

MINUTES of the Vernal City PLANNING COMMISSION

Vernal City Council Chambers – 447 East Main Street

April 9, 2009

Members Present: Freida Parker, Troy Allred, Gordon Seitz, Eric Olsen, Sonja Norton

Alternates Present: Glenn Spencer, Vernie Heeney

Excused Members: Shirley Wilkins, Howard Carroll

Staff Present: Allen Parker, Assistant City Manager; Dan Nance, Building Official; Janine Shannon, Administrative Clerk

WELCOME AND DESIGNATION OF CHAIR AND MEMBERS: Eric Olsen stated that as Vice-Chairman, he is filling in for Howard Carroll as chair for tonight's meeting. He added that all those present will be voting, with Glenn Spencer voting in place of Howard Carroll and Vernie Heeney voting in place of Shirley Wilkins.

APPROVAL OF MINUTES FROM MARCH 12, 2009: Eric Olsen determined that there was a quorum of members from the March meeting present to vote. **Freida Parker made a motion to approve the minutes from March 12, 2009. Sonja Norton seconded the motion, and the motion passed with Freida Parker, Gordon Seitz, Sonja Norton, Eric Olsen, Glenn Spencer, and Vernie Heeney voting in favor.**

OPEN MEETING TRAINING: Allen Parker stated that the State requires training on open meetings annually. He explained that this is an hour-long video by Dave Church, legal counsel for the Utah League of Cities & Towns, on the open meetings act. The Planning Commission watched about thirty minutes of the video.

REQUEST TO REZONE PROPERTY LOCATED AT 291 SOUTH VERNAL AVENUE FROM R-3 RESIDENTIAL TO CP-2 PLANNED COMMERCIAL – APPLICATION #2009-0011-RZ – STEVE KELLY: Freida Parker stated that she will not be voting due to a conflict. Vernie Heeney expressed concern that she might also have a conflict, but Allen Parker explained that she does not live within 300 feet of the parcel in question and it was up to her to state if she had a conflict. Allen Parker stated that this item will be a recommendation, but the Conditional Use Permit (CUP) that follows will be a final action. He explained that this is a request by Steve Kelly to rezone 1.67 acres on South Vernal Avenue from R-3 to CP-2. He added that the area is designated as mixed use on the general plan, which supports both R-3 and CP-2 zones. He continued that the parcel is adjacent to CP-2 zoning, so the change would not be considered "spot zoning." He concluded that staff finds the application to be approvable. He clarified that the City Council will have the option to attach a development agreement to the rezone, and the rezone will revert back to an R-3 zone if

the conditions of the development agreement are not met. Gordon Seitz asked what is allowed in a CP-2 zone that is not allowed in an R-3 zone. Allen Parker explained that a CP-2 zone allows for commercial uses, as well as apartments with a conditional use permit, whereas an R-3 zone allows for 4-plexes. Glenn Spencer asked what the parcels around this one are zoned. Allen Parker answered that the parcels to the north, east and west are zoned R-3, and the parcel to the south is zoned CP-2. Eric Olsen asked about the parcel's history because he heard that a rezone request had been previously denied. The Planning Commission agreed that there had been a request for higher density several years ago. Allen Parker stated that it was probably a request to rezone to R-4 because this is the first time commercial zoning has been requested. He clarified that the Planning Commission has the opportunity to attach conditions to this rezone, through the conditional use permit, that could not be attached to an R-4 rezone because residential use is already permitted in that zone. He added that apartments are a permitted use in a CP-2 zone only with a conditional use permit. Sonja Norton stated that she thought that any uses allowed in residential zones were allowed in commercial zones. Allen Parker responded that residential uses are actually not allowed in commercial zones, with the exception of apartments with a conditional use permit. He continued that about a year ago, the City Council adopted an ordinance that requires a development agreement to be associated with a rezone so that developers cannot mislead the Planning Commission or the City Council. Gordon Seitz stated that it seems backwards to talk about the rezone without hearing the plan first. Allen Parker responded that the agenda is ordered that way because the Conditional use permit cannot be approved until a recommendation on the rezone has been made. Glenn Spencer noted that if the rezone is approved before the Conditional use permit, then any commercial development could be allowed there. Allen Parker reiterated that the planning commission is just making a recommendation to the City Council on the rezone, and the City Council will attach a development agreement. Eric Olsen stated that he would like Mr. Kelly to talk about the plan.

