

Minutes of the Planning Commission meeting held on Thursday, November 16, 2017, at 6:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Buck Swaney, Chair  
Maren Patterson  
Travis Nay  
Scot Woodbury  
Lisa Milkavich  
Jared Hall, Community & Economic Development Supervisor  
Jim McNulty, Development Services Manager  
Brad McIlrath, Associate Planner  
G.L Critchfield, Deputy City Attorney  
Citizens

Excused: Phil Markham, Vice Chair  
Sue Wilson

The Staff Review meeting was held from 6:00 p.m. to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording is available at the Murray City Community and Economic Development Division Office.

Buck Swaney opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

#### APPROVAL OF MINUTES

Mr. Woodbury made a motion to approve the minutes from the November 2, 2017 Planning Commission meeting. Seconded by Ms. Milkavich.

A voice vote was made, motion passes 5-0.

#### CONFLICT OF INTEREST

There were no conflicts of interest.

#### APPROVAL OF FINDINGS OF FACT

Mr. Woodbury made a motion to approve the Findings of Fact for All Hours Plumbing & Drain Cleaning, Murray Medical Holdings LLC. Mr. Nay seconded the motion.

A voice vote was made, motion passes 5-0.

#### MICHAEL JENSEN – 4906 & 4950 South Naylor Lane - Project #17-157

Michael Jensen was the applicant present to represent this request. Brad McIlrath reviewed the location and request for a Conditional Use Permit for a private park to be located at the properties addressed 4906 & 4950 South Naylor Lane, located in the R-1-8 zone. The applicant currently lives in the Three Fountains Condominiums and owns these properties adjacent to his residence. He wishes to expand the existing open space area of the property at 4906 South Naylor Lane to the adjacent undeveloped property addressed 4950 South Naylor Lane. The area is currently used as an open recreation space for family members and friends. The request would include additional amenities such as a pickle ball court, shuffleboard, a circular driveway with landscaping between the two accesses and a six-foot high solid privacy fence adjacent to the driveway. The R-1-8 zone is principally a single

family residential zone, but parks are recognized as a Conditional Use in this zone and require approval to construct the amenities desired and to designate it as a private recreational space. The proposed site plan includes a pickle ball and shuffleboard court in the rear, large lawn landscaping, trees around the perimeter and circular drive way. The applicant has begun to work on the landscaping and paving in some areas that do not require a permit to install. The Tanner Ditch that runs through the property is piped. One area of the ditch will be left open and will allow the water to flow more freely and be safer, which has been previously approved by the ditch company. Based on the information presented in this report, application materials submitted and the site review, staff recommends that the Planning Commission approve a private park at the properties addressed 4906 & 4950 South Naylor Lane, subject to conditions.

Michael Jensen, 4840 Three Fountains Drive, Unit 173, stated he has reviewed the conditions and will be able to comply. Mr. Jensen stated that he is appreciative of the help that staff has given since acquiring the property in August and hopes to construct the court next year. Mr. Jensen stated that the pickle ball courts at Murray Park are always occupied and must use the switch out process when playing, it has become such an inconvenience that he decided to build his own. He commented that his grandchildren have started playing with the neighborhood children on this property.

The meeting was opened for public comment.

Public comment was submitted via email from Sharon Coombs, a resident of Three Fountains East, the proposed park is a great improvement to the area and the prior use was a rat infested, drug user home. Ms. Coombs is thrilled with the proposed park and loves seeing the green open space.

The public comment portion was closed.

Mr. Nay made a motion to grant Conditional Use Permit approval for the private park at the properties addressed 4906 & 4950 South Naylor Lane, subject to the following conditions:

1. The project shall comply with applicable building and fire code standards.
2. The proposed circular driveway shall comply with the development standards outlined in Chapter 17.72 of the Land Use Ordinance.
3. All structures shall comply with the setback, height, and coverage requirements of the R-1-8 Zone as outlined in Chapter 17.100 of the Land Use Ordinance.
4. No future structures shall be constructed across the shared property line. To avoid this, the properties may be combined.
5. All fencing shall comply with Chapter 17.64 of the Land Use Ordinance.

Seconded by Ms. Milkavich.

Call vote recorded by Mr. McIlrath.

  A   Travis Nay  
  A   Lisa Milkavich

A Maren Patterson  
  A Scot Woodbury  
  A Buck Swaney

Motion passed 5-0.

