



PLANNING COMMISSION MEETING
117 South Main Street, Monticello, Utah 84535. Commission Chambers
July 13, 2023 at 6:00 PM

MINUTES

GENERAL BUSINESS

Welcome / Roll Call

PC Chair Trent Schafer called the meeting to order at 6:00 pm.

PRESENT

Chairman Trent Schafer
Commissioner William Johnston
Commissioner Cody Nielson
Commissioner Ed Dobson
Commissioner Ann Austin
County Administrator Mack McDonald
Building Inspector Ben Tomco
County Chief Deputy Attorney Mitch Maughn
Board of County Commissioner Silvia Stubbs

Pledge of Allegiance

The PC conducted the Pledge of Allegiance

Approval of Minutes

1. Approval of June 08, 2023 Planning Commission Meeting Minutes

Motion to approve the minutes was made by Commissioner Austin, Seconded by Commissioner Dobson.

Voting Yea: Chairman Schafer, Commissioner Johnston, Commissioner Nielson, Commissioner Dobson, Commissioner Austin

PUBLIC COMMENT

Public Comment was offered for anything not on the agenda. Public Comment will be allowed for individual Administrative and Legislative Items.

No public comment was made.

ADMINISTRATIVE ITEMS

2. Consideration of Conditional Use Permit, Shane and Karry Deeter, Deeter Accounting

Time stamp 3:30 (audio)

Commissioner Shafer provided background reminding the PC Commissioners that this was referred to the County Attorney to review a legal question asked regarding Conditional Uses being added to the RR-1 Zone where it was not a permitted Conditional Use.

Commissioner Shafer indicated that this is kind of putting the cart before the horse and should wait until the new Land-Use Ordinance is approved.

County Attorney Mitch Maughan provided an opinion letter regarding the allowance of conditional uses for the Deeter property located at 156 East Markle Road. County Attorney Maughan indicated that this is kind of a band-aid until the new map and new Land-Use Ordinances are approved. This area of La Sal will need further discussion until the new zoning can be determined.

Commissioner Shafer invited the applicant to respond to their Conditional Use Application.

Karry Deeter reminded that the ordinance they are referencing is the old ordinance approved back in 2007. They are wanting the office space approved. Shane Deeter reminded the Commission that this business has been operational since 1994 prior to the 2007 changes. Their business employes 5 employees in La Sal in the attic of their home and would like to move them out. They have also obtained signatures of members in the Community and most importantly their neighbors on both sides of this property.

Commissioner Austin asked what the risk was to approve it as a Conditional Use?

Commissioner Shafer indicated that the Conditional Use isn't the reason, it should go through an entire rezone application. The project would fit perfectly if it was rezoned. The property is located adjacent to the Deeters existing house.

County Administrator McDonald indicated that the property falls within the R-1 zone.

Commissioner Nielson mentioned he had no problem with it there, they are already performing this use in their home.

Commissioner Shafer reminded them that the Deeters are performing this use out of their home as a home occupation. The adjacent property would require a Commercial Zone.

Commissioner Shafer asked if there were any public comments regarding the application for Conditional Use. No one provided any comments.

Commissioner Dobson asked if this was approved as a Conditional Use, who would object?

Commissioner Shafer indicated no one in the community would object but the approval creates precedence.

Commissioner Dobson made a motion to approve the Conditional Use.

County Administrator McDonald provided a reminder regarding Conditional Uses and referenced the County Attorney's opinion regarding allowing a Conditional Use being permitted within this zone and on this property. Prior to making a decision as a Conditional use, and what a Conditional Use is. Commissioners can turn to guidance such as that found in the *Utah Land Use Institute Ground Rules: Your Handbook to Utah Land Use Regulation*. With this guidance Commissioners need to state why they are placing the Conditions and what those Conditions are in their motion so that they are appropriately a part of the official record.

If something is not permitted in the Zone, that is why Conditional Uses are allowed as a process. In our Ordinance for RR-1 it states: Conditional Uses can be applied if that use is not named specifically. This is why we are here today. As a refresher, especially as you consider these items on the agenda.

