

AGENDA

August 11, 2015

6:00 p.m.

The Roy City Planning Commission regular meeting will be held in the City Council Chamber / Court Room in the Roy City Municipal Building located at 5051 South 1900 West. The meeting will commence with the Pledge of Allegiance, which will be appointed by the Chair.

Agenda Items

1. Declaration of Conflicts
2. Approval of July 28, 2015 work session minutes
3. Approval of establishing Planning Commission meetings schedule for FY2016
4. Continued – Request to amend the General Plan (Master Land Use Map) and the Zoning Map for the property located at 2748 W 5600 S:
 - a. From Low Density, Single-Family Residential to Very High, Multi-Family Residential (General Plan)
 - b. From RE-20 to R-3 (Zoning Map)
5. 6:00 p.m. – PUBLIC HEARING - Request for Preliminary Subdivision approval for Trailside subdivision, a two (2) lot residential subdivision located at 2748 W. 5600 S.
6. 6:00 p.m. – PUBLIC HEARING - Request for Preliminary Subdivision approval for Jeffs subdivision, a two (2) lot residential subdivision located at 4250 W. 5250 S.
7. 6:00 p.m. – PUBLIC HEARING - Request for Preliminary Subdivision approval for T & D Nelson subdivision, a five (5) lot residential subdivision located at 5463 S 3100 W.
8. Request for approval for a Site Plan to allow accessory buildings for Southern Comfort, located at 5357 S. 1900 W.
9. Commissioners Comments
10. Staff Update
11. Adjourn



ROY CITY PLANNING COMMISSION

August 11, 2015

Minutes of the Roy City Planning Commission Meeting held in the City Council Room of the Roy City Municipal Building on August 11, 2015, at 6:00 p.m.

The meeting was a regularly scheduled meeting designated by resolution. Notice of the meeting was provided to the *Standard Examiner* at least 24 hours in advance. A copy of the agenda was posted.

The following members were in attendance:

Gennie Kirch, Chairman
Bob Dandoy
Leland Karras
Doug Nandell
Lindsey Ohlin
Claude Payne

Steve Parkinson, Planner
Michelle Drago, Secretary

Excused: Joe Paul

Others present were: Mayor Willard Cragun; Cathy Spencer, Management Services Director; Gary Empey; Dale Dixon; Jo Dixon; Rosemary Higgs; Kasey Randall; Tabitha Randall; Dee Nelson; Don Higgs; Orlene Higgs; Tim Higgs; John Barker; Boyd Call; Crystal Jeffs; Michael Jeffs; Greg Sagen; Scott Berry; and Dan Higgs.

Pledge of Allegiance: Lindsey Ohlin

1. DECLARATIONS OF CONFLICT

Commissioner Dandoy stated that he had a conflict with Item No. 7. A family member had a direct interest in the subdivision. He recused himself from discussion on that item.

2. APPROVAL OF JULY 28, 2015, MINUTES

Commissioner Dandoy moved to approve the July 28, 2015, minutes as written. Commissioner Ohlin seconded the motion. Commission members Dandoy, Karras, Kirch, Nandell; Ohlin, and Payne voted "aye." The motion carried.

3. APPROVAL OF REGULAR PLANNING COMMISSION MEETING SCHEDULE FOR FY2016

Steve Parkinson asked if the Planning Commission was concerned about holding meetings on November 24th and December 22nd, which were on the weeks of Thanksgiving and Christmas. The Planning Commission members were not concerned.

Commissioner Dandoy asked about meetings held in the large conference room. Mr. Parkinson said only the work sessions would be held in the conference room.

Commissioner Karras moved to approve the Planning Commission meeting schedule for FY2016. Commissioner Payne seconded the motion. Commission members Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

4. CONTINUED FROM JULY 14, 2015 – CONSIDERATION OF A REQUEST TO AMEND THE MASTER LAND USE MAP OF THE GENERAL PLAN FROM LOW DENSITY, SINGLE-FAMILY RESIDENTIAL TO VERY HIGH, MULTI-FAMILY RESIDENTIAL AND THE ZONING MAP FROM RE-20 TO R-3 FOR THE PROPERTY LOCATED AT 2748 WEST 5600 SOUTH FROM

Steve Parkinson stated that the property under consideration was located at 2748 West 5600 South. Two actions had been requested regarding this property: A request to amend the Future Land Use Map of the General Plan from Low Density, Single-Family to Very High Density, Multi-Family; and a request that the Zoning Map be amended from RE-20 to R-3 with a RIO (Residential Infill Overlay). A public hearing was held on July 14, 2015, and several good comments were received. The public hearing was closed, and the Commission tabled the matter in order to allow time for a traffic study to be completed.