LAND USE ORDINANCE TEXT AMENDMENT – Section 17.170.080(D)(2) Amend the coverage percentage for Accessory Structures from 25% to 50% in the MCCD Zone – Project #17-150 – Public Hearing

Mark Bennett was the applicant present to represent this request. Jared Hall reviewed the request for an amendment to the text of Section 17.170.080(D)(2) of the Murray City Land Use Ordinance for the MCCD Zone. Mr. Hall explained that Subsection (D)(2) allows accessory structures and buildings on development parcels in the MCCD zone specifically, parking structures and other accessory buildings which do not in aggregate have a footprint greater than twenty-five percent (25%) of the footprint of the main buildings on a development parcel. The property management company representing the Center Court Apartments are asking to add covered parking structures to the existing parking area which would have a building footprint greater than the allowed 25%. The site plan, by current code, would allow about half of the parking spots to be covered. The applicant proposes raising the allowable percentage from 25% to 50% of the footprint of the main building. Staff is opposed to the proposed text amendment for several reasons. First, the density's that are allowed in the MCCD zone make the street presentation and the open space on the interior of a lot vital. Secondly, the City is not opposed to carports; however, the city has opposition to carports that cover more than 25% of the area. Carports and accessory structures are controlled in most all zones within Murray City. This application was reviewed by the DRC and they agreed with Staff in recommending that the Planning Commission forward a recommendation of denial. Based on the information presented in this report, application materials submitted and the site review, Staff recommends that the Planning Commission forward a recommendation of denial to the City Council for the proposed text amendment to Section 17.170.080(D)(2) of the Murray City Land Use Ordinance.

Mark Bennett, River Park Development, 10701 South River Front Pkwy #135 South Jordan, stated he has reviewed the staff report. Mr. Bennett stated the current owner purchased the 55 and older apartment building property less than a year ago. The original building does not include either a parking garage for all the residents or carports for all the exposed parking areas. The intent for covering all the exposed parking is not only as a convenience for the residents but, also to avoid a slip and fall. The prior owner had a slip and fall lawsuit. The current owner had given the residents a survey, and the results showed overwhelming support for some type of carport structures on all of the parking spaces. He stated that the current ordinance will only allow them to cover half of the parking spaces. Mr. Bennett added that he thought he would be able to get a variance to allow all of the proposed carports for only his property, but it seems the text amendment is the only option of getting the change.

Mr. Nay asked if the average tenant has more than one parking spot, and what is the ratio of parking spaces to residential units. Mr. Bennett answered there are sixty apartments and about sixty parking stalls, and the ratio is one stall per apartment. Mr. Nay asked if they pay a premium for the covered parking, and if there is a reason they could not construct the additional allowed covered parking. Mr. Bennett answered yes, they do pay a premium and they will build the allowed 25 percentage with parking stalls even if they get denied for the additional covered parking tonight.

The Public Hearing opened for public comment. There were no comments and the Public Hearing was closed.

Mr. Woodbury stated he appreciated Mr. Bennett going through the process tonight and he understands the frustration of buying a property with certain expectations, trying to meet the needs of the residents and knowing that the property should have been built with all the parking covered. Mr. Woodbury added that in his experience of being on the Planning Commission the City has ordinances and text amendment processes in place for a reason and trusts the Staff and the DRC to interpret the ordinances correctly. Mr. Woodbury stated the ordinances are written to serve a purpose and the implications of changing the text could have an impact on other properties in the City as well. The recommendation has been stated and we must support it.

Ms. Patterson added that this Text Amendment would apply to all the MCCD and as much as we would want to help this one property and it is frustrating because the new property owner is dealing with the poor decisions that the previous owner made when building the Center Court Apartments. As much as we want to help the new owner there is no way they could change the text because it applies to everything in the MCCD.

Mr. Nay stated that he also believes that a variance to change this would have little to no chance of succeeding because it does not meet the states five criteria.

Ms. Milkavich added she agrees with the prior comments of the Planning Commission and hoped the residents understand that the City is not against them having covered parking. Ms. Milkavich added that she feels bad that the residents have to suffer for the poor decisions that were made previously and does not see how she could support the proposed change.

Mr. Woodbury stated at the least 20 more coverings are allowed, unfortunately the developer of the property made some poor decisions and there is not a lot we can do to change that.

Mr. Swaney stated one of the biggest challenges the Planning Commission faces is trying to hold intact the vision the City has for the MCCD and visions are eroded variance by variance. If you keep the entire vision together and don't vary, then the vision is the long-term outcome. Often, we have a request to change something fundamental about the MCCD, over time all the changes tend to have a big, unintended, cumulative change.

Mr. Woodbury made a motion that the Planning Commission forward a recommendation of denial to the City Council for the proposed text amendment to Section 17.170.080(D)(2) of the Murray City Land Use Ordinance.

