

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD OCTOBER 20, 2015 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Dan Lawes, Matt Quinney, David Pack, Zach Jacob, and Bill Heiner. Josh Suchoski and Kelvin Green were excused.

STAFF: Scott Langford, Nannette Larsen, Nathan Nelson, Julie Davis, Robert Thorup,

OTHERS: Greg Wilding, Brigham Colton

The briefing meeting was called to order by Dan Lawes.

There was a discussion regarding proper procedure for commissioners who want to submit comments for a meeting they aren't attending and if they can be considered in the deliberations. They reviewed the definition of the open meetings act. There were some recommended amendments to the text in Item #3 to change 'permit' to 'notice' and to remove the reference to a collection of a fee since none is required at this time.

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

**1. Consent Calendar
Approve Minutes from October 6, 2015**

MOTION: Zach Jacob moved to approve the Consent Calendar. The motion was seconded by David Pack and passed 5-0 in favor. Kelvin Green and Josh Suchoski were absent.

2. Jordan Valley Dental; 7452 South Campus View Drive; Preliminary Site Plan; P-O Zone; Grass Creek Construction (applicant) [#SPCO20150020; parcel 21-29-301-015]

Greg Wilding, Wilding Engineering, and Dr. Brigham Colton were in attendance. Mr. Wilding said their request is to build a dental office in an approved zone. They have met all of the requirements and conditions of the staff during the review process.

Nannette Larsen said the new building is approximately 9200 square feet. The Design Review Committee also recommended positively to the Planning Commission with the conditions 3 and 4 as listed in the staff report relating to ground cover and additional lighting on the site.

Based on the positive findings of fact in the staff report, staff recommended that the Planning Commission grant Preliminary Site Plan approval for Jordan Valley Dental located at 7452 South Campus View Drive in a P-O zoning district, with the conditions of approval as listed below.

Conditions of Approval:

1. The proposed development shall meet all applicable Subdivision and Zoning Ordinance requirements.
2. The final site plan must meet all requirements of the Engineering and Fire Departments.

3. Ground cover from the City's Recommended Plant List must be installed along the north property line retaining wall.
4. Additional lighting is required on the south side (adjacent to the access to the basement suite) and lighting to the southeast corner of the Site.
5. Approval of a Preliminary Site Plan shall become null and void if development does not commence within two (2) years of final site plan approval.

Dan Lawes opened the public hearing.

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

MOTION: David Pack moved based on the positive findings in the staff report and information received during the meeting to approve the Preliminary Site Plan for Jordan Valley Dental; 7452 South Campus View Drive; Grass Creek Construction (applicant) with the five conditions listed in the staff report. The motion was seconded by Matt Quinney and passed 5-0 in favor. Kelvin Green and Josh Suchoski were absent.

3. **Text Amendment – Amend the 2009 West Jordan City Code – Adding Section 13-8-24 “Mural or Wall Art”; City-wide applicability; City of West Jordan (applicant) [#TA20150006]**

Robert Thorup explained that in response to a recent violation to the sign code staff wanted to separate 'wall art or mural' from the sign code. The idea of the amendment is that the city doesn't want to get involved but there had to be a difference between graffiti and wall art, which is the building owner consent. The process would have the building owner or artist come to the city with a notice where the city would see that the owner had agreed. No permission or approval is needed from the city other than the need to put people on notice that wall art or murals cannot involve three key problem areas: 1) Hate speech. The definition was taken from Utah State Code, which makes hate speech a crime; 2) Advertising. If the wall art advertises the business then it will be regulated as a sign, which will limit size and location, etc. If it doesn't advertise a specific product, particularly at that location, then it can remain a mural or wall art; and, 3) Obscenity. That definition is taken from the sexually oriented business regulation in the existing city code in order to be very clear.

Mr. Thorup said it was discussed in the pre-meeting that there was probably an error in calling the contact with the city a 'permit', but they are already generally permitted in all commercial areas. The city doesn't want to get in the business of stating that one mural is good and one is bad through permitting. Staff recommended that the term be changed to 'notice'. The amendment also makes a statement regarding a fee, which was meant to leave the opportunity open in case a fee for the process was imposed. But based on the discussion in the pre-meeting staff felt it would be wise to amend out that reference, because we don't presently contemplate it.

Based on the findings set forth in the staff report, staff recommended that the Planning Commission forward a positive recommendation to the City Council for the proposed text amendment adding Section 13-8-24 “Mural or Wall Art” to the 2009 West Jordan City Code.

Matt Quinney asked if the advertising prohibition were limited only to the subject location, for instance putting a Jazz logo on a Mexican restaurant.

Robert Thorup said a Jazz logo has taken on a meaning other than buying tickets to the Jazz. For example, if he put a logo in his front window it doesn't necessarily mean he is selling tickets, but he is indicating he is a fan of the Utah Jazz. However, if they wanted to put up an advertisement for a car dealership then that is advertising. If they put up advertising for their own business it is on-premises advertising and is regulated by the sign code and is not a mural. If they advertise for another business then it is off-premises advertising and that would be strictly regulated as a billboard in the ordinance, and there are only a limited number allowed.

Zach Jacob asked why it isn't applicable in residential zones. He explained that 14 years ago a lot of people were painting flags on their homes and garages, which might be prohibited with this ordinance.