Mr. Parkinson stated that the applicant asked A-Trans, a transportation engineering company, to conduct the transportation study. The transportation engineer recommended that there be no access on 5600 South. The only access the applicant was proposing on 5600 South was the existing access for the existing home. The transportation engineer recommended that all access occur on 2700 West. Without knowing exactly what was being proposed on the property, the engineer could not make a recommendation about any traffic motions. When a development plan was submitted for this property, the engineer could continue the study.

Commissioner Dandoy felt the Planning Commission's concerns resulted from the close proximity of any access on 2700 West to the 5600 South intersection. Such an access might be limited to right in and right out turning movements. Modifications to 2700 West might be needed. Mr. Parkinson said the transportation engineer could not make a recommendation until he knew what was being proposed on the property. At this time, the applicant was simply seeking to rezone the property and subdivide the home from the rest of the property.

Commissioner Dandoy felt one could pre-suppose the property was heading in the direction of high density since that was the zone the applicant was requesting. Why couldn't a less dense zone, like RE-15 be considered? Mr. Parkinson stated that half of the property was already zoned R-3. He didn't feel there was enough room on the remaining property for a public road which would be required if the property had a single-family zone. The property would probably be developed by a single developer.

Steve Parkinson stated that the applications to amend the Future Land Use Map of the General Plan and the Zoning Map complied with the criteria contained in Sections 505, 506, 509, and 510 of the Zoning Ordinance. The Planning Commission had to consider if amending the General Plan and the Zoning Map were in the best interest of the parcel. If the zoning was left as is, the current use would continue. The staff recommended that the Planning Commission recommend that the Council approve both requests.

Commissioner Dandoy stated that the Future Land Use Map showed there weren't many RE-20 areas left in Roy City. Most of the RE-20 was along the west side of 2700 West and the southwest

corner of the City. What was being proposed on this piece of property would mean the loss of its RE-20 Zone for good. Did the Planning Commission want to consider preserving larger lots for families?

Commissioner Dandoy was also concerned about the small strip of land that UDOT owned in front of this property. Steve Parkinson said UDOT owned a 12-foot strip of land the length of the property on 5600 South. It owned similar strips elsewhere on 5600 South. He felt the strips were in preparation for future widening of 5600 South.

Chairman Kirch felt the Planning Commission needed to consider the adjacent property uses. Almost all of the adjoining properties were already multi-family. If this property was rezoned, it would not be an island.

Chairman Kirch asked about the adjacent designations on the Future Land Use Map. Mr. Parkinson said the area to the north was low density, single-family residential. The area to the south was very high density, multi-family residential and medium density, single-family residential. The area to the west was high density, multi-family residential. The property to the east was commercial.

Chairman Kirch felt the Planning Commission needed to consider how the property could best be developed. There would likely be no access to 5600 South for future development. The only access would be from 2700 West. If the property was left RE-20, would it ever develop?

Chairman Kirch asked if there would be enough room behind the existing house for a private drive to access the back area. Would the back area be landlocked? Mr. Parkinson said the required width for a private road was 26 feet. There was 40 to 45 feet behind the lot with the house. It appeared there was enough room for a private drive.

Chairman Kirch asked if other properties on 2700 West could request permission to subdivide their lots. Mr. Parkinson said they could. They would have to go through the same process as the current applicant – request amendment of the General Plan and the Zoning Map.

Commissioner Dandoy stated that once this property was rezoned for smaller lots, it was highly unlikely it would ever be large again. People were not able to find large building lots in Roy City. Should Roy retain these larger lots as an attraction for families that wanted to stay in Roy?

Commissioner Nandell asked how many high density developments the City wanted.

Chairman Kirch stated that the property in question was located on 5600 South. The D&RG Trail was located immediately to the west. Those interested in an RE-20 lot would not want to have their animals next to a lot of foot traffic. When one looked at the surrounding uses, what the applicant was requesting was typical, not atypical.

Steve Parkinson stated that if the property was subdivided, the larger parcel would have about 1.4 acres.

Commissioner Dandoy said the applicant could have requested a change from R-3 to RE-20.

Chairman Kirch pointed out that with a parcel this size, the City could have received a request for a commercial use.

Commissioner Dandoy felt the issue was whether to retain those areas designated low density, single family residential. This would not be the last time the Planning Commission would consider this type of request. This was a genuine issue. The Planning Commission would continue to see this type of development until there weren't any large lots left in Roy City. The Planning Commission had to determine if it was going to give up the larger properties.

Chairman Kirch reviewed the criteria used for considering General Plan and Zoning Map amendments. A lot of the criteria could be applied to both sides of the argument. This really was a difficult issue.

