FINAL

MINUTES OF THE COTTONWOOD HEIGHTS CITY PLANNING COMMISSION MEETING

Wednesday, November 2, 2011
6:00 p.m.
Cottonwood Heights City Council Room
1265 East Fort Union Boulevard, Suite 300
Cottonwood Heights, Utah

ATTENDANCE

Planning Commission Members:

Perry Bolyard, Chair
Paxton Guymon, Alternate
Lindsay Holt
James S. Jones
Dennis Peters
Joseph L. Scott

City Staff:

Brian Berndt, Planning Director
Morgan Brim, City Planner
Shane Topham, City Attorney
Brad Gilson, City Engineer
Kory Solorio, Deputy City Recorder

BUSINESS MEETING

1.0 WELCOME/ACKNOWLEDGEMENTS – CHAIR BOLYARD

Chairman Perry Bolyard called the meeting to order at 6:00 p.m.

2.0 CITIZEN COMMENTS

There were no citizen comments.

3.0 PUBLIC HEARINGS

3.1 (Project #CUP-11-002) The Planning Commission will hear public comment on a proposal from Mila Gleason, requesting approval to operate a learning center providing one-on-one tutoring located at 1844 East Fort Union Boulevard, #7.

City Planner, Morgan Brim, stated that the proposed business will offer one-on-one tutoring for children in mathematics. An application has been filed for a conditional use permit, which requires a public hearing and approval by the Planning Commission before making application for a business license. The proposed site will be located at Plaza 7000, which is the retail site just south of the liquor store. The applicants are proposing to locate in Suite 7, which has approximately 1,280 square feet. The use is very low impact with respect to parking and requires just over three spaces per 1,000 square feet, which is much less intense than other businesses in the development. The Unified Fire Authority reviewed the proposal and found that it meets all current Code requirements. As a result, no building permit is required. Staff recommended approval.

The applicant presented the proposal and stated that business hours will be from 3:00 p.m. to 7:00 p.m. Monday through Thursday and Saturday from 9:00 a.m. to 1:00 p.m. They will provide mathematical tutoring with the goal being to improve the skills of children in the community.

Chair Bolyard opened the public hearing. There were no public comments. The public hearing was closed.

3.2 (Project #wt 11-001) The Planning Commission will hearing public comment on a proposal from Pete Simmons, requesting approval to construct a 65-foot high monopole on the west side of St. Thomas More Church located at 3015 East Creek Road.

(18:04:27) Mr. Brim presented the staff report and reported that Verizon Wireless is requesting to construct a 65-foot monopole that will resemble a pine tree. The location is in the rear parking lot on the west side of the St. Thomas More Church near the dumpster enclosure. In conjunction, a 10-foot high equipment shelter is proposed to be located just north of the dumpster enclosure. The applicants were asked to use the same enclosure material as was used on the exterior of the church.

The applicant, Pete Simmons, stated that Verizon is proposing a 65-foot mono pine that will be the same height as the one at Green Field. In addition, a 12' x 25' equipment shelter is proposed that will blend in with the church and the dumpster enclosure. A question was raised as to whether the panels can be moved closer together. Mr. Simmons stated that with the mono pine they are trying to locate the antennas on the branches so they do not interfere with the radio frequency being broadcast. Based on the proposed design, the panels need to remain in the proposed locations. With regard to aesthetics, Mr. Simmons stated that the antennas will not be visible from a distance and will blend in to the tree branches. Other possible sites considered were discussed. He stated that of the two viable sites, Verizon chose St. Thomas More Church because it is higher in elevation and provides the coverages needed in the area. The various types of equipment were discussed.

Mr. Brim presented the site plan and the proposed location of the monopole. City Attorney, Shane Topham, discussed legal issues and explained that the application will need to comply with federal, state, and city laws. The applicable federal law is the Telecommunications Act of 1996, which trumps state and local laws. In addition, there are five limitations on state or local authority under the Act. The purpose of the federal law is to recognize that no one wants cell towers but all need them. Absent federal law, controlling a local jurisdiction's ability to prohibit cell towers, service would be spotty nationwide. In addition, the City cannot consider the health impacts of cell tower emissions. As long as the radio waves emitted and used are within FCC standards, the City cannot consider health effects. The City similarly cannot effectively prohibit the provision of wireless services in the City or unreasonably discriminate among providers. The City is also required to act on the application within a reasonable period of time. In this case action must be taken within 150 days of the date the application was filed. A decision to deny must be based on a detailed written decision with findings and conclusions of law.

