

Smithfield City Planning Commission

January 15, 2014

MINUTES

The Planning Commission of Smithfield City, Utah met at the City Council Chambers, 96 South Main, Smithfield, Utah at 7:00 p.m. on **Wednesday, January 15, 2014**. The following members were present constituting a quorum:

Vice Chairperson	Bryant McKay
Commission Members	Jackie Hancock Pete Krusi Jamie Anderson
Engineering Staff	Clay Bodily
Deputy Recorder	Char Izatt
City Council Member	Brent Buttars

The notice was provided to the Herald Journal and delivered to each Commission Member and posted at the City Office Building, the Smithfield City Web Page and the Utah Public Meeting Notice web site.

The meeting was called to order by Vice Chairperson McKay

Opening Ceremonies: Cameron Rutherford

Visitors: John Abel, Kevin King, Diane Esplin, Cameron Rutherford, David Mason, Hayden Grover & Kids, Danielle Olsen, Apryll Peck

Excused: David Price, Chairperson; Steve Teuscher, Alternate; Jon Wells, Planning Staff; Stacey Dority, Minutes

Absent: Steve Edwards, Commissioner; Doug Archibald, Commissioner,

Workshop Session:

The Commission will continue discussion on the placement and height of residential flagpoles, and flagpoles in general.

Mrs. Izatt assessed if the commission had a chance to look at the exemption section of the ordinance that actually lists the flag poles. In discussion she felt they needed to concentrate on where they want the flag poles; the height and the setback. She would like to have the stealth antenna in the ordinance as a definition for anyone that might want to put up a Hamm radio in guise of a flag pole.

Vice Chairperson McKay clarified if it was last month that the commission received information regarding the lights on the flag pole.

Mrs. Izatt confirmed it was. She also stated having been to American Legion meetings and in regards to what Commissioner Teuscher had talked about, had never heard about not requiring lights on the flag. Commissioner Teuscher researched the information he had given to the Commission and it was not correct. Lights are still required for flags flying at night.

Vice Chairperson McKay speculated if the brightness of the light had to be stipulated in the ordinance.

Mrs. Izatt replied she was not familiar with any stipulations for illumination of the flag.

Vice Chairperson McKay inquired if there were any questions from other members on the Commission about the flag pole issue or the stealth guidelines.

Mrs. Izatt mentioned the commission needs to restate what was discussed last month and then provide more definite height, setback and stealth guidelines.

Vice Chairperson McKay repeated from last month's meeting the commission had discussed the height of the pole, the boundary lines next to the street and off of the person's property.

Mrs. Izatt replied she needed precise wording for the ordinance.

Vice Chairperson McKay relayed his personal feelings would be the height of the flag pole considering closeness to the street or off personal property.

Mrs. Izatt questioned if that was for just residential or for commercial as well.

Vice Chairperson McKay replied all residential and commercial.

Mrs. Izatt brought up the definition of stealth and how to refer to it in the requirements.

Commissioner Krusi stated he thinks it should be referred to. The commission liked how it was written. It should be allowed and used as an antenna.

Mrs. Izatt questioned limiting the amount of poles.

Vice Chairperson McKay mentioned a lot of people put up three poles for the different flags. Proximity of the flag poles to each other would limit how tall the pole is.

Mrs. Izatt replied a commercial business is not only going to have one pole; most of the time there are three poles and are fairly close together.

Vice Chairperson McKay inserted the poles are usually tapered in height.

Commissioner Krusi didn't think the closeness of the flag poles to each other is as big a deal as the setback on the property.

Mrs. Izatt inquired about commercial zones that don't have setbacks.

Commissioner Krusi replied we would have to treat the commercial differently than residential.

Mrs. Izatt added she thought residential and commercial should be handled quite different and would like to know how the commission would like the wording.

Vice Chairperson McKay stated the only flag he could think of as a commercial flag would be by Macey's. It was a huge flag in the old spot let alone in their new spot. It was put in such a general location. If the pole fell it would be in their parking lot. Most businesses could locate the pole somewhere that would not allow it to fall in the road. He referred to Lee's parking lot and putting a pole to the edge of the parking lot. Flag poles don't seem to be much of a concern right now.