Chairman Kirch reminded the Planning Commission that this property was adjacent to the D&RG Trail. Development of the property could attract those interested in access to the Front Runner station.

Commissioner Dandoy said the Planning Commission had requested the traffic study because it didn't know what the applicant was proposing. The traffic study said the property was located close to the 5600 South 2700 West intersection, and there could be traffic restrictions. The City required the developer of the subdivision on 4800 South to put in a median to make ensure drivers complied with the turning restrictions. The same thing could happen on 2700 West. A median could be required to ensure compliance. He felt there was a safety risk associated with this property. He felt the Planning Commission would feel more comfortable if it could see a development plan. Due to the size of the property, the maximum density was 16 residential units. He felt 16 units would make the 5600 South 2700 West intersection more complicated. He found it difficult to support this request due to the safety risk and the requested change to the Future Land Use Map.

Commissioner Ohlin felt there was a difference between this property and the one on 4800 South. The Planning Commission didn't know what was being proposed on this property.

Commissioner Dandoy stated that when the Planning Commission recommended approval of the development on 4800 South, it also recommended the installation of a roundabout to help with the turning restrictions. The Council approved the roundabout to make the turning restrictions less cumbersome. There wasn't a place for a roundabout near this property. The Planning Commission would have a better feel, if they knew what was being planned. They would know if there was a safety risk or not.

Chairman Kirch stated that the proposal before the Planning Commission did not include a development plan. Safety concerns would be addressed if and when a plan was submitted. The property on the immediate corner of 5600 South 2700 West had been vacant for a long time. She felt it would be better to have it developed rather than leave the corner in weeds and the property in the back inaccessible.

Commissioner Dandoy said he had an issue with the R-3 Zone. He wanted an alternative. He felt it was extreme to go from an RE-20 to an R-3. The property would be changing from very low density to very high density.

Chairman Kirch pointed out that the corner and half of the large parcel were already zoned R-3.

Chairman Kirch asked how many units the property could have if it was zoned R-3. Steve Parkinson said the maximum density in the R-3 Zone was 12 units per acre. If the remainder parcel was 1.4 acres, the density would be 15 to 16 units. The total number would depend on setbacks and parking. There couldn't be more than 16, because the size would not support it.

Steve Parkinson stated that other zoning options would require a subdivision to have a public road.

Commissioner Dandoy did not feel this property could meet a public road requirement. He was concerned about the unknown. Roy City had a limited number of low density properties left. The applicant was proposing to take another one away. Was that in the best long term interest of Roy? He felt the information from the traffic study the Planning Commission requested just added to the confusion.

Chairman Kirch stated that the corner was already zoned R-3. The Planning Commission was considering the zoning of about 1.4 acres. The developer would be responsible to address safety concerns. Changing the zone to R-3 would change the dynamics of the neighborhood. She did feel for the adjoining property owners, but that was not a criterion the Zoning Ordinance allowed the Planning Commission to consider. In order to deny the requests to amend the General Plan and the Zoning Map, the Planning Commission had to find a criterion that it did not meet.

Commissioner Karras moved to recommend that the City Council approve the request to amend the Future Land Use Map designation for property located at 2748 West 5600 South from Low Density, Single-Family to Very High Density, Multi-Family based on the staff's findings and subject to the conditions recommended by the staff. Commissioner Nandell seconded the motion. A roll call vote was taken: Commissioners Ohlin, Payne, Nandell, Karras, and Kirch voted "aye." Commissioner Dandoy voted "nay." The motion carried.

Chairman Kirch asked about the request for a Residential Infill Overlay. Steve Parkinson said a RIO did not affect the underlying zone. It was a tool for difficult pieces of property. It did give a property owner some flexibility. In this case, it would give some flexibility with lot widths, but not the overall size.

Commissioner Karras moved to recommend that the City Council approve the request to amend the zoning designation of property located at 2748 West 5600 South from RE-20 to R-3 and to grant the Residential Infill Overlay request based on the staff's findings and subject to the staff's recommendations. Commissioner Nandell seconded the motion. A roll call vote was taken: Commissioners Payne, Karras, Nandell, Kirch, and Ohlin voted "aye." Commissioner Dandoy voted "nay." The motion carried.

5. PUBLIC HEARING TO CONSIDER A REQUEST FOR PRELIMINARY SUBDIVISION APPROVAL FOR THE TRAILSIDE CROSSING SUBDIVISION, A TWO-LOT SUBDIVISION LOCATED AT 2748 WEST 5600 SOUTH

Steve Parkinson stated that the Trailside Crossing Subdivision was a two-lot subdivision located at 2748 West 5600 South. The applicant wanted to subdivide the existing single-family home from

the rest of the property. The home was currently zoned R-3. The minimum lot size in the R-3 Zone was 6,000 square feet. However, in order to have enough property for the home to meet the setback requirements, the lot would be just over 8,000 square feet. The second lot would be 1.4 acres in size. The existing home had access from 5600 South. No other changes in the property were proposed at this time.