It states, if Conditional Uses are not appropriate and desirable that process would not be allowed in the Ordinance. It is allowed in our Ordinance. The Board of County Commissioners has designated the Planning Commission to approve Conditional Uses.

Substantial Evidence has to be a part of the record when approving a Conditional Use. It states: It must be kept in mind that any consideration of both the nature and extent of potentially detrimental impact as well as the type of condition that might reasonably and substantially mitigate that impact must be based in substantial evidence, and not on speculation, clamor, or unfounded apprehensions of either members of the Land Use Authority which is the Planning Commission, the Staff, nearby landowners or the general public. This means that only information that is to be considered in reviewing a proposed Conditional Use and imposing conditions includes an appropriate interpretation of the relevant law and substantial evidence in the record.

That is what we are trying to set today. Substantial evidence has been defined as “the quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. It is essential that the Land Use Authority provide a clear statement in the record of the proceeding as to the law and facts that support its conclusions. Without findings and conclusions, the task of a court reviewing the decision becomes highly impractical because there is no way to determine from the record what the decision maker's thinking was when it took action. That substantial evidence needs to be stated as to why you made the decision.

With that, as you apply Conditional Uses in a zone and you allow uses that may not be listed as permitted, it is important that you consider those items that may mitigate the detriments of that use. This property is in a residential zone, they are applying for other uses to be allowed in a residential zone including RV parking, the office and residential. As you look at the uses, are they compatible with that zone? What is the effect of these uses in that zone? What are those items to help mitigate negative aspects of these uses? If you are in this zone and you bring in an RV park, what does that look like and how do you mitigate that use with the surrounding neighborhood yet accomplishing the purpose of a residential zone? What conditions can be placed to continue to keep these uses compatible with the zone?

Be careful with public clamor, this is not substantial evidence. Substantial evidence is critical and a key word in law when you look at the uses. This does not mean that the public can not also have substantial evidence of their own and should not be ignored.

The burden of establishing this entitlement for approval of a Conditional Use is required of the applicant. With no evidence in the record to support the conclusion that has detrimental effects of the use can be substantially mitigated by reasonable conditions, the applicant is not entitled to approval.

Looking at substantial and the imposition of reasonable conditions, several steps need to be taken to deny a Conditional Use. First, you have to be able to determine the detrimental effects of these uses within that zone. With the Deeters, what are the detrimental effects of these uses in that residential zone? How the standards of our Ordinances are going to be applied to these effects. With your Conditions and as you consider Conditions, you want to make sure those Conditions are appropriate within the authority of the local government to regulate. This is critical, if you place a Condition on this property that the County can't enforce, doesn't have a mechanism, or means to enforce, then it doesn't make sense to make that Condition. Conditions have to be appropriate and relevant as consistent with the standards of the Ordinance. The Standards of the Ordinance in the residential RR-1, if they allow similar uses, then it is relevant to that Zone.

Our County Attorney has provided his opinion demonstrating that some of the uses are relevant to this Zone. This becomes part of that record that we are looking for, but we need to state it in your approval as well. Also, it must be proportionate and otherwise reasonable. These are the reasons to impose the Conditions but not having them so far outlandish that it overrides the intent of the Zone.

Denial of a conditional use as quoted in Utah Code "if the reasonably anticipated detrimental effects of the proposed Conditional Use can not be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the Conditional Use may be denied." It doesn't say it must, it doesn't say shall, but it says may be denied. Again, it states substantially mitigated. It does not state it has to be fully mitigated only substantially. For example, if you have a dark sky initiative in that Zone, dark sky and safety sometimes don't correlate but if I can substantially mitigate a dark sky initiative but still allow for safety in my lighting scheme, that is a Condition that is allowable where it is substantial but not 100% no you have to be dark sky, no matter what, it is about safety.

Some of the Conditions can help mitigate. How can you mitigate some of the Deeters uses, the office hours, with the office hours they have been in operations for years, office hours are not late into the night, it is practical and reasonable to have this type of business in a residential Zone. What are the Conditions you would have? Where do people frequenting this business park? On the street or on the property? It is things like this that can be used as Conditions to a Conditional Use to be allowed within the Zone. They may have suggestions as well if there are concerns with the uses.