Mrs. Izatt mentioned the flag poles are not a concern this minute but in the future she would like to be prepared if someone comes in and states they want a flag in a certain area, then we could back ourselves up and let them know if that falls in the guidelines. If the commission is fine with the way it is she doesn't want to push anyone into changing the guidelines. She has been dealing with a gentleman who has had problems with his neighbors because he is a Hamm radio operator and because of the location he lives, it is hard to have a Hamm antenna. This incident is what brought the need for more requirements.

Vice chairperson McKay discussed one more item about the cell tower which was regulated by the airport and FAA (Federal Aviation Administration). If we extend somewhere in their flight pattern, the people need to be aware that is what will govern the ability for them to put up a pole.

Mrs. Izatt mentioned that right now the city is exempting flag poles. If someone wants to put one up in the stratosphere, who is going to look into it to make sure they are in regulations. She feels strongly that the commission needs to be prepared and if they are good with what is written she will type up a rough draft and we will go from there.

Commissioner Hancock questioned if we are still thinking no higher than 25'.

Mrs. Izatt felt she hadn't received a complete consensus.

Commissioner Hancock mentioned if it was less than 25' it wouldn't be over a person's house.

Commissioner Krusi asked Mr. Bodily what the height of a structure was allowed.

Mr. Bodily replied 35' for accessory buildings

Commissioner Krusi responded that there could be two different heights for commercial and residential.

Mrs. Izatt stated that right now we stand at 2 ½ stories or 35' across the board with accessory buildings being at 25'. She will get a rough draft of the information.

Commissioner Anderson asked what the decision on the commercial set back was.

Mrs. Izatt replied there wasn't a decision it is still very rough.

Vice Chairperson McKay suggested that they state the setback be fit to their property; requiring the measurements of the pole would not fall into the road or anyone else's property.

Mrs. Izatt replied they are giving too much latitude that way. Last time it was discussed, the height would be the same as the zone requirement.

Vice Chairperson McKay speculated if they needed to discuss the scout flags that were put in on Holidays.

Mrs. Izatt commented no in fact they are covered in the sign ordinance. The American Flag is protected under that ordinance.

Resident Input

John Abel spoke up about insurance policies for businesses that do not have the proper setback space for their flag poles. Businesses are covered under their liability insurance for any problems that would be caused by a flag pole. A residential property could have a setback footage requirement but the commercial property would be covered under their liability insurance.

Consideration of Consent Agenda Minutes of December 18, 2013 Planning Commission Meeting

Minutes were approved by consent

PUBLIC HEARING to consider Ordinance #13-09 which amends the Smithfield City Subdivision Regulations, Title 16; Sections: 16.06.040 “Procedure”; 16.06.080 “Recording of Plat or Filing of Record Survey”; 16.12.040 “Preparation and Required Information”; 16.09.040: Approval of Preliminary Plat: and Amending the Land Use Ordinance, (Zoning) Title 17; Section: 17.36.070 “Prohibited Signs”; 17.40.010 “Building Permit Required”.

Vice Chairperson McKay opened the public hearing at 7:30 p.m.

There was no public input.

Vice Chairperson McKay closed the public hearing at 7:31 p.m.

Vice Chairperson McKay asked the commission if there were any questions.

Commissioner Anderson commented he had read through it and finds no problems with it.

MOTION: A motion was made by Commissioner Krusi to approve Ordinance #13-09 which amends the Smithfield City Subdivision Regulations, Title 16; Sections: 16.06.040 “Procedure”; 16.06.080 “Recording of Plat or Filing of Record Survey”; 16.12.040 “Preparation and Required Information”; 16.09.040 :Approval of Preliminary Plat: and Amending the Land Use Ordinance, (Zoning) Title 17; Section: 17.36.070 “Prohibited Signs”; 17.40.010 “ Building Permit Required”.