Mr. Topham stated that in addition to the federal law overlay, there is state law under the Land Use Development and Management Act (LUDMA) that the City must comply with. The application before the Commission is for a conditional use with the standard being that it be

approved unless no reasonable conditions are or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. Mr. Topham stated that the Utah State Property Rights Ombudsman, who is the state official who oversees local government land use decisions, instructs that when a city is faced with a conditional use application, the proper question is why it should not be granted.

(18:36:55) David McRae stated that he owns the property immediately to the south of the St. Thomas More Church and has lived there for 34 years. During that time they have enjoyed a wonderful view and were concerned that the antenna will be an eyesore. He was most concerned that the monopole is not needed. He noted that he has Verizon service and never has an interruption of service. He was also concerned about his property value decreasing because of its proximity of the cell tower.

(18:39:30) James Warner had questions about alternative locations and why the church would allow it if other property owners would not. He also asked if co-location would be offered to other carriers. Mr. Topham stated that when a pole is installed, the carrier is required to allow other carriers to co-locate. Mr. Warner remarked that he did not see how the proposal could enhance the neighborhood and expressed concern about the potential detrimental impact on his view.

(18:41:44) Clayne Poulsen stated that his property backs onto the church parking lot. He found the picture displayed to be misleading since the tower in actuality is 2.5 times as tall as the existing tree. He was very opposed to what is proposed and would not have cared if the tower had been proposed in a commercial area rather than in a residential community.

(18:46:10) Charles Derr agreed with the previous comments made. He expressed concern about how the proposal has been communicated. He owns a home with views overlooking the proposed tower. His understanding was that only 28 homeowners received letters while hundreds will be impacted. He expressed opposition to the proposal and was concerned about a potential negative impact on area property values.

(19:48:11) Dr. David Massinople expressed his opposition to the proposed conditional use permit and believed that placing a cell phone tower in this location will negatively impact his view and property value, which cannot be mitigated. He values his views and noted that the tree in front of the cell phone tower on Verizon's plans is shown as a 35-foot tree. He further commented on the negative impact the cell phone tower will have on his views. Photos submitted by Dr. Massinople were shown to the Commission.

(18:51:40) Dale Harris asked what area the proposed tower will benefit in terms of subscribers. Mr. Harris noted that he and all of his neighbors currently have great reception. Mr. Simmons stated that the monopole will benefit the Cottonwood Heights area, the golf course, and the surrounding area. He indicated that while there is not currently a need, there will be shortly. What is proposed is in response to their customers demanding better service.

(18:53:20) Claire Geddes stated that she lives some distance from the proposed tower and as a Verizon subscriber, has never dropped a call. She was aware of other areas that have huge service issues.

(18:54:05) Harold Huntzinger asked who Verizon negotiated with in the Public Works Office. He also asked to see other areas Mr. Simmons considered as well as the issues with each.

Elise Veranda stated that she and other residents on her street will be impacted by the proposed tower. She asked if all other options have been exhausted with respect to the tower placement.

(18:57:13) Nancy Hardy thanked Mr. Brim and Mr. Berndt for their time and effort. She and her family moved to Cottonwood Heights for the view and not for the cell phone coverage. She was confident that most residents would prefer to have the view than the coverage. She remarked that the primary vision of the City is to preserve the views and view sheds and protect the scenic views. In conducting research she found no evidence of coverage problems in Cottonwood Heights.

(19:00:48) Max Warner valued his view and did not want to see it negatively impacted by the cell tower.

Monica Haynes stated that she and her husband moved to Cottonwood Heights eight years ago and were most attracted to the views. She was concerned that a tower will be permanent and negatively impact their views. She thought cell towers were more appropriate in commercial areas. Her primary concern was that it is completely surrounded by residential development. She was also concerned about the precedent that will be set. She discovered that within a four-mile radius of the proposed tower there are 168 antennas and towers, many of which have co-location opportunities but do not offer it. Commissioner Scott informed Ms. Haynes that the cell service she enjoys has come to be because someone else's view was negatively impacted. Ms. Haynes disagreed and stated that a commercial location has less of an impact.

(19:06:20) Steve Hardy stated that he provided the applicant with various alternatives that they did not take seriously. To locate at the golf course seemed to him to be an acceptable alternative. It did not appear that other commercial alternatives had been explored adequately. He suggested those be exhausted before locating the monopole in the middle of a residential area.