Mr. Kelly described what properties are in the vicinity: Pro Rehab, Valley Home Medical, a bus parking lot, rental homes, the home of Randy & Jessica Collins, the fairground parking lot, vacant or abandoned homes, Ashley Valley Education Center, the home of Clayton Newberry, Rob Caldwell's business, and the home of Shawn Hawk. He added that he tried to talk to as many neighbors as he could. Sonja Norton asked if the vacant lot to the north had already been approved for development. Allen Parker answered that that lot has been approved for offices that have not been built yet. Mr. Kelly stated that he could build four 4-plexes on the parcel as it is currently zoned, with a cul-de-sac off of 100 East accessing three of the buildings and Vernal Avenue accessing the other one. He explained that this plan has some problems, including too much paving (57%), maintenance, and upkeep. He stated that instead he wanted to build condos, which eliminates renters and provides more control, but he recently found out that condos are not allowed on this parcel because there is not enough land. He continued that since he had already spoken to neighbors about the condo project, and they liked the idea, he decided to apply the same plan to apartments. He stated that although there will be more units, this plan reduces the number of buildings from 4 to 3, increases

the landscaping and buffers, and reduces pavement to 43%. He continued that rather than having no control over a 4-plex development, he will be required to sign a development agreement with this plan that will guarantee input on the look of the project and a capital reserve fund for long term maintenance. He concluded that the project is basically apartments that incorporate condo benefits like professional management, a homeowner's association with CC&Rs, professional landscaping, and financial reporting. He added that all this will be enforced through deed restrictions. Gordon Seitz asked what happens if, through the financial reporting, the City finds that there is not enough money in capital reserve to fix problems. Mr. Kelly responded that a tax would be levied against the property through a special assessment. Allen Parker clarified that this is a concept plan and the details have not yet been reviewed by the staff. Mr. Kelly reiterated the benefits of a rezone with the required Conditional use permit: gives more control to the City and surrounding homeowners, provides for a homeowner's association and professional management, and revitalizes the area. He added that the rezone is consistent with the master plan, and apartments are an appropriate use for an area so close to downtown and the recreation center. Mr. Kelly stated that he spoke with homeowners about the plan, and many of them signed statements saying they would rather have this project than the 4-plex one. He continued that he is willing to work with adjoining neighbors concerning landscaping, positioning of buildings, etc. Eric Olsen opened the meeting for public comment.

Shawn Hawk, 287 S. Vernal Ave., stated that he is concerned about there being enough parking, traffic that has already increased due to the recreation center, lighting that will now be to the north of him (due to another conditional use permit for offices there) and to the south, and a three-story building looking down into his yard. He continued that it will take too long for trees to grow high enough to buffer. He concluded that he knows this property will be developed in some way, but he is not excited about three-story buildings.

Barbara Risbon, 352 S. Vernal Ave., asked how many units there will be. Mr. Kelly responded that there will be three 12-plexes, or 36 units. Ms. Risbone stated that she is concerned about traffic and safety. She explained that there is a school across the street with 80 to 100 students, a pre-school down the road, kids biking and families walking to the recreation center, a bus garage south of the property with buses coming and going on school days, and Western Park nearby. She continued that vacancies in the area are also a concern, but she does not feel that more apartments or high density buildings are what the area needs. She explained that her experience is that commitments regarding these types of projects are not honored. She concluded that she is concerned about the integrity of the neighborhood.