The motion was seconded by Commissioner Hancock. The voting was unanimous.

Commissioners voting in favor: Hancock, Krusi, McKay, Anderson

John Abel has applied for approval of a Commercial Conditional Use Permit for a proposed retail & Tobacco Specialty store located at 896 South Main. Zoned CC.

Mr. Abel informed the commission he was applying for a conditional use permit for a retail alternative goods store, but to cover all items in the store he wanted to receive a license through the city and he has applied for a tobacco specialty use permit. 85% of sells needs to come from nicotine containing products to be considered a tobacco specialty store. His store only sells 63% nicotine containing products which is similar to convenience store other than the sale of gasoline. He sells clothing, incense, essential oils and then tobacco products which include electronic cigarettes. He has a successful business in the Tremonton area. Smithfield is his hometown and he would like to get a business going here as well.

Vice Chairperson McKay inquired if he had filed all his paperwork with Mrs. Izatt.

Mrs. Izatt replied he had.

Vice Chairperson McKay opened questions up to the commission.

Commissioner Krusi established the hours of operation being 8 a.m. to 11 p.m.

Mr. Abel responded the hours seem extreme, but he doesn't want to hurry someone away if they are browsing through the store around 10:00 p.m. Current hours in Tremonton are 9 a.m. to 10 p.m. and that works out well.

Vice Chairperson McKay said on the permit it said the establishment would be open daily and then Sunday is scratched out.

Mr. Abel explained as he had talked with Mrs. Izatt he realized he needed to cover all bases in the application phase. He didn't want to come back in to adjust hours if needed so he just applied for the same hours all days of the week.

Vice Chairperson McKay established if there would be six employees.

Mr. Abel commented he would have up to six employees. If it changed he would have to come back in.

Commissioner Krusi asked if they were moving into the Family Dollar building.

Mr. Abel replied it was just north of Subway where Curves used to be. He announced his proposed opening date would be March 1st.

Vice Chairperson McKay clarified when Mr. Abel said daily will he be open on Holidays?

Mr. Abel expressed that Holidays are usually his best days. The main Holidays he will be closed.

Vice Chairperson McKay opened up the floor to any other questions.

Mrs. Izatt explained that Mr. Abel mentioned 85%. Actually the definition of a specialty business is where the amount for tobacco products is more than 35% of the total annual. If you do more than 35% it throws you.

Mr. Abel replied it used to be 85% did they change that.

Mrs. Izatt stated she spoke to the Bear River Health Department and they pointed out a few concerns. The statute refers to a 600 ft. distance for agricultural use or zone. The Touts have agricultural property within probably 472 ft. We had to do all the measurements to make sure the footage distances was covered. So the Commission may need to make a motion that addresses both aspects of business. If you go into the higher percentage of sales then you would not be able to go into this location.

Mr. Abel responded that Smithfield is an agricultural community and on July 21st you had planned to open a tobacco retail smoke shop/tattoo parlor here and we are not really a smoke shop or tattoo parlor. You can't name one place north or south in Smithfield that is 600 ft. out of agricultural property.

Mrs. Izatt replied that Smithfield city is a subdivision of the State so we can be stricter but we can't be less strict. This is a state ordinance not a city ordinance. Mrs. Izatt stated that when she initially read the house bill she didn't have any inclination they were requiring zone or use until she talked to Jesse at the Bear River Department of Health. Jesse has called her back a couple of times to see how things had gone. Mrs. Izatt told him the first time she was getting the packets prepared and the second time the Commission was actually going to have the meeting. She told him she would give him a call tomorrow to let him know how things turned out. Mrs. Izatt stated that the commission could go ahead and give Mr. Abel a conditional use for the business for 35% of sales of specialty products if she is reading the information correctly. She also addressed the section about food and beverage products excluding gasoline if sales are less than 45% of total annual gross receipts for the establishment. She indicated that Mr. Abel's business cannot be a licensed pharmacy and then the statute breaks down the tobacco products and what the definitions are. Mrs. Izatt told Mr. Abel that he met the community location. The city ruled that at one thousand. The other retail tobacco store was Lee's Market Place but they don't sell tobacco anymore so Chevron is the closest establishment that sells tobacco. She explained to Mr. Abel that he had met the original criteria but there is that little clincher with the agricultural use and the residential which had already been discussed.