Kris Derr was present because of her concern about setting a precedent. She did not want to cell phone towers to be built in any one else's backyard and stressed that they should be placed in commercial areas. She contacted the cemetery on Bengal Boulevard earlier in the day and was told that in 2000 Nextel contacted them but they have not been contacted since. She felt there were other viable alternate locations to place the tower that should be explored. She remarked that only 28 residents who reside within 300 feet of the tower were notified. Commissioner Holt informed Ms. Derr that every project is noticed the same way and follows the mandates of State law.

A question was raised as to whether the City will receive tax revenue from the tower. Mr. Topham responded that the City may get some real property tax revenue because the tower could potentially represent a real property improvement. He was not sure whether it would be segregated from the Church property or not. If there was revenue generated, however, it would not be sizable.

(19:13:43) Patrick Porter identified himself as a Parishioner at St. Thomas More and asked if there were examples of other mono pines that can be viewed. Mr. Porter was made aware of others in the area with the closest being at 10400 South 700 East.

Richard Schutt remarked that cell towers like the one proposed never look real. Even though the proposed tower is to be located on church property, it is still in a residential area with adequate cell service. He felt that if requests were denied more often the technology might change and make co-location easier.

It was clarified that the proposed use is allowed on the church property. The request came forward as a conditional use application, which means that the presumption must be made that the use is allowed, particularly if it meets the ordinance and the zoning. The City can next consider what can be done to impose conditions to offset the detrimental effects of the use. In this case the only two options are to camouflage the tower to the extent possible or not have it at all.

(19:23:32) Sally Rasmussen asked what the tax consequences of the tower will be to the church. Her understanding was that if the church takes money they no longer will be considered tax exempt. Mr. Topham was not in a position to comment but pointed out that that is the business of the St. Thomas More Church.

Sharon Massinople commented that too little is known about the towers with respect to safety and structural stability.

(19:26:14) Sharon Bryant agreed that regardless of where the tower is located, it will affect someone's view. She asked if there was a point at which Verizon will change the location. Commissioner Holt stated that this provider cannot be treated differently than any other.

Stan Rozenzweig did not care if the tower goes up or not but was concerned about comments made by Commissioner Scott. He knows the law and knows what the applicant can and cannot do. He suggested Verizon have conversations with neighbors. He thought the citizens ought to work together to make life bearable for everyone. He also recommended that Verizon work to minimize the impact and offer alternatives. It was acknowledged that Verizon has offered what is proposed as an alternative to a previous proposal that would have consisted of locating on a silo in front of the grade school.

(19:37:15) Mr. Warner asked if the City would be legally liable if the request is denied. Mr. Topham stated that that is possible if the request is denied improperly.

Neil Rasmussen asked what the cost will be to the City. Mr. Topham stated that the tower will be paid for by Verizon subscribers. Mr. Rasmussen next asked about the benefit to the church. Mr. Topham stated that they will receive an undisclosed amount of rent. Mr. Rasmussen had heard they would be paid $1,000 per month. The issue of payment was determined to be a non-issue for the Commission since the City does not make or receive payment.

Commissioner Holt suggested the possibility of extending the public hearing to allow for additional questions and discussion. Mr. Brim stated that the public hearing can be left open to allow for the submission of written comments. It was suggested that one citizen representative be allowed to speak at the next meeting for five minutes prior to a decision being made. Mr. Topham

suggested the public hearing be closed to verbal comments tonight and written comments allowed until a date certain.

In response to a question raised, Mr. Topham stated that City ordinance allows a condition to be imposed to provide the financial means to remove the tower in the future if it is abandoned. He suggested such a condition be imposed.

(19:48:05) ***Commissioner Scott moved to close the public comment but allow written submittals for the next two weeks in order for the Commission to consider them and take action at the December meeting. Commissioner Jones seconded the motion.***

Commissioner Jones suggested citizens consolidate their written comments so that they carry more impact. Citizens were invited to submit written comments to Planning Director, Brian Berndt or City Planner, Morgan Brim.

Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.

(19:50:25) The first question was responded to pertaining to whether the cemetery is a workable solution. Mr. Simmons stated that in looking at the search ring, the cemetery is outside of the scoped area they are trying to address and improve.