Chairman Kirch asked what would happen if the existing home was demolished. Mr. Parkinson said the then vacant lot would have to meet the requirements of the Zoning Ordinance. Chairman Kirch asked if the 8,000 square foot lot would qualify for division into smaller parcels. Mr. Parkinson felt the existing home would have to be demolished and the subsequent vacant property absorbed back into the larger parcel before it could be divided. At this point, he didn't feel demolishing the home would be in the best interest of the developer.

Commissioner Dandoy stated that the entire property was now zoned R-3. The lot with the existing home would be 8,000 square feet in size. If the house was demolished, the lot would still be zoned R-3. Mr. Parkinson said it would. If the home was no longer there, the lot could lose access to 5600 South. He didn't feel the applicant would be subdividing the property if he had plans to demolish the home.

Chairman Kirch asked how long the frontage on 2700 West was. Mr. Parkinson said it was a little over 100 feet. He didn't know the exact length. Commissioner Dandoy said frontage on 2700 West was longer than the width of adjoining properties to the north.

Chairman Kirch stated that the traffic study indicated that Lot 2 would not be able to get access onto 5600 South. Mr. Parkinson said the owner would have to apply for a permit from UDOT for access onto 5600 South.

Chairman Kirch felt this property was limited. Steve Parkinson said the entrance to a development would have to be at least 36 feet wide if it contained full traffic movements. The Fire Department could reduce the width of the entrance if turning movements were restricted, but the entrance could not be less than 26 feet.

Steve Parkinson said the staff found that the proposed subdivision could meet all of the requirements of the Zoning and Subdivision Ordinances. It recommended that the City Council grant preliminary approval of the Trailside Crossing Subdivision subject to approval of the requested amendments to the General Plan and Zoning Map and compliance with the DRC's July 27th memorandum.

Commissioner Payne moved to open the public hearing at 6:47 p.m. Commissioner Dandoy seconded the motion. Commission members Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Chairman Kirch opened the floor for public comments.

Tim Higgs, 5381 South 4300 West, stated that Joseph Higgs was his father. His mother and father owned a lot that would back onto the proposed subdivision. He had several concerns about the subdivision. He understood that the traffic analysis was inconclusive. He felt the applicant was asking for approval before the impact on 2700 West could really be understood. He was

concerned about public versus private access. What constituted a private drive? Would the access be public or private?

Chairman Kirch stated that a private drive was an ingress and egress path for privately-owned property. It might consist of a network of access lanes. The City had no responsibility for its upkeep.

Tim Higgs stated that according to the agenda, the subdivision was limited to two lots. Chairman Kirch said at this time the applicant was separating the house from the rest of the property. The remaining property could be used for future development. Mr. Higgs asked if there could be more than two lots. Chairman Kirch said there could if those lots could meet the requirements of the Zoning Ordinance.

Chairman Kirch stated that because Roy City was almost built out, the City would see more development of unusual properties.

Tim Higgs questioned whether the use was right. He asked how the applicant planned to get services and utilities to the property. If utilities came from 2700 West, how would it inconvenience existing residents? Was there room for emergency access equipment? What about garbage and snow removal? Water drainage was another issue. When the overpass was put in, the intersection was raised higher than adjoining properties. The drainage on 2700 West changed. Most of the street drained from north to south. The homes near the intersection now flowed from south to north. It now seemed that all of the drainage in the area collected in front of his parents' home. The same drainage issue existed in the back of this property. He was still concerned about traffic. A right in and right out restriction would ease some of his concern, but drivers traveling down 5600 South would want to turn into a development on this property because it would be too inconvenient not to. He didn't see how the City could approve a rezone with an inconclusive traffic study.

Boyd Call, Layton, stated that his parents owned this home for over 60 years. Several years ago, his mother wanted to rezone the entire property for high density. When she approached the City, she was told not to waste her money. The City planned to change the zone when it updated its maps. They sold the property with that understanding. Then he got a call from the buyer about the difficulty he was encountering rezoning the property. He found it ironic that the City told his mother not to worry about the zone, and now the City was hesitating. No one wanted to purchase this large lot because it was isolated. He felt not rezoning the property was taking away the owner's rights.

Commissioner Karras moved to close the public hearing at 7:00 p.m. Commissioner Ohlin seconded the motion. Commissioner members Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Chairman Kirch stated that there were many issues and quinky dink about this site, which were dictated by the Zoning Ordinance. The developer would have to address those.