Seconded by Ms. Patterson.

Call vote recorded by Mr. McIlrath.

  A   Scot Woodbury  
  A   Maren Patterson  
  A   Lisa Milkavich  
  A   Travis Nay  
  A   Buck Swaney

Motion passed 5-0.

EXCLUSIVE ARCHITECTURAL PRODUCTS – 5639 South Riley Lane - Project #17-45

Travis Pelch was the applicant present to represent this request. Jared Hall reviewed the request. This agenda item was continued from October 5, 2017 when the Planning Commission considered revocation of the Conditional Use Permit which was previously granted to allow the millwork operation of Exclusive Architectural Products on the property at 5639 South Riley Lane for failure to meet conditions that were imposed in April of 2017. The item was continued from the October meeting by vote of the Planning Commission with three key benchmarks that must be met by this meeting. The first requirement was, that the applicant return with evidence that all applications for the required permits have been submitted. Second, that the applicant will have submitted "engineering specs" for the masonry wall and the sound attenuating wall. Third, the applicant will have submitted a formal landscape plan, which meets all City standards. Since the meeting on October 5<sup>th</sup>, Mr. Pelch has engaged a landscape architect that has submitted a formal landscaping plan, which meets all City requirements. The plan shows landscaping that includes trees planted with about thirty foot separations, an irrigation plan and a planting schedule. The masonry wall plan shows an 8-foot wall that will run along the entire south and east property lines. The permit for the perimeter wall was issued this morning and Mr. Pelch is ready to start work on it. A permit application for the walls to enclose the dust collector and attenuate the sound has been submitted and the permit will be ready to issue as soon as Monday, November 20, 2017.

The items in the original Conditional Use Permit were reviewed by Mr. Hall. The first item was, obtaining permits for all changes that have been made or need to be made such as the electrical work, and other items that are tied up in the sound wall. A permit will be ready to issue as soon as one structural question is resolved with Staff which could be issued as soon as Monday November 20, 2017. Second, the applicant had to meet building and fire codes and provide fire sprinkling, etc. This was done back in April and has been met. Third, the applicant had to provide the additional 14 parking stalls and one ADA compliant stall. Staff has verified they have been restriped appropriately. Fourth, the applicant was to install the 8-foot masonry wall, the permit was issued this morning. Fifth, the applicant was to submit a landscaping plan, this requirement is met. Sixth, the limited hours of operation, the City has not received additional complaints outside of the original two. Seven, the applicant shall enclose the dust collector. The permit for the sound wall of the dust collector may be ready as soon as Monday, November 20<sup>th</sup>. Eighth, the applicant will obtain a Business License. The City will issue the license once all the conditions of approval have been met. At this point with the progress that has been made by Mr. Pelch, Staff is recommending that the Planning Commission take no action to revoke the Conditional Use Permit, but continue the item to be reviewed again at the regularly scheduled meeting on January 18, 2018.

Mr. Woodbury thanked Mr. Hall for his work on this difficult application and stated it has been trying for all involved. Mr. Woodbury clarified that it seems to be the opinion of Staff that all plans submitted are going to work, and if all the plans are completed according to what has been submitted, then everything should be fine going forward. Mr. Hall stated that is correct, and that Staff has more confidence now that it's going to occur, but would still like to keep the continuance in order to keep progress being made. In the end, the property will have a much better buffer wall and better landscaping than has ever been at the site.

Ms. Patterson asked if Mr. Pelch is able to get the permits and start construction and if this item is continued to January 18, 2018, what amount of completion does Mr. Pelch need to

have on that date. Mr. Hall answered that he is unsure of the timeline to build the attenuating wall, but feels the attenuating wall and perimeter fence should be up by then. Mr. Pelch is constructing the attenuating wall himself as the contractor.

Mr. Woodbury asked if Mr. Pelch will defer the landscaping. Mr. Hall answered likely yes, it is typical at this time of year that he will post a bond and defer the landscaping until spring time.

Travis Pelch, 11595 Player Road, Sandy, stated the fence construction is scheduled to start the week after Thanksgiving. Mr. Pelch stated he has encountered miscommunication in emails and he did not realize that he needed to clarify some information about the sound wall but has been in contact to try to resolve the question. Mr. Pelch stated the company that will supply the steel for the sound attenuating wall will take about 2-3 weeks to deliver.

