

**MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD JANUARY 19, 2016 IN THE WEST JORDAN COUNCIL CHAMBERS**

**PRESENT:** Dan Lawes, Kelvin Green, Matt Quinney, David Pack, Bill Heiner, Josh Suchoski, and Judy Hansen.

**STAFF:** Scott Langford, Ray McCandless, Robert Thorup, Todd Johnson, Paul Brockbank, and Julie Davis

**OTHERS:** Mike Kelly, Patrick Todd

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The briefing meeting was called to order by Dan Lawes. The agenda was reviewed and clarifying information was given.

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

**1. Consent Calendar  
Approve Minutes from January 5, 2016**

**MOTION:** Matt Quinney moved to approve the Consent Calendar, the minutes from January 5, 2016. The motion was seconded by Josh Suchoski and passed 6-0 in favor. David Pack was absent.

David Pack arrived at 6:02 p.m.

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**2. Oquirrh West; 7800 South & Hwy U-111; Future Land Use Map Amendment for 138.5 acres from Low Density Residential, High Density Residential, Mixed Use, and Commercial to Medium Density Residential, High Density Residential, and Commercial Designation and Rezone 138.5 acres from M-U, HFR, LSFR, and SC-2 to R-1-10E, R-1-6B, R-1-5A, and SC-2 zones; Holmes Homes/Patrick H. Holmes (applicant) [#ZC20140003; GPA20140006; parcel 20-28-400-005-4002, 4001]**

Mike Kelly, applicant with Holmes Homes, said the project was originally submitted as a mixed-use product that included some multi-family, but the Cap and Grade moratorium put them on hold. They now propose a single-family development. He showed the proposed land use designation with a reduced commercial area defined by the connection to the roundabout on New Sycamore Road to the south. That caused the high density area to be a little larger than the combined original high density and mixed use designations. The proposed medium density is the same size as the current low density designation. The proposed land use designations will match their proposed zoning categories. The density for their medium density area is about two units per acre based on the LSFR designation, which has a base density of 2.1 units per acre. However, because they want a broader range of lot sizes going to 10,000 square feet, it pushes them to medium density. They aren't proposing any more density than the current zoning for that part of the property. The high density will develop at more like a medium density development in terms of lot sizes. The high density area will have a range of 5,000 up to 10,000 square foot lots and the medium density lots will be from 10,000 up to about 20,000 square feet.

Mr. Kelly showed the concept plan that includes some open space and a trail system that can eventually connect to the shoreline trail. The property indicated as future development is slated for commercial, but they are working with a group right now for a possible congregate care facility.

Mr. Kelly showed the housing styles, which were distributed to the commissioners, that will vary in sizes based on the lot sizes. The homes facing the collector roads are designed to be alley-loaded lots. Most of the homes in the R-1-10 zone will have three-car garages. They plan to build good-looking, quality homes out of quality materials.

Mr. Kelly answered some questions from the Commission. Four roads are shown on the concept plan that exit onto 7800 South and two are proposed to exit to the north and will need to be either above- or below-grade crossings if they are required over the rail line. Some lots will need to be tiered because of the sloped topography and there will be opportunity for some walkout basements. He showed a flat area at the bottom of the sloped open space, and he said there will also be a flat area at the top near the streets for the trail system.

Ray McCandless gave an overview of the application. The developer opted for traditional zoning partly because of City Council action in 2013 that limited the WSPA zoning to The Highlands, and partly because of the Cap and Grade ordinance. The applicant had attempted to have densities that are similar to the base densities of what would have been allowed in the WSPA. The applicant proposed 434 single-family units. The commercial area would be reduced from 13 to 9 acres in order to accommodate the street connection. The current WSPA zoning no longer pertains to the property and the proposed zoning will closely bisect the property at the existing boundary. The applicant asked for medium density because R-1-10 is considered medium density in the general plan. The Mixed Use zoning is eliminated and the high density area is extended. The proposed R-1-5 and R-1-6 zones will transition in density from east to west. Water service may be an issue especially for properties at the higher ends of the project, which would be addressed at the time of a development application. There is adequate storm water and sewer service, but access may pose a problem. Two access points to the north will have to cross a rail line that is not serviced anymore. Staff felt that the densities are similar to and lower than what otherwise would be allowed under the current zoning.

#### Future Land Use Map Amendment

Based on the findings set forth in the staff report, staff recommended that the Planning Commission forward a positive recommendation to the City Council to amend the Future Land Use Map for 138.5 acres from Low Density Residential, High Density Residential, Mixed Use and Commercial to a Medium Density Residential, High Density Residential, and Community Commercial Designation on property generally located at 7800 South U-111.