Commissioner Nandell stated that when the developer submitted a site plan, he would have to address concerns about the property. Mr. Parkinson said all site plans were reviewed by the Fire Department. The Fire Department would determine if there was adequate access for their emergency equipment. Access for waste removal and snow removal would be considered. Water drainage was governed by FEMA and APWA. The developer would be required to retain water

on the site and then release it. The site plan would have to satisfy the requirements of the Zoning Ordinance before the DRC would bring it to the Planning Commission. Even traffic safety would have to be addressed.

Chairman Kirch stated that if the home was subdivided, it would limit what could happen on the rest of the property. If the home was demolished, access onto 5600 South would be lost.

Commissioner Nandell moved to recommend that the City Council grant preliminary approval of the Trailside Crossing Subdivision located at 2748 West 5600 South based on the staff's facts and findings and recommendations of the staff, including approval of the amendments to the General Plan and Zoning Map. Commissioner Payne seconded the motion. Commission members Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

6. PUBLIC HEARING TO CONSIDER A REQUEST FOR PRELIMINARY SUBDIVISION APPROVAL OF JEFFS SUBDIVISION, A TWO-LOT SUBDIVISION LOCATED AT 4250 WEST 5250 SOUTH

Steve Parkinson stated that the City had received a request for preliminary approval of a two-lot subdivision located at approximately 4250 West 5250 South. The property was located south of the Meadow Creek Village pond and east of the Howard Slough. It was 1.3 acres in size and was zoned R-1-7. The R-1-7 Zone would allow several smaller lots on a parcel of this size, but the property was only accessible via a 26 foot piece of land on 5250 South. The proposed lots would have to share a single driveway. The Zoning Ordinance only allowed two lots to share a driveway. This was a familial subdivision; a mother and daughter planned to live there.

Mr. Parkinson stated that the staff had found that the proposed subdivision met all of the requirements of the Zoning and Subdivision Ordinances. The DRC's August 6th memorandum outlined issues that would have to be addressed. Most were due to the proximity of the Howard Slough. Mr. Parkinson felt the DRC's concerns could be resolved. The DRC would address installing drainage and utilities in the 25-foot access lane. The Fire Department was okay with a 25-foot access as long as there was adequate turning radius. There was a separate parcel along 5250 South which would have to be combined with Lot 1.

Mr. Parkinson stated that the City owned an area west of the proposed subdivision. It might be in the interest of the City to move its fence to give the applicant more access width in exchange for better access to the Slough. The staff recommended that the Planning Commission recommend that the City Council grant preliminary approval of the Jeffs Subdivision subject to the DRC's 'concerns listed in the August 6th memorandum being resolved. Mr. Parkinson felt the issues could be resolved. It just might take some time.

Commissioner Dandoy stated that there was a sign posted on this property indicating it could be used for public parking for the fish pond.

Steve Parkinson stated that this property had a lengthy history involving a dispute over the legal ownership of the property. The City did not own the property and couldn't sign it for public parking. He would ask the Public Works Director to have the sign removed.

Commissioner Dandoy felt that the slough could be a hazard. Who was responsible to put up a fence separating the proposed subdivision from the slough? Steve Parkinson said the developer was responsible to separate two different uses. Commissioner Nandell said the City Engineer had indicated that the Howard Slough right-of-way needed to be fenced in accordance with Roy City Standards.

Commissioner Ohlin moved to open the public hearing at 7:12 p.m. Commissioner Dandoy seconded the motion. Commissioners Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Chairman Kirch opened the floor for public comments

Crystal Jeffs, 3351 West 4250 South, West Haven, stated that she and her mother wanted to live on this property. Right now there was sufficient room for cars to park along the slough without blocking her access. There currently wasn't a fence along the slough. She had received a copy of the DRC's memorandum, and knew they would have to put in a fence. She was planning to do so.

Chairman Kirch asked if there was a home on the property. Mrs. Jeffs said the property was currently vacant.

Commissioner Nandell asked about access for parking. Mr. Parkinson said this property was not a suitable parking lot. There needed to be a sign indicating this was private property. Crystal Jeffs said there was plenty of parking at the fish pond itself.

Commissioner Dandoy moved to close the public hearing at 7:17 p.m. Commissioner Payne seconded the motion. Commissioners Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Commissioner Dandoy stated that this subdivision would have access through a private road. Right now both lots would be owned by family. What happened in the future if one or both lots were no longer owned by family members? What if the owner of Lot 1 blocked access for Lot 2? Steve Parkinson stated that on the subdivision plat, the driveway would be shown as a shared driveway which would be fully accessible by both lots. The property owners would be responsible for the maintenance of the driveway. The driveway would have to remain open for fire access. The developer would have to put in a fire hydrant.

Commissioner Dandoy was concerned about how the City would resolve an access dispute between the two lot owners. Steve Parkinson said it would be a civil issue. The City would not be involved.

Commissioner Ohlin moved to recommend that the City Council grant preliminary approval of the Jeffs Subdivision located at 4250 West 5250 South based on the staff's findings and subject to the staff's recommendations. Commissioner Nandell seconded the motion. Commissioners Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

7. PUBLIC HEARING TO CONSIDER A REQUEST FOR PRELIMINARY SUBDIVISION APPROVAL OF T & D NELSON SUBDIVISION, A FIVE-LOT SUBDIVISION LOCATED AT 5463 SOUTH 3100 WEST

Commissioner Dandoy recused himself from this item and stepped down.

Steve Parkinson stated that the City had received a request for preliminary approval of the T & D Nelson Subdivision located at 5463 South 3100 West. The proposed subdivision would modify Lots 19 and 27 of Hidden Cove Phase 4 and divide an additional 1.42 acres into five individual lots

Mr. Parkinson stated that when Hidden Cove Phase 3 was submitted, the developer was generous and left Mr. Nelson frontage on 5475 South. However, Mr. Nelson was too late to arrange to have utilities stubbed to his property (Lot 4). When Hidden Cove Phase 4 was submitted, Mr. Nelson paid to have utilities stubbed to his property on 5450 South (Lot 3). Lots 1 and 2 were Lots 19 and 27 of Hidden Cove Phase 4. Lot 5 was Mr. Nelson's existing home on 3100 West.

Mr. Parkinson said the biggest issue regarding this subdivision was installation of utilities for Lot 4 on 5475 South. Roy City did not allow new roads to be cut for five years unless the developer agreed to repave the entire road. The road in front of Lot 4 was paved in October of last year. The City had agreed to allow Mr. Nelson to cut 5475 South to install utilities for Lot 4 if he agreed to repave the entire bulb of the cul-de-sac.

Chairman Kirch asked when the five years would be up. Mr. Parkinson said the five year time frame would be up in 2019.

Steve Parkinson stated that the staff had found that the proposed subdivision met all of the requirements of the Zoning and Subdivision Ordinances. The staff recommended that the Planning Commission recommend that the City Council grant preliminary approval of the T & D Nelson Subdivision subject to the conditions outlined in the DRC's July 29th memorandum. When the subdivision was complete the improvement would be seamless and continuous. One would not be able to tell where one subdivision started and another ended.

Commissioner Karras moved to open the public hearing at 7:25 p.m. Commissioner Ohlin seconded the motion. Commissioners Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Chairman Kirch opened the floor for public comments.

Dee Nelson, 5463 South 3100 West, stated that he was ready to develop Lot 4. He was requesting approval of the subdivision and permission to cut the street to stub the utilities. He didn't want to wait five years.

Commissioner Nandell moved to close the public hearing at 7:27 p.m. Commissioner Karras seconded the motion. Commissioners Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Commissioner Karras moved to recommend that the City Council grant preliminary approval of the T & D Nelson Subdivision located at 5463 South 3100 West based on the staff's facts and findings and subject to the conditions recommended by the staff. Commissioner Payne seconded the motion. Commissioners Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

8. CONSIDERATION OF A REQUEST FOR APPROVAL OF A SITE PLAN FOR ACCESSORY BUILDINGS FOR SOUTHERN COMFORT RESTAURANT LOCATED AT 5357 SOUTH 1900 WEST

Steve Parkinson stated that the Planning Commission considered a site plan and conditional use permit for the Southern Comfort Restaurant in October of 2014. The Planning Commission recommended that the City Council approve both, which it did on November 18, 2014. The site plan included landscaping in front of the building. Due to the time of the year, the restaurant was allowed to open subject to completion of the landscaping by June 1, 2015.

Mr. Parkinson said the applicant was now asking for approval of a site plan that included a concrete pad for a smoker and a shed. The request was being made after the fact. In March of 2015, the restaurant had a fire. The Health Department told them to move the smoker away from the building, put in on a concrete pad, and enclose it with a fence. The owner complied with the Health Department's directive sometime between March 30th and April 9th but did not contact the City. Mr. Parkinson said that on April 9th, he spoke with Shawn, the restaurant manager, about the site plan violation and the need for a new site plan approval. Nothing occurred until May 27th, when it was noted that a shed was being constructed. Mr. Parkinson said both he and the Building Official spoke with the manager. She was informed that construction on the shed needed to stop until a revised site plan was approved. The only reason the shed needed a permit was for the electric service as the size was less than 200 square feet. Later that day someone applied for a building permit for the shed, but no one provided a site plan or addressed the site plan issues.