It is important to note that as you approve a Conditional Use, that Conditional Use stays with the property itself. If they sell the property to another owner, that Conditional Use can carry on, the new owner will still have to uphold those Conditions that you approved, but they do remain with the property.

Regarding the importance of the Conditional Uses, as you place Conditions with your approval or denial, we need to clearly state these Conditions in the motion and if approval, why you are approving these Condition, what they are, or in case of denial, why you are denying a Conditional Use. We need that in the record so that it is clear why you approved these uses and

Conditions you placed on them. If there is an item contested, these are the Conditions that you placed on the uses and why you placed those Conditions. In that motion, it is a record of fact why you placed those Conditions.

All of these items tonight on this Agenda are all able to have Conditional Uses if not permitted in the Zone with appropriate Conditions.

Commissioner Shafer asked Commissioner Dobson if he would like to amend his motion adding Conditions.

Commissioner Dobson indicated that the County Attorney listed Conditions imposed to adequately deal with parking, water, sanitation, emergency vehicle access, storm drain runoff, and other Conditions as needed. Have the applicants brought back suggestions to meet these Conditions?

Shane Deeter indicated that any Conditions imposed, we will meet. These Conditions in the letter will need to be met. We had planned to do these anyways.

Commissioner Austin indicated that we need to identify what the detriments are. Is the use and RV park or renting RV's for people to rent?

Shane Deter mentioned that this is a building for offices, our RV's are on another property. We need offices to administer the Air BnB, showers, laundry, a private meeting room to rent, all uses to support our RV rental but that RV rental is on another RV park. They will use this facility for Wi-Fi or a mobile location.

Commissioner Austin mentioned it does not sound like a large amount of people here. So, traffic, is that detrimental and not an issue where it seems like it will be light traffic? Hours of operations?

Shane Deter mentioned the offices are open from 8 am to 6 pm. Same hours as these uses will be available.

Commissioner Nielson asked about the meetings taking place by those staying in the RVs?

Shane Deter mentioned that if someone needed a meeting place and there wasn't a place in La Sal to hold those, we could hold them here but it would be few and far in between.

Commissioner Nielson asked about the noise from the laundry?

Shane and Kerry Deter mentioned that they do not get too rowdy. We are only putting in a couple of machines. Where the building is located, it is next to our house on a 20-acre parcel. We are the only ones that could complain.

Commissioner Nielson mentioned it is an easy Conditional Use to approve using the County Attorney's Legal Opinion as the basis to do so.

Commissioner Shafer mentioned we can use those Conditions set forth there.

Commissioner Dobson amended his motion using that language within the opinion.

Commissioner Nielson seconded the motion.

Commissioner Shafer, we have a motion to approve the Conditional Use Permit for Deeter Accounting with the following Conditions:

- *The uses must have adequate parking*
- *The Use must have adequate water and sanitation*
- *Must have appropriate emergency vehicle access*

3. Consideration and Approval of a Conditional Use Permit for the La Sal Junction Airport Helipad. Sarah Day, Foundation Properties, LLC

Time stamp 31:28 (audio)

The applicant was not at the meeting, but some background information was provided regarding the Conditional Use Permit.

County Administrator McDonald indicated that this is within the Control District Community Commercial Zone. This section allows for Commercial and is flexible in uses.

These proposed uses are allowable as a Conditional Use where they are within the appropriate Sub Zone.

There are a lot of public comments that have been received through email. As a reminder and caution, this is not about the ownership, the owner's reputation, or uses outside of this property. We are strictly looking at these uses and ways we can mitigate a Conditional Use. There are concerns with noise from the helicopter. We need to have this discussion with the applicant.

Commissioner Austin mentioned that seeing that the applicant is not here and all the detrimental issues with the use, I would like to make a motion to have a Public Hearing regarding this item.

Commissioner Nielson commented about having a Public Hearing, the problem I have about a Public Hearing, not that I don't take in all this input, it's like County Administrator McDonald indicated, sometimes no matter if we agree with you or do not agree with you, we are bound by statute and the ordinance. We can't deny it because we don't like it, or neighbors don't like it. Statute allows for it, language allows it and we can place Conditions on it, but we are not allowed to just deny it. A Public Hearing makes me look like a bad guy, but I am still bound by the law.