#### Zoning Map Amendment

Based on the findings set forth in the staff report, staff recommended that the Planning Commission forward a positive recommendation to the City Council to rezone 138.5 acres of property generally located at 7800 South U-111 from MU (Mixed Use), HFR (High Density Multi-family Residential), LSFR (Low Density Single-family Residential), and SC-2 (Community Shopping Center) to R-1-10E, R-1-6B, R-1-5A, and SC-2 zones.

Dan Lawes said Finding D for future land use map amendments says it is a 'better use for the property'. The current designations are meaningless. He didn't know if it is a better use of the property and asked if there were other options for the Commission to consider.

Ray McCandless said the property has zoning that doesn't apply, so staff saw that as an upgrade to what is currently not allowed.

Scott Langford said page 3 of the staff report compares the WSPA zoning districts to the roughly equivalent typical zoning districts. This is a legislative act that the City Council has to weigh in on and they have a lot of discretion. The Planning Commission discussion and direction tonight will hopefully help them determine what is best for the community in this location.

Kelvin Green referred to Finding B and asked if it is saying there are no other options in West Jordan for this development except this property.

Dan Lawes said Finding B has been a problem for them in the past based on that interpretation.

Ray McCandless acknowledged there are other areas in the City that can accommodate single-family homes, but this boils down to what is the best fit for this property.

Kelvin Green also referred to Finding D and said it may be an overall improvement, but felt there is a better use for the land other than 500 homes.

Bill Heiner understood them to say if this property had been included in the WSPA then the applicant is actually proposing less home sites than what would have been allowed.

Ray McCandless said yes, the number of lots is less. The WSPA is a performance zone where the developer would provide certain amenities for more density. A traditional zone has a minimum lot size. The applicant is trying to make the zoning reflect the *base* density that would be allowed in the WSPA zone. For example in the WSPA HFR zone they are entitled to 9.01 units per acre, but with added amenities they could buy up to 18 units per acre. The applicant is trying to keep in line with or less than the base densities.

Dan Lawes asked if a P-C or PRD zone would be a better improvement.

Ray McCandless said the P-C zone allows the Planning Commission, Council, and the applicant flexibility in design and gives more control to the Planning Commission over design of the property.

Scott Langford said the P-C or PRD zone would give developers more flexibility, and the tradeoff for that flexibility is to give the City more predictability in housing type and amenities. In order to proceed with that type of zone they have to promise to do certain things through amenities, housing architecture, etc.

Kelvin Green said if they look at the general land use map knowing this was written for the WSPA, the original intent would see added density for amenities and a more open, community-like feel than just having 500 tract homes.

Ray McCandless said that is more a function of the zoning than land use. Land use talks about overall densities you might expect. The zoning is what sets more specifically how the property will develop.

Mike Kelly said they were really left hanging when the WSPA zoning went away. The general plan is still there and in effect. Even though they are taking half of the property from low to medium density, they are greatly reducing the overall density. If they go into the P-C zone there is a requirement for a minimum of 15% open space. This project is at about 11% now with some open space and amenities, so this is different from a typical subdivision built on flat property.

Josh Suchoski said Finding A gives examples of the general plan goals and policies 1) encourage the development of residential neighborhoods with a range of lot sizes to offer variety for homebuyers. 2) Provide housing targeted for the diversified market. He sees medium density to the south and medium and high density across U-111. He didn't see that they are offering a diversified market by adding more high and medium density to the area. Low density would contribute more to a diversified range.

Ray McCandless said overall in this area there is a range of different products and lot sizes. You could make the argument either way. There is a range within this development with housing sizes and styles.

Scott Langford said when he read and signed the report, he read it to apply to the range of housing within this particular development and not on a more global scale, but the point is valid.

David Pack said the staff report references page 23 in the general plan. We do want to offer a variety of housing options to a diversified demographic while also stating that lower density, single-family uses are the most preferred in West Jordan. But pages 6 and 7 in the staff report state on Criteria 2 that this decision won't adversely affect adjacent properties. He found it tough to find factually that high density won't adversely affect the surrounding areas. Criteria 3 said it has to *further* the public health, safety, and general welfare of the citizens. It may be in the eye of the beholder if vacant property is better than a developed property, or we may ask what the highest and best use of the property is. This is a quasi-judicial decision that requires finding of fact and it is hard to factually assess objectively instead of subjectively that all criteria had been met.