Mr. Parkinson said he conducted a site plan review a week later, even though there wasn't an application, when the building permit application arrived on his desk. On June 16th, he sent Mr. Berry comments regarding the site plan deficiencies. Later that day Mr. Berry filled out an application but did not provide a new site plan as requested. A new site plan was filed on July 7th, but it didn't take into account any of the June 16th comments. Rather than wait another month for a new site plan, he accepted the deficient plan to bring to the Planning Commission.

Mr. Parkinson stated that the site plan presented to the Planning Commission was deficient. It did not contain the required 10% landscaping. The staff did not have an issue with the smoker. The shed was supposed to be constructed of the same materials as the main building. As the main building was concrete block, the staff felt painting the shed the same color would be sufficient.

Mr. Parkinson felt the main issue was the owner's failure to do what he was originally required to do. The landscaping was supposed to be completed by June 1st, but not much had been installed. He had spoken with the owner twice about extension dates. The project was currently in violation of the conditional use that was approved by the City Council on November 18th.

Mr. Parkinson asked that any recommendation of approval be subject to the installation of the landscaping guaranteed by an escrow. If the landscaping wasn't completed, the City could take

the money and finish it. Because the building had been vacant so long, new uses had to comply with today's standards as much as possible. The City was trying to beautify 1900 West. The staff had found that the proposed site plan could be the site design standards in the Zoning Ordinance. The staff recommended approval of the amended site plan and the conditional use permit subject to the requirements and recommendations of the Building Official; the DRC's July 27th comments; a financial guarantee for all required landscaping, including removal of any concrete or asphalt; that the area west of the building be hard surfaced, or posted with 'no parking' signs and posts and chain installed; and notification and understanding that continuous violations to Building, Fire, Health and/or Planning codes will result in the revocation of the business license.

Commissioner Nandell asked if the financial guarantee would have a time limit. Mr. Parkinson said it would. Due to the time of year, it would likely be June 1, 2016.

Chairman Kirch asked if the unfinished landscaping was due to a lack of knowledge on the applicant's part. Mr. Parkinson said the City had a letter from the applicant indicating that the landscaping would be installed by June 1st.

Scott Berry, 3532 South 3500 West, West Haven, stated that he was the owner of the Southern Comfort Restaurant, and a professional engineer. He felt his integrity had been called into question. Several things had been represented which were not true. He appeared before the Planning Commission last October. The Planning Commission had questions about parking and the restaurant's proximity to the day care center because of the alcoholic beverage license. There were questions about landscaping and whether it would be zeroscape or xeriscape. The Planning Commission recommended that the City Council approve the site plan.

Mr. Berry said the City Council considered the conditional use and site plan on November 18th. There wasn't a discussion about what the Planning Commission recommended. The Council made its decision based on input from the staff. He was told after the Council approved the site plan that he would have to have 10% landscaping. The City wouldn't grant him occupancy until he agreed to install the landscaping. He had to have occupancy in order to meet the deadline to open his restaurant. The City would not allow them to put their commercial smoker inside. They were required to put it outside. In March, there was a fire in the smoker. The Fire Department was called, along with the Building Official and Health Department. He was required to move the smoker 24 feet away from the building, and the Health Department required the smoker to be on a concrete pad surrounded by a fence. The Building Official told him to just get it done. His manager forgot to tell him he needed another site plan approval. He wasn't aware about the site plan issue until he had started the storage box for the cooler. He had discussed the whole matter with the Mayor on May 25th. The Mayor assured him not to worry about it; the landscaping was good. Mr. Berry said he did not own the building. The owner would not let him take out parking to put in landscaping. He felt it should be an issue of quality versus quantity. He tried to keep people off the gravel area behind the building. The only parking that occurred there was for food deliveries that happened during the day and garbage pickup. His employees parked next door. They were not the only commercial business with a gravel parking. He wanted to do what was right, but he didn't feel what was required of him was right.

Chairman Kirch felt Mr. Berry's issues were very fixable. She referred to the October 14th Planning Commission minutes. The discussion at that time was about a conditional use for the alcoholic beverage license. The Planning Commission moved to recommend that the City Council approve

a conditional use for an alcoholic beverage license for a full service restaurant located at approximately 5357 South 1900 West based on the staff's findings and subject to the recommendations of the staff; submission of a landscaping plan; submission of written agreements for use of additional parking; and clarification about whether Kiddie Academy was considered a school. It appeared there were currently three issues regarding this site: 1 – A site plan approval and building permit were needed for the smoker and shed; 2 – The area west of the building needed to be hard-surfaced or posted per the site plan; and 3 - The landscaping matching the site plan needed to be installed. She asked about the area west of the building.