The next question had to do with whether there are rules or regulations that would allow the church to subdivide the property as stated. Mr. Simmons stated that they will lease ground from the church in order to locate a communication facility that will blend in. The tax consequences were determined to be beyond the scope of Mr. Simmons' work. The next question had to do with whether the Code requires a minimum distance between a facility and areas where children play. Mr. Simmons explained that currently there are no regulations addressing safety. With every facility a structural analysis is performed, which looks at wind and snow loads to prove that the monopole is structurally sound. Additional safety measures will be taken including removal of the climbing pegs up to 20 feet.

Mr. Simmons stated that with regard to locating in a commercial area, there are no commercial areas within the area they are searching. They looked at various other locations including Smith's, which is part of another search ring he will be working on in the future. The only other feasible site was the Metropolitan Water District property. They, however, were not interested in working with Verizon.

(19:57:36) Mr. Simmons responded to a question about this type of facility in a residential neighborhood, and stated that if they are in a residential area they must look at existing public and quasi public uses such as parks, bridges, and schools. Based on the search ring, the only location other than the water district property is the church. In this scenario, his preference was to look at a mono pine rather than a monopole because it will blend in better than a stealth flag pole, light pole, or a standard monopole. It was noted that the Code requires the facility to be co-locatable. Mr. Simmons stated that consideration was given to locating on a church steeple but the size and height of the building was not adequate. In addition, many commercial buildings cannot handle the equipment load that must be placed on the roof.

Chair Bolyard expressed appreciation to the public for their input, which would be weighed carefully as the Commission makes its decision.

3.3 (Project #SD 11-002) The Planning Commission will hearing public comment on a proposal from Chris McCandless requesting approval to subdivide two parcels into 12 lots located at 7350 South Wasatch Blvd.

(20:14:05) Mr. Brim presented the staff report and stated that the site is just south of Fort Union and Wasatch Boulevards. The site is formerly known as the Canyon Racquet Club. The subdivision is required to be reviewed by the Planning Commission and have a public hearing because it consists of more than 10 lots. The approval will allow the property to be subdivided and prepared to obtain the use permit. A map of the area was displayed. The applicant is requesting to place a roadway through the property, to be known as the Canyon Center Parkway, which will split the property up and connect it to Wasatch Boulevard. Twelve buildable lots were proposed and the applicants will be required to go through the process before any entitlements will be issued.

The applicant, Chris McCandless, stated that the proposal is an effort to save time rather than do it in concert with other activities planned for the property. This action is expected to save three or four months, which is significant given the rate of interest being charged on the loan. Mr. McCandless noted that they are not yet sure exactly what will be built on the property and which concept will be developed. What has remained constant, however, throughout the master planning of the site has been the road alignment. What is proposed allows them to put in the road improvements and repair existing infrastructure that is lacking on the surrounding sites.

Access issues were discussed. Mr. McCandless stated that there will be a cross-utilization easement for both pedestrian and vehicular access on the entire site. A question was raised about some of the lots that have specific shapes and whether they will work for future development. Mr. McCandless hoped that would be the case but did not rule out additional changes at some point. The uses being considered were all permitted uses within the Mixed Use Zone. Mr. McCandless was hesitant to discuss specifics. His preference was to come back with a plan and mechanism for funding and development.

(20:21:42) In response to a question raised by Commissioner Holt, Mr. Brim stated that there is no minimum lot size for this zone and that the Mixed Use Zone is very flexible in nature. The intent is to allow the developer to get the best design possible.

Chair Bolyard opened the public hearing.

(20:23:40) Woody Noxon was present on behalf of the neighbors on Racquet Club Circle. He stated that none of the property owners adjacent to the subject property received notice of tonight's hearing. Mr. Noxon believed Mr. McCandless wants to do the right thing but was concerned that once the lots are sold, control will be lost.

Mr. Noxon stated that the setback for Lot 3 is proposed to contain a parking garage and set back from Racquet Club Drive by 20 feet. Currently, Racquet Club Drive is a residential street with existing homes set back 36 feet. He asked that the developer consider setting back the parking

garage the same distance as existing homes. Mr. Noxon next stated that currently there is a partial sidewalk. He asked that consideration be given to extending it all the way down.

With regard to the proposed parking garage on Lot 3, the sketch shows access via Racquet Club Drive and no access through Lots 2, 4, and 5. Mr. Noxon thought there should be access within the Canyon Center to keep cars off of Racquet Club Drive. He expected Lot 5 to have a commercial building, which he suggested face into the Canyon Center and not onto Racquet Club Drive. He asked that each of his suggestions be included as conditions. Further, if Lot 3 is not a parking garage he suggested all of the businesses provide parking for deliveries within the Canyon Center.