Judy Hansen said Finding A also says that while lower density single-family residential uses are most preferred in West Jordan, the city should also address in this general plan a range of residential densities and housing types in order to provide housing opportunities for all age groups and income levels. This is true, but 60% of this development is 5,000 and 6,000 square foot lots, which she didn't think addresses all residential densities. They could mix in some 7,000 and 8,000 square foot lots. This development appears to be a box subdivision with the same house and lot size and may become rentals. She wants the city to look upward and not to continue with the small lots. The Sycamores and the Maples also have small lots, and you can't park in the driveway without blocking the sidewalk.

Dan Lawes opened the public hearing.

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

Josh Suchoski said he lives in the medium density area in the Sycamores. He agreed that cars in the driveway block the sidewalks. A lot of families moved in when they were young, but now the kids are getting older and there are more cars. With the cars parked on both sides of the road, snow plows aren't

able to access the roads. It is also a health and safety issue in the summer because there is not enough room for two cars to pass abreast. He would hate to know what would happen in the high density area with even smaller, tighter lots.

Kelvin Green agreed. Without exceptions in the Cap and Grade policy there are conundrums. We can't have attached walls so they are trying to maximize the single-family homes on a piece of land that isn't the best to develop. We've seen in other areas like this that they become rentals and they aren't maintained. He felt that 5,000 square foot lots are terrible. You can't park an SUV in the driveway. We talk about providing housing opportunities for all ages and incomes, but 60% is high density, which doesn't target all age groups. The R-1-5 and R-1-6 is targeting entry market income and that isn't a mix. His perception is there is one area for entry level homes and then there is a little bit on the other 60 acres to say there are higher income homes. He thought there would eventually be a line of demarcation that will cause a problem for the City in the long run. Even though he complained about the high density housing and multi-family in the past, multi-family housing with amenities may be something they want in the community rather than looking like Los Angeles.

David Pack said we are grateful that the developer wants to develop in West Jordan with a variety of home styles, but the diversity of lot sizes isn't so good. He didn't think there needed to be a mix of *everything* within the same subdivision. We have seen subdivisions that are all the same size without providing a mix, but there is already high density in the surrounding area. He thought there should be some larger lot sizes provided for.

Josh Suchoski said the closest mass transit stop is more than 2 miles to the east and you have to cross three freeway speed roads with no protected pedestrian crossings to get to it. So the only way you can live in this area is if you have a car, which creates the problem of traffic on the streets inside of the subdivision. He agreed that it would almost be better if a townhome style was mixed throughout the development to allow for more open space and less restrictive traffic.

Judy Hansen said there is high density, senior housing (55+ such as Jordan Villas) in West Jordan that is well done. She asked if that could be built in this area instead of 5,000 square foot lots.

Scott Langford said they could propose a 55+ community, but he didn't know if the market would support it that far west.

Ray McCandless explained that the front yard setback in the traditional R-1-5 zone is a minimum of 25 feet. In the P-C zone, such as the Sycamores that was discussed earlier, they had a smaller front setback of 18 feet, which doesn't accommodate a large pickup truck.

Kelvin Green said this proposal has 11% open space, but that is only because it is unbuildable. He asked if this zoning is appropriate for what they want in the future and if it meets the real intent of the general plan or is this just continuing business as it has always been done.

Bill Heiner said based on the information, the developer is also in a conundrum. They are trying to massage this plan so it works with a blended density. He was a little concerned with the higher density, but he said there is a market for it. If they do it right then they can accommodate the developer and bring people into West Jordan who are now having to go to Herriman and farther south in order to find

affordable homes. He commended the applicant for trying to make something work when they don't have a lot to work with.

**MOTION:** Josh Suchoski moved based on the findings set forth in the staff report and new evidence and further explanations and discussion received in the meeting today to forward a negative recommendation to the City Council for Oquirrh West; 7800 South & Highway U-111; Holmes Homes/Patrick H. Homes (applicant) to amend the Future Land Use for 138.5 acres of Low density residential, High density residential, Mixed use and Community Commercial to Medium density residential, High density residential, and Community Commercial designation specifically for the reasons that he didn't feel that Finding A, diversified market, was met, and also had concerns with Finding E. The idea is that general improvements of infrastructure are going to be added along the way, but he didn't feel that it is there and didn't feel there is a specific enough plan to accomplish that. The motion was seconded by Kelvin Green.

It was pointed out that they aren't approving the concept plan at this time.

Kelvin Green said he could live with medium density (R-1-10) on the south end, but the high density on the north where it becomes more than 50% of the project didn't meet the findings.

Josh Suchoski said this isn't a shutdown to building on the property, but it just isn't the right zoning for the area. He would prefer a P-C zone that would allow for more input from the City on the development. He isn't against high density, but not in this particular area. It belongs in a more urban environment and not on the outskirts.

Bill Heiner asked if the P-C zone allows for higher density where they would end up with the same amount of dwellings anyway.

Scott Langford said the P-C zone doesn't by right allow for higher density but it takes its density cues from the general plan. There are larger lot P-C developments in West Jordan. Density would all be part of the discussion.

Bill Heiner said the developer would need higher density in order for it to work and to fit the price point of what is driving the market right now.

There was a review of what the next steps in the rezoning process were. The Planning Commission discussed the requirements for recommending a P-C zone.

Josh Suchoski knows that this product would sell, but he felt there is now enough rooftops in this area that will bring in more attractive commercial development and as that comes in this land will become more desirable. He felt that this would become a prime piece of property in West Jordan and we can ask for what we want, and he didn't want high density.

Judy Hansen said if they want to prevent the influx of people leaving West Jordan to go south they need to look at this type of development, because that is what causes people to leave West Jordan. It

has been this way for a lot of years and if we continue down this road West Jordan will continue to be a starter home community.

Josh Suchoski said a lot of his neighbors have moved to Riverton and South Jordan for a larger lot.

Bill Heiner said they also got the opportunity to get a start so they could move.

Judy Hansen said she wants West Jordan to be a destination place where they will stay, where people want to move to and not move out of. In Santa Fe there are developments that have bigger lots, but they put in some smaller lots so people who can't afford the bigger lots can still live in a nice area, which she thought was a great idea.

**VOTE: The motion passed 6-1 in favor of a negative recommendation with Bill Heiner casting the negative vote.**

**MOTION: Josh Suchoski 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 Oquirrh West; 7800 South & Highway U-111; Holmes Homes/Patrick H. Homes (applicant) to Rezone approximately 138.5 acres from LSFR, HFR, MU, SC-2 to R-1-10E, R-1-6B, R-1-5A and SC-2 Zones specifically for the same reasons listed in the previous motion (he didn't feel that Finding A, diversified market, was met, and also had concerns with Finding E. The idea is that general improvements of infrastructure are going to be added along the way, but he didn't feel that it is there and didn't feel there is a specific enough plan to accomplish that). The motion was seconded by Kelvin Green and passed 6-1 in favor of a negative recommendation with Bill Heiner casting the negative vote.**

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**3. Text Amendment – Amend the 2009 West Jordan City Code – Amending Sections 12-1-4 and 12-2-5 to address “works of art”; City-wide applicability; City of West Jordan (applicant) [#TA20150006]**

Robert Thorup was available for questions from the Planning Commission.

Staff recommended that the Planning Commission forward a positive recommendation to the City Council for the proposed text amendments to Sections 12-1-4 and 12-2-5 of the 2009 West Jordan City Code.

Judy Hansen didn't like that there is no requirement for a permit or prior administrative review. She agreed with the provision that there can't be hate speech, obscenities, etc. She also thought there should be a percentage of coverage limitation.

Robert Thorup said if the owner is the only one who could approve it, that would limit the occurrences. He asked if it is up to the city to tell a property owner what they can do if it is tasteful and if the property owner wants to do it.

Judy Hansen said we don't know if it is going to be tasteful. If a business owner puts up an advertising sign they need a permit and we tell them what they can and can't do.

Robert Thorup said that is a valid point, but we probably don't want to get into the permitting business to approve 'Art A' and not to approve 'Art B' even though they may not be hate speech or obscene or advertising. There are some cities that do that, however. Regarding censure, Robert Thorup said if there is a complaint of hate speech then the City Planner would interpret the sign code and State code and he would be the person to make the initial decision. His decision could be appealed to the Planning Commission and that decision is appealed to the City Council and that decision could be challenged in court. So there are opportunities to be censored all down the line. In the criminal code hate speech is made a crime.

Kelvin Green asked what can be prosecuted under hate speech in the Utah Code versus a political statement on the side of your house. He felt they are getting into serious restrictions on freedom of speech.

Robert Thorup said he didn't think there would be a problem. For example, in his view the confederate battle flag isn't hate speech, in his view a swastika would arguably not be hate speech, but a statement of "kill the Jews" would be hate speech. But the City Planner would be in the position to make that ruling.