Carol Judd, owner of a home in the vicinity that she rents, stated that she does not want to see higher density in that area. She explained that the 16-20 units currently allowed in that zone are enough, and a developer can do something nice with 4-plexes. She

continued that renters do not want a three-story building looking down on them either. She added that there is not a landscaping buffer proposed between the back of her property and the proposed apartment parking lot.

Eric Olsen closed the meeting to public comment. Sonja Norton asked if Mr. Kelly had considered doing something similar with the 4-plexes, like adding CC&Rs. Mr. Kelly stated that he could not make the 4-plex plan look good and added that there is only revenue to do that sort of thing with more units. He explained that 4-plexes require a certain amount of street frontage, and so there is no way to avoid putting in a public road. He continued that the apartments will contain one and two-bedroom units, which are in short supply, and so there will actually be about the same number of bedrooms in either plan. He stated that it sounds like Ms. Risbon is frustrated with traffic that already exists, and based on his experience with traffic studies, the traffic impact with this project will be less than 1%. He added that he would be happy to include a landscaping buffer for Mrs. Judd. Sonja Norton asked if this project would require the 6-foot site-obscuring fence around it. Mr. Kelly and Allen Parker responded yes. Glenn Spencer asked if the cul-de-sac would be maintained by the City. Mr. Kelly responded yes, but the parking lot with the apartment project would not. Glenn Spencer commented that this may or may not be beneficial to the City because at least the cul-de-sac would be guaranteed to be maintained as the City's responsibility. Mr. Kelly responded that that is why he is willing to implement deed restrictions and require financial reporting to assure funding for maintenance issues. Gordon Seitz expressed concern that developers have great ideas, but often go bankrupt and abandon their projects. He concluded that the 4-plexes would be just fine and disagrees with Mr. Kelly's argument for apartments. Mr. Kelly clarified that the deed restrictions would transfer from owner to owner. Sonja Norton commented that the Planning Commission had previously discussed requiring a bond for private roads to help solve maintenance issues. Allen Parker responded that a bond is not required at this time, and the only way to control a completion right now is by withholding certificates of occupancy. Troy Allred asked if the rezone would allow for 36 units instead of 20. Allen Parker responded that the current zoning would allow for only 16 units, not 20. Eric Olsen clarified that a road would be required with the 4-plexes, but not with the 12-plexes. Allen Parker agreed and explained that the reason is because each 4-plex is required to be on a separate parcel with road frontage, hence the cul-de-sac design. Eric Olsen stated that he does not like the idea of three-story buildings in that area. He asked if it would be possible to run 300 South all the way through the property. Mr. Kelly responded that doing so would eliminate two of the buildings and so is just not feasible. He added that when he spoke to the neighbors, he explained that there will be apartments there either way, but a rezone would give the neighbors and the City more control. He concluded that he has worked hard to design a project with minimal impact, and he has gotten good feedback from homeowners. Allen Parker pointed out that the 4-plex plan would simply require the approval of a subdivision, where only things like storm water and street widths would be considered and not what is being built there. He explained that the rezone and Conditional use