Mr. Noxon next pointed out that Lot 8 only has access via Wasatch Boulevard, which presents a major traffic issue. Lot 7 has no access. Mr. Noxon considered overall traffic flow to be a problem. He suggested a traffic study be pursued in order to understand the flows and how the project will affect Fort Union and Wasatch Boulevards. City Manager, Brian Berndt, stated that without knowing the use, however, staff cannot take into account what the traffic flow will be. Mr. Noxon also presented principles to be considered in development of the area.

(20:30:30) Sylvia Bennion stated that she did not receive notice of tonight's meeting. She appreciated the efforts made to beautify the area. It was important to her that the new development be able to support the level of housing that exists presently. She expressed concern about the parking structure and its height, in particular.

(20:32:53) Mark Macklas stated that they are not opposed to the mixed-use process and were involved earlier on. His understanding was that the property was divided into lots of various shapes in order to make room for the road, which will be public. He remarked that that cannot occur if there are two parcels. He stated that now is a good time to improve the road. He recognized, however, that Wasatch Boulevard cannot handle the additional traffic without acceleration and deceleration lanes. Unfortunately, there is no room to mitigate the road on this property with this subdivision.

Mr. McCandless assured Mrs. Bennion that a Las Vegas-style parking structure will not be built and remarked that this has been one of the more complicated projects he has done. The grading currently taking place is an effort to mitigate some of the negative impacts to the community and minimize the amount of work and reduce the number of trucks accessing the road in the future.

Mr. Brim indicated that the application will be signed off on by the Mayor and does not need to go on to the City Council.

(20:39:35) Joann Earl stated that one year ago Chief Russo thanked her for alerting him to the poor condition of Racquet Club Drive, particularly in the winter with cars parked on the road. She asked that precautions take place before construction begins.

There were no further public comments. The public hearing was closed.

(20:41:00) In response to a question raised, it was reported that the City will accept the dedication of the roadway when it is built to standards. Mr. Topham stated that the City does not have to accept dedication at any particular time once the road is up to standard.

With regard to the acceleration and deceleration lanes, Mr. McCandless stated that they do not own the property for the acceleration lane. He questioned whether they can utilize the existing right-of-way to create that as well. They will, however, construct a significant deceleration lane.

Possible conditions to be imposed were discussed.

4.0 ACTION ITEMS

4.1 (Project #CUP 11-002) The Planning Commission will take action on a proposal from Mila Gleason, requesting approval to operate a learning center providing one-on-one tutoring located at 1844 East Fort Union Boulevard, #7.

(18:02:51) ***Commissioner Guymon moved to approve the application. Commissioner Jones seconded the motion.***

Commissioner Holt expressed her support for the project and wished the applicants well.

Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.

4.2 (Project #WT 11-001) The Planning Commission will take action on a proposal from Pete Simmons, requesting approval to construct a 65-foot high monopole on the west side of St. Thomas More Church located at 3015 East Creek Road.

(20:06:40) ***Commissioner Scott moved to postpone action item on 4.2 until the December 2 meeting. Commissioner Jones seconded the motion. Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.***

4.3 (Project #SD 11-02) The Planning Commission will take action on a proposal from Chris McCandless requesting approval to subdivide two parcels into 12 lots located at 7350 South Wasatch Blvd.

(20:53:30) ***Commissioner Guymon moved to approve the application subject to the condition that if a deceleration lane is deemed reasonably necessary by the City Engineer, that it be designed and constructed simultaneously with construction of the roadway. Commissioner Peters seconded the motion. Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.***

4.4 The Planning Commission will take action and approve meeting minutes from October 5, 2011.

(20:55:45) ***Commissioner Paxton moved to approve the minutes from the October 5, 011 Meeting. Commissioner Jones seconded the motion. Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.***

5.0 ADJOURNMENT

(20:56:10) ***Commissioner Peters moved to adjourn. Commissioner Scott seconded the motion. Vote on motion: Dennis Peters-Aye, Joseph L. Scott-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, James S. Jones-Aye, Chairman Perry Bolyard-Aye. The motion passed unanimously.***

The meeting adjourned at 8:56 p.m.

I hereby certify that the foregoing represents a true, accurate and complete record of the Cottonwood Heights City Planning Commission Meeting held Wednesday, November 2, 2011.

Teri Forbes
T Forbes Group
Minutes Secretary

Minutes approved: