other adjacent developments instead of onto collector and arterial streets. Finding D is not correct, because it will shift the burden of this street to other developers rather than sharing the burden. There are other options the applicant has ruled out rather than pursuing them. He said that most of the economic issues don't relate to the portion of the improvements that the city is imposing. He felt the criteria are not met and the recommendation to city council should be a negative one.

Justin Stoker also wanted to add that the \$1.42 million costs shown represent a worst case scenario and don't consider any other mechanisms that may be able to reduce the costs.

David McKinney also said the costs include a variety of items that the applicant would be required to build anyway, and they don't properly belong in the listing.

John Winn said the applicants haven't looked into everything that they can do to reduce the cost. They did look into providing a signal at the intersection, which would be \$400,000 compared to \$750,000. The applicant didn't think that was a significant difference, but he felt that \$350,000 is pretty significant. They could also apply for a modification for a half-road instead of the full road.

Justin Stoker stated the applicant said none of the infrastructure in 8600 South is required for their subdivision, including utilities. However, it was his understanding that water infrastructure was needed for pressure and flow.

Nathan Nelson said it is a requirement that water systems be interconnected and looped. It is also a requirement that when we build roads we put the utilities that go in those roads. The amount of benefit to this subdivision is something the city would evaluate if there were a request for a reimbursement or upsizing agreement, which there is not. Rather than saying it is not a direct benefit to the subdivision, it might be more accurate to say that it is just as beneficial or more so to off-site properties. He thought that all of the sewer in this subdivision would be going to the north, so the applicant could argue that there is no direct need for a sewer line that he would tie into. However, a sewer line is an integral part of the road design, and that would be considered as part of any review that they take in.

MOTION: Dan Lawes moved based on the findings set forth in the staff report and upon the evidence and explanations received today to forward a negative recommendation to the City Council for Discovery Phase 3; approximately 8600 South U-111; Land Solutions, LC/Steve Glezos (applicant) for a modification to design standards of Section 8-3A-3(a) Modifications to Design Standards and Section 14-5-5(G) of the Subdivision Ordinance exempting the applicant from the requirement to construct 8600 South contiguous to the southern boundary of the Discovery Phase 3 subdivision between U-111 and approximately 6800 West. The motion was seconded by John Winn.

AMENDED

MOTION: Nathan Gedge moved to amend the motion to add that specifically Findings B, C, and D had not been met. The amendment was accepted by Dan Lawes and John Winn and the amended motion passed 7-0 in favor of a negative recommendation.

Three element of the updated General Plan are scheduled for the July 19, 2011 meeting.

MOTION: Nathan Gedge moved to adjourn.

The meeting adjourned at 7:00 p.m.

Justin Stoker
Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Development Department

Approved this _____ day of _____, 2011