permit, however, would require a site plan and development agreement. Sonja Norton stated that she likes the apartment design, but not the layout of the 4-plexes. Mr. Kelly commented that the apartments will actually be two-and-a half stories high because the bottom units are partially underground. Dan Nance responded that there are ADA restrictions on putting units all the way underground. Eric Olsen stated that the problem is the density and the three-story buildings. Glenn Spencer asked if Mr. Kelly owns the property. Mr. Kelly responded that the property is under contract to purchase, and the owner has signed this application. **Gordon Seitz made a motion to forward a negative recommendation to the City Council concerning the Request to Rezone Property Located at 291 South Vernal Avenue from R-3 Residential to CP-2 Planned Commercial – Application #2009-0011-RZ. Glenn Spencer seconded the motion, and the motion passed with Troy Allred, Gordon Seitz, Eric Olsen, Glenn Spencer, and Vernie Heeney voting in favor. Sonja Norton voted nay. Freida Parker abstained.** Gordon Seitz explained that the rezone allows for a significant increase in density, and even though there are good intentions, maintenance is an issue. Glenn Spencer agreed and added that at least with the 4-plexes, the road will be sure to be maintained. Eric Olsen clarified that this is just a recommendation, and the City Council will make the final decision. Allen Parker stated that the next step is the public hearing on the conditional use permit, which if approved by the Planning Commission, will be pending the approval of the rezone by the City Council. Sonja Norton asked what happens if the Planning Commission denies the conditional use permit, but the City Council approves the rezone. Allen Parker stated that Mr. Kelly will have to reapply for the conditional use permit. He added that the Planning Commission could deny the conditional use permit at this time because the current zoning is not appropriate.

Gordon Seitz left at about 7:05 p.m.

REQUEST FOR CONDITIONAL USE PERMIT FOR MULTI-FAMILY APARTMENTS LOCATED AT 291 SOUTH VERNAL AVENUE – APPLICATION #2009-0012-CONDITIONAL USE PERMIT – STEVE KELLY:

Eric Olsen opened the meeting for public comment. Mr. Hawk stated that he is in favor of lighting restrictions and landscaping buffers. Ms. Risbone reiterated that she is concerned about traffic and the integrity of neighborhood. She added that previous owners had planned to continue 300 South to help with traffic. She concluded that there are neighbors who are not in agreement with the apartment plan. Allen Parker clarified that if the rezone and associated conditional use permit are approved, a site plan must still be approved showing that all specified conditions have been met. Mrs. Judd stated that she favors the lowest density possible, and traffic will be a problem either way. Eric Olsen closed the meeting to public comment. Vernie Heeney suggested they require directional lighting to protect the neighbors. Eric Olsen asked how to specify landscaping as a condition. Allen Parker suggested they require “screening landscaping” as presented to the Planning Commission. Glenn Spencer stated that it does not make sense to approve a conditional use permit that is not allowed on the property without the

rezone. Allen Parker responded that the Planning Commission can deny the conditional use permit on the basis that the zone is not appropriate. He added that if the City Council approves the rezone, then Mr. Kelly will have to submit another application for a conditional use permit. Mr. Kelly asked if he will be required to reapply or if he could then do whatever is allowed in a CP-2 zone. Allen Parker responded that the City Council would still attach a development agreement to the rezone. **Glenn Spencer made a motion to deny the Request for Conditional Use Permit for Multi-Family Apartments Located at 291 South Vernal Avenue – Application #2009-0012-Conditional use permit, because the rezone has not been approved. Troy Allred seconded the motion, and the motion passed with Troy Allred, Eric Olsen, Sonja Norton, Glenn Spencer, and Vernie Heeney voting in favor. Freida Parker abstained.** Sonja Norton noted that the reason she voted to deny the conditional use permit is solely because of the rezone issue.

PLANNING COMMISSION ALTERNATE MEMBER DISCUSSION – ALLEN PARKER: Allen Parker stated that Councilmember Bert Clark recommended David Brinkerhoff as an alternate, and Mr. Brinkerhoff will be going before City Council for approval. He added that Mr. Brinkerhoff is a petroleum engineer who lives on northwest side of town and actively pursued the position. The Planning Commission determined that all alternate positions are now filled.

Glenn Spencer asked if a member abstains from voting, if that member can still comment on the issue. Sonja Norton responded, yes, but it is suggested that the member sit with the public and comment as a member of the public.

Sonja Norton made a motion to adjourn. Troy Allred seconded the motion, and the motion passed with Troy Allred, Eric Olsen, Sonja Norton, Glenn Spencer, and Vernie Heeney voting in favor. The meeting adjourned at about 7:25 p.m.

Eric Olsen, Vice-Chairman