Commissioner Austin indicated that a Public Hearing demonstrates a wider impacted area, we owe it to the larger public that this is important enough to have it on public record that we had a Public Hearing on this item for any legal challenge that may come from our decision.

Commissioner Nielson made a motion to table the item and come up with a list of Conditional Uses or questions and answers we want them to come back with. Hours of operations? Parking? Easement? Off the County Road? Housing, is it employee housing restricted only to employees? We don't know any of these things.

Commissioner Austin mentioned that maybe tabling is the way to go but after the applicant presents then we can decide if it warrants a Public Hearing.

Commissioner Johnston seconded the motion.

Voting Yea: Chairman Schafer, Commissioner Johnston, Commissioner Nielson, Commissioner Dobson, Commissioner Austin

Commissioner Shafer allowed for public comment regarding this item and had 4 members signed up to comment.

Steven Burtell commented that he lives 2 ½ miles away in the Flat Iron Mesa Subdivision Community. They are concerned about the noise this would cause and the dark skies. This development has caught us by surprise and will affect our peace and serenity and will decrease our home values. Night operations, flyovers and multiple aircraft will impact us. From his research it is impossible to mitigate noise from takeoff.

Commissioner Nielson indicated that he is considering Conditions such as hours of operation and how many helicopters. If people comment, do you like these or can you comment on those?

Beth Jankowski commented that she has a direct view of this property. She is in the approach and takeoff. Can you place a restriction that they only take off and land towards the east. She is concerned with the light. These can be mitigated by the number of lumens, but we need to protect our dark skies. Where are the tours going?

Mike Sheerer commented he lives on Flat Iron Mesa and is a contractor, he is concerned about the road into the employee housing and should have their own turn lane. Another concern is the helicopters being distracted, the fuel leaking into the aquifer and water. How are you going to enforce complaints if they fly over our homes?

Cassie Paup commented that this would significantly impact neighboring developments. No one would choose to develop right next door. Development that could help stimulate our tax base. Also, a concern is the noise and flight level or how many take-offs are taking place. Who is enforcing this? We need to know this and where they are going and the impact on others not just us.

Randy Day commented that before Flat Iron Mesa the airport existed for the mining industry with fuel pump, two gas stations, a tire shop and his mom worked in the café there. Randy mentioned that his neighbor had a helicopter starting it up each morning, it was a nuisance for 60 seconds and he was respectful. The road cannot go there because UDOT will not allow it. The concerns are not unwarranted.

David Smith from Flat Iron Mesa commented that the people proposing this aren't even here. No information for substantial mitigation. No studies from the FAA regarding noise fuel and emissions. Until there is a lot more information, we cannot mitigate anything without further information.

Sam Wood from Flat Iron Mesa commented that blind sided they feel by the magnitude of the helicopter proposal is. He is concerned with the noise. They can hear them from where they

live and are easily heard over vehicle noise. It is impossible to mitigate the peaceful enjoyment where they are noisy.

Simon Koumjian from Flat Iron Mesa commented that he was concerned about the Conditions and echo's everyone that has commented. He is concerned about the colors of the hangers as well as the roads. Colors should be compatible with the scenery. He is also worried about the distraction this would cause on the highway.

Mike Sherer from Flat Iron Mesa commented that it is unfortunate that this could not be placed in Monticello or in Moab at those airports. He is concerned about the sightseeing tours where there is limited areas here to view. The road is a concern onto highway 191.

LEGISLATIVE ITEMS

5. Consideration and Approval of Spanish Valley Overnight Accommodations Overlay Development and Site Master Plan for the Balanced Rock Resort, Mack McDonald

Time stamp 90:05 (audio)

County Administrator McDonald provided a brief history of the steps in this process indicating the next step is the Development Agreement. This applicant has gone through the rezone, overlay approval and now we approve the Site Master Plan and make sure they have everything in the Site Master Plan in accordance with the ordinances.

The Site Master Plan working towards a Development Agreement follows Chapter 10 of the Spanish Valley Ordinances. The Planning Commission is to review the Site Master Plan that this development in its entirety is supposed to be reviewed and approved. That at this point, the Site Master Plan is critical due to the concept of the development that it creates.