Commissioner Krusi questioned how many feet from agricultural.

Mrs. Izatt replied 600 ft. from agricultural and residential

Mr. Abel remarked he is at 472 ft.

Mrs. Izatt said Mr. Bodily ran all the measurements to see how close the property was to the residential and agricultural areas.

Commissioner Anderson questioned what property the 472' measurement was from.

Mrs. Izatt replied the other Tout property or the field south of Subway. She also stated: "We were okay initially because the zone is CC so we were okay but from the front door of the curves unit it was 472 ft. or 502 ft. under the 600 ft. It was the lots that were zoned agricultural that are still a concern. The ones that were zoned CC were under 100 ft. The thing is the lots closer to the 600 ft. mark are in the County and she doesn't know if that is grey area.

Commissioner Anderson inquired where the city boundary ends, right at the shopping center?

Mrs. Izatt replied she wasn't sure. They aren't specific where the city ends and county starts.

Mr. Abel responded the county has it recorded as ending at 1000 south.

Mrs. Izatt replied, "we have annexed properties in that area and we don't have a 1000 south on the other side. She indicated she didn't know if that would even be an issue. Mrs. Izatt inquired if the Commission wanted to make a motion for this application as pending until we find that out? Mrs. Izatt also stated she didn't know what percentage of sales Mr. Abel was planning on.

Mr. Abel commented he is in the 60% and 35% wouldn't do him any good. He wished he would have known that before paying his fee. Mr. Abel stated, "We had covered everything for several months and you guys put it into your own planning and zoning matrix and he was aware of that but Mrs. Izatt told him there were two locations and he ascertained one of the two locations and doesn't think it is fair."

Mrs. Izatt inserted that it isn't the zone that doesn't meet the 600 ft. She also stated that she didn't know about the agricultural use until she talked to Jesse. Mrs. Izatt stated that she had hoped Mr. Abel had talked to him as well.

Mr. Abel mentioned he had discussed not talking to Jesse until after he felt the commission was okay with the conditional use and then moving forward with the business license because the health department doesn't make the laws. They enforce a lot of things.

Mrs. Izatt mentioned Bear River Health would provide all the training for Mr. Abel's employees.

Commissioner Anderson inquired if Mr. Abel was applying for a tobacco specialty shop.

Mr. Abel replied that is technically what I have to do to make sure all my bases are covered so if there is one month I surpass the 35% it would fall under the tobacco specialty. It used to be 85% and I run about 65% so it doesn't make any sense. If you monitor convenience stores they are probably above 35% on their tobacco sales.

Commissioner Anderson responded the other option would be to find other places that fall into the 600 ft. requirement.

Mr. Abel replied there is none.

Commissioner Krusi inquired about the Family Dollar.

Mr. Abel replied it was too large of a building and cost too much for a small guy to pay.

Commissioner Anderson questioned about the building on the North side of Lee's Market Place.

Mr. Abel replied they were too small and would need to knock down walls. He had talked with Nannette, the property manager, about that space. It used to be an office type area and there is not a lot of retail space in that location.

Mrs. Izatt inquired about DeMirour Image location. Was that property larger than curves?

Mr. Abel mentioned he had looked at one further north that had a partition in the front.

Commissioner Krusi explained Mr. Abel would have to be another 130 ft. to the north to accomplish the 600 ft.

Mr. Bodily remarked that property is in the county is that correct?

Commissioner Krusi said not in the first part.

Mr. Bodily mentioned he had not looked into the county website.

Mrs. Izatt replied that the statute says zone or use.

Mr. Abel stated, "the other thing I do know, I'm not seeing relevance, I understand it is a state house bill but there are several cities that make exceptions. Bountiful, Ogden, Provo, St. George make exceptions to the house bill depending on location. Utah is an agricultural community and Smithfield is my home town and I would like to get back to it. I know you have put it into the matrix so I know that you can make allowances for that because other cities have.

Mrs. Izatt stated that the matrix is in place for the businesses that can come in and the uses. The matrix lists a specific zone, so the zone your in does allow it. So when we created the usage for the tattoo shops and smoke shops we didn't have this house bill.

Mr. Abel replied the house bill was in place.

Mrs. Izatt responded not when the city added the smoke shops and tattoos.

Mr. Abel remarked house bill 91 & 95 were implemented in January last year.

Mrs. Izatt confirmed the implementation and mention it had been two or three years since they had added Smoke Shops to the matrix. She had pushed to have it added in case this type of business came to the city. She then stated it is no longer just a house bill it is a law so there is no latitude in this area. She then mentioned it is 560 ft. to the Gossner's property and 740 ft. to the Larsen property. They are both in the county. The Touts have someone farm their property so it is an agricultural use. The zone is good but the use isn't.

Mr. Abel remarked 38 ft. too close.

Mrs. Izatt responded 38 ft. too close to that one but still 100 ft. from the Tout's property which is zoned CC but still being farmed. We haven't discussed the agriculture zone and how it impacts this. Did anyone get a chance to read that information to see if you read something different?

Commissioner Anderson stated he had read it and it has helped him to understand it better with the discussion tonight. First off, he doesn't have a problem with having a smoke shop in Smithfield, but there is a state law and we have to abide by that law. Even to the point if someone wanted to come in and put in a smoke shop and were 38 ft. illegal we wouldn't allow it because that is what the law says. I don't understand from the agricultural standpoint why you have to be so many feet away from it but I don't know that we have an ability to override a state law. I think there are some other options in the strip mall.

Mr. Abel replied I understand what you are saying but what she is saying is both locations are ruled out because you consider things under zone or use you might as well take it out of your matrix. For the reason that it is zoned CC but used agricultural or zoned for or used as is it is eliminated.

Commissioner Anderson replied the difference is the state law supersedes it.

Mrs. Izatt explained that the Tout properties are not the only CC zones. The smoke shop can stay you have to find the zone that would adhere to the house bill or law. There was potential there as I read the 2nd and 3rd printings of this, things have changed through there, the interpretation and talking with the gentleman at the county because I wanted to make sure everything was in line. We will leave it in the matrix because at some time there may be another location that would meet that criterion. We control where the zones are. Taking the smoke shops out won't change the requirements.

Mr. Abel replied if I go west I'm in residential/agriculture, you go east are in residential and you can't go any further south and all along main street you have residences too. That is why with those two business locations they will both be ruled out.

Commissioner Krusi commented the only thing that would change this is if the Tout family expands across the rest of the property. Then the shops we are discussing would qualify.

Vice Chairperson McKay shared his concerns about the 60% sales over the 35% allowed. He felt he had been enlightened with the conversation.

Kevin King representing the Tout properties approached the commission and thought it would be good to put in the motion that the permit be pending until the next meeting and have further investigation into the state law on the agricultural use and zoning.

Vice Chairperson McKay responded we have had a lot of discussion here that has been clarified. There is still a lot of vague information that I think it would be wise to postpone and research more and present it next month.

Mr. Abel remarked he would research as well because there are a lot of cities that are allowing these licenses to tobacco shops. Everywhere in Utah is agricultural and it is hard to find a place that would fit within these parameters and so the cities are making an exception. I know you don't want to override state law and that is fine too, but why are other cities? I think what you are doing is eliminating a very profitable and a very good business from coming to Smithfield. When you consider all the people that travel to Davis County, Weber County and even Salt Lake County it is huge. He researched this information before he opened up his Tremonton location.

Vice Chairperson McKay asked Mr. Abel if he could get with Mrs. Izatt. He informed Mr. Abel that they have had several people buy property without researching and found they didn't have water for the property. It is very important to do the homework.

Mrs. Izatt mentioned she has met with Mr. Abel and due diligence is on both parties. When she found out about the zone or agricultural information it was in the second conversation with Jesse at Bear River.

Mr. Abel questioned what the commission would like him to research.

Mrs. Izatt referred to the ordinance 10-8-41.6 letter B retail tobacco specialty business means a commercial establishment which:

I – the sale of tobacco products counts more than 35% of the total annual gross receipts for the establishment

II – food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; and

III- the establishment is not licensed as a pharmacy under Title 58, Chapter 17b Pharmacy Practice Act.

Mr. Abel stated 35% would not be coming from tobacco products.

Commissioner Anderson read from letter C “Tobacco product” means:

I - any cigar, cigarette, or electronic cigarette

II – a tobacco product including: chewing tobacco or any substitute for a tobacco product, including flavoring or additives to tobacco and tobacco paraphernalia.

Mrs. Izatt mentioned she had read three references but what they are discussing is the actual law and Mr. Abel is welcome to her copy.

Mr. Abel replied the information he had was from July of 2013, House bill 91 & 95.

Mrs. Izatt explained the house bill has to pass through the senate before it becomes law and her reference is the actual law.

Commissioner Krusi brought up the main set back is the distance to the agricultural use.

Mr. Abel interjected by 38 ft.

Mrs. Izatt summarized if the Touts quit farming their land and Mr. Abel moved to the DiMirour property he would be able to meet the footage requirement, from how she is interpreting it. If Mr. Abel could find a city ordinance or resolution backing up the claim that other cities are working around the state statute and present it, then the Commission could look further into it.

Mr. Abel questioned Mrs. Izatt how she found House bill 91 & 95 had turned into state law; because as of January 1st it had not turned into state law yet.

Mrs. Izatt replied when she spoke with Tremonton City and the Health Department it was brought to her attention.

Mr. Abel questioned if they had told her it was state law.

Mrs. Izatt confirmed yes and directed him to the top of section 10 under the municipal law that refers to a state statute.

Cameron Rutherford approached the commission in support of Mr. Abel. It would be mutually beneficial for the city and other businesses to allow this business into Smithfield. He knows of several people that leave the city to go to Tremonton or a different smoke shop to find the different choices. In his opinion he offers the best pricing and products that is why he gets people to travel from Utah County and Idaho and brings a lot of business in. It would be a good thing for the city if you could find a way to work him in. As far as his character he is a great person to work with. Mr. Rutherford is a veteran and Mr. Abel supports vets. If there are other exceptions or motions that can be made he is sure the commission wouldn't be disappointed in having his business here.

Vice Chairperson McKay restated he would like to continue this permit next month.

Commissioner Anderson asked for a summary of the proper steps to validate what needs to be done for the motion to continue. For example is this something the City Attorney would need to look at. He also requested if Mr. Abel would like to see if there are other locations that are 38 ft. further away. We certainly want to increase our tax base and we don't like to have empty shops. We are not opposed to what you're doing but we would like to find a way to make it fit into the law.

Mr. Abel replied what he is understanding from Mrs. Izatt is there are two commercial zones that are eligible for the business. One is the strip mall and the other is the Dollar Tree on the other side of the road. The problem being there is agricultural being used within 100 ft. of that location so if he did go 38 ft. further away it is 138 ft. instead of 600 ft. Finding a different location isn't a problem but finding a location that meets as many requirements as this one does isn't going to make a big difference. We have spent several hours looking over properties and the ones on the South of Lee's are the ones that come close to meeting all the requirements. Even if he could find other property whether he could afford it or not would be another issue.

Commissioner Anderson questioned if this was something we could consult the City Attorney on.

Mr. Abel interjected that Box Elder County worked with their City Attorney to make the arrangements in Tremonton.

Mrs. Izatt explained the thing with Box Elder is that Mr. Abel applied during the cusp between discussion of the house bill and approval of the bill. Tremonton had already approved Mr. Abel before the house bill went through the steps to become law. Tremonton City stated they have no complaints and that Mr. Abel has remained in compliance.

Commissioner Anderson felt that Smithfield City probably wouldn't have any complaints either about being over the 472' from the agricultural property. But he would like to see if they could find someone to make a determination on how the law reads.

Mrs. Izatt mentioned she could talk with Jim Gass.

Mr. Bodily suggested making this an easier process by denying Mr. Abel the conditional use permit and having him take it to the city council.

Vice Chairperson McKay responded there are still too many questions for him to make a motion.

Mrs. Izatt felt there were too many questions to send it to the city council.

Mr. Abel would like to call the southern area, Bountiful, Layton and see what they are doing with the new smoke shops coming in. He spent four hours with Logan City trying to find a place to open up a shop there. But there were conflicts with residential footage. Somehow there are exceptions being made and we need to find what they are.

Commissioner Anderson referred back to Vice Chairperson McKay asking if there were any other questions.

Vice Chairperson McKay had his questions answered for now. He called for a motion for continuation next month and requested Mr. Abel do more research.

Commissioner Krusi inquired if Mr. Abel would prefer a continuation or a denial motion.

Mrs. Izatt replied Mr. Abel would need to appeal if the application is denied. One thing people who are applying for conditional use permits don't seem to grasp is the fact that they are an allowed use, so we can mitigate differently, so she felt a continuation would be best so research could be done. It is the commissions call on what to do. Looking at item five it is pretty specific. There is not any grey area there. It would be good to know what other communities have done unless they have specific ordinances. She has never known a city to go less strict than the state. I know you can increase the footage but you can't go less. I felt comfortable bringing this to the commission until she spoke with Jesse from Bear River Health who knew the ordinance far better. Jesse regulates e-cigarettes, and all the things they sell to be a specialty shop.

Commissioner Anderson explained the other option is to reduce sales of those types of products to 35% and then it would fit the ordinance.

Mr. Abel answered he would have to try and wrap his mind around that.

Mrs. Izatt inquired if Mr. Abel would have a problem with being set back another month.

Commissioner Anderson suggested if Mr. Abel could find a way to reduce the tobacco sales to 35% he wouldn't have to be a tobacco specialty shop.

Commissioner Krusi suggested they continue the conditional use permit next month.

MOTION: A motion was made by Commissioner Anderson to continue the application for the conditional use permit for the proposed retail and tobacco specialty shop located at 896 South Main. Zoned CC until the next scheduled planning commission meeting.

The motion was seconded by Commissioner Krusi. The voting was unanimous.

Commissioners voting in favor: Hancock, Krusi, McKay, Anderson

The Commission will review and consider "Rules for Conducting Business of the Planning Commission" and Public Hearing Procedures.

Vice Chairperson McKay referred to the rules and all the things that were crossed out. He asked Mrs. Izatt about the section where it refers to members abstaining from a vote, however, shall count toward constituting a quorum.

Mrs. Izatt replied she originally borrowed this eight years ago from what the city council had created and adapted it to ours. We had several discussions on it and that is how it was written. I went back to look at the current city council one, it is a lot more detailed now. They have a law that requires it is by ordinance. And it strongly suggested ours be by a resolution or ordinance and we just haven't done that yet. We have reviewed it every January for any changes we want to make. It wasn't clear last month so that is why she put those options in there. She thought we need to leave it in there because it is a grey area, it always comes up; every once in a while we will have an abstention.

Commissioner Krusi clarified the passage as meaning if you had four people and one abstained, you would still have a quorum and the majority would rule.

Mrs. Izatt concurred. That is not how she was taught before. It was usually a negative. But she couldn't find anything anywhere that would say it was a no vote.

Commissioner Anderson questioned if they could require a vote unless it was a conflict of interest for a council member. Not allow them the opportunity to abstain.

Mrs. Izatt you cannot force a person to vote.

Commissioner Anderson gave an example of the Smoke Shop permit today if three of the commissioners abstained and then Commissioner Hancock voted in favor, then they would be done. He was trying to look for any possible loopholes in the sentence.

Mrs. Izatt had referred to Robert's Rules of Order and that is why she felt they would be safe. She hopes no one would do that. It can happen so she doesn't want to take it out. It needs to be addressed.

Vice Chairperson McKay remembered members on the commission who abstained and left.

Mrs. Izatt said that was a recuse. They don't have to leave. A lot of people just state their bias and still vote. She has attended a lot of meetings where someone will state their bias but still makes an informed decision and chooses to vote. This also addresses if we don't have a quorum

Commissioner Anderson inquired if they could say something like you need a voting quorum or at least 4 voters to carry or deny a motion.

Mrs. Izatt explained that is how it is supposed to be. You need four people to do business. I try to have more than a quorum in case something comes up. You cannot hold a meeting with three.

Commissioner Anderson replied let's have it state we need four voting members

Mr. Bodily had an example of seven members and four abstain, then you don't have four voting members.

The commission looked at different scenarios of how the voting would change with an abstaining vote.

Commissioner Anderson felt okay with how things were written. He felt they were looking at a worst case scenario that would never happen.

Commissioner Krusi felt it might be worth looking into a little more and making sure they are covered.

Mrs. Izatt explained the city council has to have three and all voting for or against. The commission has to have four.

Commissioner Anderson questioned if they had a 2-1 vote then they would split it and it would just die.

Mrs. Izatt replied yes because they have to have three and the commission needs four.

Mr. Bodily confirmed that all would have to vote for or against to make the quorum work.

Mrs. Izatt reiterated that is how the council works.

Commissioner Anderson said that is not how it is written into the rules.

Mrs. Izatt again said that is how it should be and it is actually state law. She will research it and make sure all is in order. She asked if the commission was okay with the abstention. She will take out the way it was written and what has changed.

Commissioner Anderson was okay with the wording and wanted to be able to conduct business. He wanted to make it clear that someone could abstain and it would be okay.

Mrs. Izatt would like to make sure the quorum vote consists of four people. She confirmed that all votes need to be yea or nay. She replied do you want that written in the rules and regulations.

Commissioner Anderson referred to the second page.

Mrs. Izatt explained at one point this section talked about declaring biases or conflicts of interest each January; she felt that was excessive. She thought it would be okay to bring items up when there is an issue.

Commissioner Anderson was okay with making a change when needed.

Mrs. Izatt clarified she had a form that could be filled out when a change was needed. She would try to remember to ask if there are any changes in January. She asked if there were any changes for the Rules of Public Hearing. She thought they were pretty standardized.

Vice Chairperson McKay wanted to clarify that the commission doesn't have to go and notify the neighbors if something needs to be brought up for change.

Mrs. Izatt answered the city notifies the neighbors that would be affected by a Public Hearing. The rules are different depending if it is an intrablock or a rezone, a subdivision or preliminary plat. You have to make sure each item is covered.

Commissioner Anderson suggested if we have a Public Hearing we should review the rules with the patrons in the audience. So once the public hearing is closed and the commission starts to review the audience can no longer be a part of the discussion.

Mrs. Izatt mentioned that would be the responsibility of the chairperson to review the rules before the public hearing starts. She reminded the commission that Chairperson Price brought

up he thought they should vote for a new chairperson and vice chairperson each January. She wasn't in favor of that but that doesn't mean it can't be done. She felt it would be a learning process each year; it should be considered. She didn't know of any city that changed the chairperson that often.

Commissioner Anderson felt it was okay to keep the chairperson in for a while because as someone gets used to the rules they become more proficient in their duties.

Mrs. Izatt will make the changes to the rules and then bring it back for a vote to make it official.

ADJOURNMENT

MOTION: A motion was made by Commissioner Krusi to adjourn the meeting at 8:22 p.m. The motion was seconded by Commissioner Hancock. The voting was unanimous.

Commissioners voting in favor: Hancock, Krusi, McKay, Anderson

David Price, Chairperson

Attested:

Charlene Izatt, Deputy Recorder