Mr. Woodbury stated he appreciated the efforts put forth by Mr. Pelch and the things he had completed since the last meeting and wished that it was done sooner but offered encouragement to continue to work with Staff, keep moving forward, don't leave anything to assumption, or procrastinate the work. Mr. Woodbury added that this process showed the City is willing to work with people but, we also want to protect the rights of residents. This is a good business and we want you to be here with a lot of long term value. Mr. Pelch added his efforts have been a daily attack on the work and has not procrastinated, the result has been much faster progress.

Ms. Patterson asked Mr. Pelch if his expectation for the January 18, 2018 meeting is to have the masonry wall and sound attenuating wall installed. Mr. Pelch answered yes, and that it is every bit his intention and he does not see any reason why it can't happen, aside from possible weather delays.

The meeting was opened for public comment.

Becky Hansen, 5676 South Magic Drive, asked if she is correct in understanding that the conditions were not truly met tonight. Ms. Hansen added they have not been done and feels that revocation should be imposed and Mr. Pelch's business should not be allowed to operate until they are completed. Ms. Hansen stated she has followed all the rules set up by the City to protect all the residents, Mr. Pelch has not and believes he never intended to follow the rules. She stated that this has been 10 months of torture for the residents and it has been business as usual for Mr. Pelch. Ms. Hansen stated the neighbors have suffered sleep deprivation, home business interruptions, noise nuisances and health concerns. Ms. Hansen added that if the Planning Commission chooses to continue the grace period on this CUP for the third time, she hopes a strong deadline is set for the completion of construction for both the wall and the fence that can't be changed.

Richard Hansen, 5676 South Magic Drive, stated he was distracted by the penetrating and mind-numbing whine of Mr. Pelch's vacuum and wondered if any other businesses have gotten away with operating illegally by claiming the following, "I just did not know, or these requirements are really confusing, or I have almost met them all, just give me a little more time". Mr. Hansen stated he is a valuable asset to Murray and to Utah and stated if an extension is granted to be very clear of the expectation when the conditions need to be met.

The public comment portion was closed.

Mr. Hall addressed the question about the conditions being met, and stated the reason we

made the recommendation to continue was, on the October 5, 2017 meeting the Planning Commission motioned that those three bench marks needed to be met by November 16<sup>th</sup>.

Mr. Hall reviewed all the conditions from the original meeting to give an overview of all the conditions and what stage they are currently in. The first requirement to be met tonight was to come back with evidence that applications had been submitted, they have. Second, to have submitted engineering specs for the masonry and sound wall that meets requirements, he has. Third, that he will have submitted a formal landscaping plan meeting City standards, he has. Mr. Pelch has additionally pulled the permit on the masonry wall and is ready to pull the permit on the sound wall once Staff has confirmed one structural item. In the estimation of Staff and the Planning Commission, Mr. Pelch did what we asked him to do, and they decided not to pursue revocation. The residents are correct, in wanting a clear deadline to have these things done by and to keep making progress, and as Commissioner Woodbury stated to not take his foot off the gas. As Mr. Pelch has stated, it should not take long to get these things built and work will start the week after Thanksgiving, if not earlier on some things.

Mr. Woodbury asked if Mr. Pelch were to defer the landscaping would he be able to receive a business license. Mr. Hall answered yes, with the deferral agreement in place. The process for a Deferral Agreement is that the City takes bonded money for the landscaping, then Mr. Pelch would need to sign that deferral agreement which states, if he does not install the landscaping the City could use the bonded money to install the landscaping.

Mr. Nay asked in theory if on January 18, 2018, when he comes back could he have a Business License in place. Mr. Hall answered yes, he could if he meets the conditions by January 18, 2018, yes, we could issue the business license.

Ms. Patterson asked if the Planning Commission could add additional requirements onto this continuance tonight. Mr. Hall stated yes, if the Commission wanted to add a deadline date for certain things they can. Mr. Nay suggested that it would be easier if we just asked him to produce a Business License, which would require all the conditions to be met to receive it. Ms. Patterson stated she agrees with Mr. Nay but feels that an actual date should be specified. Ms. Milkavich added that a Business License allows less wiggle room, only fulfilling the construction conditions does not necessarily mean he will obtain a Business License. Mr. Woodbury stated that most strict thing as far as conditions to be applied tonight, would be to require a Business License. Mr. Hall stated he is comfortable with adding the restrictions tonight and it seems Mr. Pelch is comfortable with his ability to perform.

Ms. Patterson asked what would be under review at the next meeting. Mr. Hall answered the Commission would be reviewing to see if he had completed the perimeter wall, sound attenuating wall, and landscaping or deferral for landscaping.

Mr. Swaney asked if Mr. Pelch gets all of these things taken care of and his Business License issued, will he need to come back to us or can it just die on its own because it is taken care of. Mr. Hall answered it would have to come back to the Commission because this is a continued item and we would need to close the hearing to complete the process.

Mr. Woodbury stated this is an unfortunate situation for the residents because the Commission cannot do anything about all the damages that have been done for the residents. Even if today we agreed to revoke this Conditional Use Permit, it will not change anything that happened. The decisions tonight could be to say no, you caused damage, we

don't trust you anymore even though you have demonstrated progress, or we say let's make sure we put a strict deadline on this so there is not a change that would allow it to go beyond January 18, 2018. Mr. Woodbury stated he is sympathetic to the residents, having personally worked around dust collectors in the past, and wished Mr. Pelch would have come before the Commission before starting his business without approval.

Ms. Milkavich stated that when the Commission gives more time it is because we are trying to follow the ordinance so the outcome is positive for everyone. We regret the time frame, but the pace is so things are done correctly.

Mr. Woodbury read from the Staff report, item 6; Conclusion and Recommendation and quoted "Staff finds that the applicant has made substantial progress on outstanding conditions, and has met the specific requirements made by the Planning Commission on October 5, 2017. However, because of the demonstrated negative impact to the adjoining properties, it is imperative that the applicant continue in earnest, and complete the masonry wall for the buffer, install the landscaping as required, continue to operate within the prescribed hours, and most importantly erect the sound attenuating walls around the dust collector. Staff is encouraged by the applicant's progress since October 5<sup>th</sup>, and we are confident that all the conditions of the use permit can be met quickly". Mr. Woodbury added that he has worked with Staff for several years now and finds them to be professional, responsive, and they try to balance the needs of residents and businesses.

Mr. Swaney added that in the October 5<sup>th</sup> meeting the Planning Commission asked for Mr. Pelch to come back tonight with completion due dates for all of the construction. Mr. Swaney suggested that it would be in the best interest of all involved to set final dates for all of the construction tonight.

Mr. Nay asked hypothetically, what if the Business License has been submitted and all the conditions are met and then for some reason the Business License does not get approved because of some fluke like, holidays or anything else. Mr. Hall stated it takes 7 to 10 business days to issue a license, and the Fire inspection has already been done, meaning it should fit within that timeline for approval.

Ms. Milkavich asked what the timeframe is for the bond process. Mr. Hall answered that the bond is associated with the Deferral Agreement and the deferral agreement designates the time the landscaping should be installed by. Mr. McNulty added that the Deferral Agreement would also need an estimate for the landscaping, irrigation and the dollar amount. Ms. Milkavich asked what if he needs to take out a loan for the bond. Mr. Woodbury stated he has sixty days to get the loan. Mr. McNulty stated that Mr. Pelch has informed the City that he has the means to pay for the improvements.

Mr. Swaney stated that the next 60 days for Mr. Pelch is going to be a crunch to get everything in and make this happen, this includes the Holiday closures as well. Mr. McNulty stated that since the last meeting in October they have seen Mr. Pelch staying on top of things. The City has been working with Mr. Pelch and his architect to get the permits issued.

Mr. Nay made a motion that the Planning Commission take no action to revoke the Conditional Use Permit, but continue the item to be reviewed again at the regularly scheduled meeting on January 18, 2018, subject to the following condition:

1. The applicant shall have completed everything necessary to have a Business License



issued.

Ms. Patterson asked if he actually has to have the business license in hand or if he could just say he has turned in the paperwork and call it good. Mr. Woodbury stated Mr. Pelch should not actually have to have it in hand but, Staff must be able to verify he has been issued a valid Business License. Mr. Swaney added, if at the next meeting Mr. Pelch for some reason does not have the Business License issued, it will be his intent to vote for revocation and the applicant would need to cease operations completely until the conditions are met and the business license is issued.

Seconded by Mr. Woodbury.

Call vote recorded by Mr. McIlrath.

  A   Travis Nay  
  A   Scot Woodbury  
  A   Maren Patterson  
  A   Lisa Milkavich  
  A   Buck Swaney

Motion passed 5-0.

#### OTHER BUSINESS

Mr. McNulty stated the next meeting is three weeks from tonight on December 7, 2017. The December 21, 2017 meeting will be canceled. The first meeting of the New Year will be on January 4, 2018. Staff wants to take some time to review the Land Use Ordinances we have been working on.

Mr. Swaney announced that due to circumstances he will not be able to continue on the Planning Commission, the meeting on December 7, 2017 will be his final meeting. Mr. Swaney thus gave his termination request of his term.

The meeting was adjourned at 7:45 p.m.

  
Jared Hall, Supervisor  
Community and Economic Development