Steve Parkinson said the no parking area was located behind the building. It did have frontage on 1950 West. It did have some gravel. The original site plan showed that some parking would be installed there. If the area was going to be used for parking, it had to be paved. He suggested that the area be posted with 'no parking' signs. Midas Muffler and Discount Tires had been continually occupied. Their site plans were approved under different zoning regulations.

Commissioner Dandoy stated that during Mr. Berry's efforts to get his business open and keep it open, he might have been given information that he could not comply with. He didn't feel the parking issue was of as much concern as the misinformation. There might have been a lot of voices telling him what to do, when in reality there should have been one. He felt the issues could be fixed. He also pointed out that Burger Bar's parking lot had some gravel.

There was a discussion regarding when food deliveries were made. Chairman Kirch asked if delivery trucks could use the no parking area. Mr. Parkinson said the Zoning Ordinance required all commercial parking to be paved. The time for Mr. Berry to appeal details of the approved site plan had passed.

Commissioner Ohlin asked why Burger Bar was allowed to have gravel parking and Mr. Berry could not. Chairman Kirch said that Burger Bar was approved under a different ordinance and had been continually occupied since. Mr. Berry's building was vacant for several years.

Chairman Kirch said the Planning Commission didn't seem to have concerns about the accessory buildings. Its main concerns were the no parking area and the landscaping. Last October the Planning Commission discussed getting as much landscaping as it could. Now it seemed there were extenuating circumstances that would not allow Mr. Berry to put in the landscaping required by the City. The owner would not let him take out pavement.

Scott Berry stated that the report he got from his manager about the storage box wasn't about a site plan. The message he received was that the storage box was too close to the property line. When he learned about the need for a new site plan, he brought in an altered site plan for the City to consider.

Chairman Kirch asked if the City could assist someone trying to work with a property owner. Mr. Parkinson said the City generally did not do that.

Chairman Kirch asked if this business would have to shut down if it could not install the required landscaping because its conditional use would not be valid.

Commissioner Ohlin felt the City's beautification effort would be better served with an occupied building versus a vacant one.

Steve Parkinson said the Planning Commission could not alter the approved site plan.

Chairman Kirch stated that if the Planning Commission approved the site plan for the accessory buildings, which showed the 10% landscaping, Mr. Berry would be required to put in the landscaping as approved. The Planning Commission didn't have the authority to alter the site plan. At this point, the Planning Commission could deny the site plan or table it.

Commissioner Dandoy asked if the City could encourage the property owner to cooperate. The landscaping would benefit him and the City.

Chairman Kirch asked how long Scott Berry had known that he could not install the required landscaping. Scott Berry said at the time he was required to draw up a site plan in order to receive occupancy, he didn't have time to file an appeal with the City Council. The lease he had with the property owner was 'as is.' Mr. Parkinson said the property owner signed the site plan application.

Chairman Kirch asked if the property owner was bound to comply with the approved site plan if he signed the application. Mr. Parkinson said that was a question for the City Attorney.

Chairman Kirch asked if the business would be forced to cease operating if the Planning Commission tabled consideration of the site plan. Mr. Parkinson said it would not.

Chairman Kirch suggested that Mr. Berry put up a 'no parking' sign on the gravel area. Mr. Berry said he already had.

Chairman Kirch stated that Mr. Berry had indicated he could not do what the plan agreed to. If he couldn't, the City had a conditional use that did not meet the requirements of the ordinance. The Planning Commission was in a difficult position. She felt it needed legal counsel.

Commissioner Karras moved to table consideration of a site plan for accessory buildings for the Southern Comfort Restaurant located at 5357 South 1900 West in order to seek a legal opinion from the City Attorney on how to proceed if the property owner refused to allow the applicant to meet the landscaping requirement needed for the conditional use. Commissioner Dandoy seconded the motion. Commissioners Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

9. COMMISSIONER COMMENTS

Chairman Kirch stated that the Planning Commission was going to see more difficult developments. She reminded the Commission that the ordinances were the governing rule.

Chairman Kirch asked that the City's sign at the entrance on 5600 South be fixed. The letters "r" and "o" needed to be repainted.

The Planning Commission commended the City for working with UDOT to complete the repaving before the Roy Days parade.

10. STAFF UPDATE

Steve Parkinson stated that the Planning Commission had two new members.

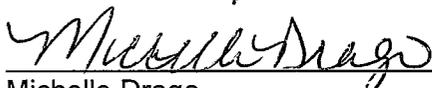
ADJOURN

Commissioner Payne moved to adjourn at 8:09 p.m. Commissioner Nandell seconded the motion. Commission members Dandoy, Karras, Kirch, Nandell, Ohlin, and Payne voted "aye." The motion carried.

Attest:



Gennie Kirch
Chairman



Michelle Drago
Secretary

dc:paug1115