David Pack said we are always trying to balance property owner rights and free speech, but the more he thought about it, and without any prejudice against any religion, ethnicity, race, or type of establishment, he looks at the example of what precipitated this action and asks if that is what we want West Jordan to look like. When the Planning Commission first took the vote a major consideration was that there probably won't be that many property owners who will allow that much wall art; but there might be. He had a problem with allowing such a massive area of a building to be painted whether it is a work of art or a sign. The City Council only asked the Planning Commission to look at this again without much specificity, so as he looks at it he felt that the Commission needs to be a voice for the citizenry as well as communicating to the City Council what is in the best interest of the community. He didn't think they would want a lot of buildings like the one that precipitated the amendment.

Robert Thorup felt that the subject restaurant is an anomaly and that there won't be a sudden flood of people painting their businesses with art.

David Pack said that is why they forwarded the original recommendation. However, it does open up opportunity for it to happen. He keeps going back and forth that the property owner should be allowed to do what they want, but he wants to safeguard the overall good of the community.

There was a discussion regarding residential properties and that this code doesn't pertain to those. The Supreme Court has recognized that commercial speech can be more regulated than what we call free speech. What you do at your home is less regulated than a business. What you do at your home hopefully will be regulated by your good sense and the interest of your neighbors.

Scott Langford referred to part Q in the current code and pointed out that it already allows as exempt from the sign code "art or art forms that do not contain or imply any commercial message". Enforcement on the subject restaurant didn't begin until they painted the name of the business. Once

they started to advertise their business it transformed from art to a wall sign, which is regulated by the sign code. As of today there isn't a percentage requirement or other parameters we can use.

There was a discussion regarding cultural art and advertising.

Kelvin Green said the Supreme Court has almost eliminated the idea of commercial speech and he gave some examples of being in an area that he didn't know if constitutionally they can differentiate between art and advertising. He felt we should be putting in reasonable time, place, and manner restrictions on what we will allow. The definition of sign can have multiple interpretations, which will set them up for failure. Based on how he read *Reed vs Town of Gilbert* the West Jordan sign code is unconstitutional and we are just putting a Band-Aid on it. There aren't that many people who are going to do this, but we need a permit that identifies the property owners' consent if we are going to allow this to occur.

Matt Quinney said he was in favor of the change originally and he is still. It doesn't matter that we don't think there will be a lot of people doing this; we have to treat it as if everyone wants to. There was support on Facebook that the restaurant should be allowed to do what they want. He asked if a challenged piece of art would be allowed to remain until all appeals had been exhausted or if they need to have the applicant sign an acknowledgement that if the art is found to be offensive then it has to come down until another action allows it to be put back up.

Josh Suchoski said if Scott has the authority to take the art down, then why can't they just bring in a prototype to begin with, which would save time and money on enforcement after-the-fact. Censorship starts when you say you don't like it without having a reason, but if the code defines hate speech, then the City Planner can make that determination and approve it or not. He was concerned with mural art being able to encompass the entire building, which could potentially lower property values or hurt a neighboring business who may want to sell their property.

Robert Thorup said the former proposed amendment had a permitting section and the city council didn't even have one vote in favor.

Kelvin Green said he spoke against the issue at the city council meeting, not because he was against the ordinance or the idea of wall art. Given the vagaries of the proposal he wasn't comfortable with giving carte blanche, but a permit can be used to determine if it is art, as a record of art in the city, and as a historical document. He had a problem with the term 'hate speech' because it conjures up multiple things, and a lot of it is political speech, which they don't want to restrict. He would be the first to vote for wall art. He asked if this amendment would change the current ordinance regarding the exemption for art.

Scott Langford said it doesn't in his opinion. If the art does not contain or imply any commercial message then it doesn't pertain to the sign code.

Dan Lawes said this is being driven by a political problem and not a city need. Because the issue made the news we were asked to act on it. He asked if we are making a legislative action to appease a political uneasiness.

Kelvin Green said if they table the item it will allow those who want to participate enough time to share ideas and develop a draft ordinance. They will have a deadline of April 1<sup>st</sup> to get the information to staff. Robert Thorup said they Planning Commission had the authority to draft some language. Commissioner Green said he would take point on the item and send it to the others for comments.

**MOTION: Kelvin Green moved to table the Text Amendment to Amend the 2009 West Jordan City Code – Amending Sections 12-1-4 and 12-2-5 to address “Works of Art”; City-wide applicability; City of West Jordan (applicant) to the April 19, 2016 meeting. The motion was seconded by Dan Lawes and passed 7-0 in favor.**

**MOTION: Josh Suchoski moved to adjourn.**

The meeting adjourned at 7:37

DAN LAWES  
Chair

ATTEST:

JULIE DAVIS  
Executive Assistant  
Development Department

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016