County Administrator McDonald also described what was in the Development Agreement and the structure of the agreement in relation to the Site Master Plan.

Jim Schnepel with Gardner Plumb LLC presented the Site Master Plan changes. His presentation covered a variety of topics including affordable housing units, road coordination with SITLA, the duplexes transitioning to twin-homes. No changes to the density will take place. He also described the benefits of this type of development, and the proposed density as well as participating in the costs of extending Old Airport Road.

Commissioner Johnston mentioned his concern about all the traffic this creates on the roads in the development and the next for additional access.

The developer informed the Planning Commission that this exact plan must have some flexibility. Regarding the desires that the neighbors to the north and have created a larger buffer to affordable housing. Regarding the development they are including deed restrictions on affordable housing so that those do not change to over-night rentals. They decided to plant trees instead of a wall separating the community to control noise. They are not planning on installing streetlights along that main road, but it depends on the County in case they are needed for safety. They will have speed limits to control the speed of ATV's if it is allowed by the County.

The developer went through the total number of units with a lodge of 130 units for a total of all units equaling 360 units. The equivalent residential (ERU) units being 269 with 360 units being the cap. They are concerned regarding the ability of the lodge coming to fruition. This development applying the number of units per acre is 3.7 ERU's per acre.

Commissioner Nielson indicated that without the lodge, it would change this development drastically. How do we approve the site plan without knowing if the lodge is not there.

County Administrator McDonald mentions that if the lodge is not developed, there can be an alternative proposed if the lodge is not developed.

Commissioner Nielson indicated that it would be good to have an alternative site plan. He would like to lock in as much of the site plan as possible. The amount of parking and making sure we have adequate parking, RV parking and items like that are a big concern.

Planning Commission Members indicated that they were in favor of the development.

Commissioner Nielson mentioned that he was confused in the steps and was thinking that we were at a different step and was worried only about the density but now he is supposed to approve a site plan that binds the County.

Commissioner Austin mentioned a concern with the trails in which the developer indicates that there is a narrative of the trail system as indicated in the Site Master Plan and on Exhibit E.

Randy Day suggested the possibility of different bonds being placed, one if the lodge is developed and another if something else takes its place.

Commissioner Nielson indicated that it is a complete plan, but it limits the developer. There is also a concern about density and parking.

Commissioner Johnston indicated his concern was the large trailers, with the development being tight, everywhere you go, there is parking on the sides of the roads and how you keep people from parking in others driveways.

County Administrator McDonald went through the items described in Chapter 10 that have to be provided in the Site Master Plan but recognizing that some of the granular details in that Chapter have not been met yet.

Commissioner Austin indicated that some of the granular details can be worked out with staff including possibilities such as a sound wall separating the neighbors to the north.

Commissioner Shafer mentioned that if all items in Chapter 10 are met and the site plan stays the same, then what is the density the Planning Commission would recommend.

Commissioner Nielson indicated that if the lodge does not work out, he would like the developer to come back and approve an alternative use for that site. Commissioner Nielson then made the motion that the Planning Commission recommends to the Board of County Commissioners the Site Master Plan dated July 11 for a total of 269 total ERU's and that if the lodge cannot be developed, the developer comes back to the Planning Commission to present an alternative for approval and allowing staff to finalize the site plan for a Development Agreement.

Commissioner Austin seconded the motion.

Voting Yea: Chairman Schafer, Commissioner Johnston, Commissioner Nielson,
Commissioner Dobson, Commissioner Austin

BUILDING PERMIT(S) REVIEW

7. Building Permit List

Time stamp 1:69.8 (audio)

The PC reviewed the building permit list.

Commissioner Austin recommended that the Planning Commission begin looking at the current ordinances and recommended that we have a discussion item on the next agenda to discuss potential changes that could be added to the current ordinances then it will help until we have the new ordinances approved to avoid current language that creates a liability for the County.

ADJOURNMENT

Motion to adjourn was made by Commissioner Nielson, Seconded by Commissioner Johnston.
Voting Yea: Chairman Schafer, Commissioner Johnston, Commissioner Nielson, Commissioner
Dobson, Commissioner Austin