Robert Thorup said the city wasn't interested in seeing this in the residential area. If a use is not listed in the City code, then it is prohibited. Staff wanted to at least start out by limiting it to commercial zones. If there is political pressure to allow wall art or murals in residential areas they will leave it for a future time.

David Pack asked if staff thought there would be any unintended consequences; could this create a worse issue than the one they are addressing.

Robert Thorup said they didn't foresee any backlash or it would have been addressed in the text. *Any* proposal to amend the code could look like there were unintended consequences a year later, but they don't know about them now. Staff tried to deal with all of the possibilities. If something comes up in the future they can deal with it at that time.

David Pack said there are no size limitations in the code. Without any bias to any ethnic group, religion, restaurant type, or anything of that nature, but as a body trying to put forth an image of West Jordan that the majority of the residents would want, he questioned whether it would be prudent to allow that much latitude for murals of any size depicting anything except the three things mentioned. He asked if that is how we want West Jordan to look. Theoretically any business could have one.

Robert Thorup said it would be politically and otherwise almost impossible to apply a size reduction to the one location that probably motivated the change. They have to assume that the location that started the process is going to stay as it is. Then they have to ask 'what is the future?' Staff does not think there will be that many building owners who would allow for *any* wall art, let alone in more than a limited area. Again, if they find that it isn't the case, then they will have to rethink it. This is more or less a unique situation in a location where restaurants have failed repeatedly over time. The operator and owner agreed to the mural. Staff didn't think they will see this anywhere else in the city.

Zach Jacob said he liked the latitude, because what we don't specifically permit in the code is prohibited, which he thought was backwards for our nation. He asked where we draw the line between painting a wall and painting wall art. A red wall isn't considered wall art, but how about a red wall with a stripe or three stripes, etc. When does this section of code become applicable?

Bill Heiner said art is in the eye of the beholder and it is a difficult situation to be in. What will happen when someone wants to paint a Confederate or another type of flag if the owner says it is okay?

Dan Lawes said symbols can mean different things for different people throughout history as well.

There was a discussion about who would decide if something is hate speech or art, etc. Case law could address some of that.

Scott Langford said for those exact reasons these things are difficult to define and interpret, which is the reason they crafted this language to be flexible. They don't want to over regulate because how do you regulate it apart from the three parameters that have been listed. It is very easy to get down in the weeds quickly with this type of issue with size, color, etc. If the commission has specific direction that the council should consider when making the policy decision it would be appreciated.

There was a discussion about the definition of advertising. The obvious one is if it says their name. If a coffee shop paints a cup of coffee on the wall then it is a sign. Staff said it is interesting to talk about these things, but they don't think they will be seeing problems. Those who are left to enforce the ordinance need to have some wiggle room and prosecutorial discretion.

Dan Lawes opened the public hearing.

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

David Pack said it is true that you do need latitude, but he is just trying to define parameters. When there is too much subjectivity in the prosecutorial latitude, if things are so ambiguous and vague then everything becomes subjective instead of objective and it doesn't have the teeth. He said that Mr. Thorup's input gave some solace in recognizing that the land/building owner needs to give consent and that the city doesn't expect to see much of this, but if there are problems they can make the code tighter. They want to consider everyone's property rights.

Zach Jacob said regarding the comment that advertising draws attention to the business, he didn't think there would be a purpose for the wall art if it didn't draw attention. The instigator in this action was trying to draw attention to their restaurant by painting pictures and colors on the side of their building. He liked the definition for advertising that says it identifies a product, service or business logo. Also, if they aren't calling it a permit and aren't enforcing the three prohibited items until after it is painted then he thought filing for permission from the city seemed onerous. He thought they should be able to go ahead and paint, but making sure there is written permission by the owner. He thought they could strike Section B.

Robert Thorup said the notice does give the city an opportunity to apply the three prohibited items.

Matt Quinney said the idea is to provide disclosure at the time of notice so they know the parameters. He agreed that there won't be so many people doing this that it becomes cumbersome.

MOTION: Dan Lawes moved to forward a positive recommendation to the City Council for the proposed text amendments to the 2009 West Jordan City Code, adding Section

13-8-24 “Mural or Wall Art”; City-wide applicability; City of West Jordan (applicant) as listed in the staff report, making modifications:

B. Permitted Use; Advance Notice Required:

- 1. Mural or wall art is a permitted use in all commercial and manufacturing zones of the City, subject only to prior notice to the City planning division before any mural or wall art is commenced.**
- 2. The notice must include a general description of the proposed mural or wall art, its subject(s) and the artistic media to be used, and must evidence the clear agreement of the property owner as to the existence and extent of wall coverage that is contemplated.**

The motion was seconded by Matt Quinney.

Zach Jacob said he would probably oppose the motion because there are so many questions unanswered and he didn't want to pass it just to pass it. Some of the gray areas had to do with when paint becomes art, becomes advertising, or becomes hate speech.

David Pack said the question on the discussion to the motion is that he agreed, but he also asked what more can they say.

VOTE: The motion passed 3-2 in favor with David Pack and Zach Jacob casting the negative votes. Kelvin Green and Josh Suchoski were absent.

MOTION: Zach Jacob moved to adjourn.

The meeting adjourned at: 6:39 p.m.

DAN LAWES
Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Development Department

Approved this _____ day of _____, 2015