



Sandy City, Utah

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Minutes Summary

Planning Commission

Dave Bromley
Michael Christopherson
Monica Collard
Ron Mortimer
Jamie Tsandes
Cameron Duncan
Jeff Lovell
Daniel Schoenfeld (Alternate)

Thursday, March 4, 2021

6:15 PM

On-line Meeting

Meeting procedures are found at the end of this agenda.

Electronic Meeting

Planning Commission Chairman Statement

In accordance with, Utah Code 52-4-207(4) Open and Public Meeting Act, I have determined that to protect the health and welfare of Sandy citizens, an in person Planning Commission meeting, including attendance by the public and the Planning Commission is not practical or prudent.

Considering the continued rise of COVID-19 case counts in Utah, meeting in an anchor location presents substantial risk to the health and safety of those in attendance because physical distancing measures may be difficult to maintain in the Sandy City Council Chambers.

The Center for Disease Control states that COVID-19 is easily spread from person to person between people who are in close contact with one another. The spread is through respiratory droplets when an infected person coughs, sneezes or talks and may be spread by people who are non-symptomatic.

It is my intent to safeguard the lives of Sandy residents, business owners, employees and commission members by meeting remotely through electronic means without an anchor location.

Community Development staff are hereby authorized and directed to include a copy of the above notice with each Planning Commission agenda.

Cameron Duncan, Chair
Sandy City Planning Commission

The March 4, 2021 Sandy City Planning Commission meeting will be conducted via Zoom Webinar. Public comment may be allowed after the presentation of the particular item by the Staff and Applicant, as directed by the Planning Commission Chairman. Each speaker is allowed two minutes. Citizens wishing to comment must access the meeting via the Zoom Webinar link below and must use the "raise hand" feature. The call-in number is for listening only. If a citizen is unable to attend a meeting via Zoom, he or she may e-mail the Planning Director at bmccuiston@sandy.utah.gov by 3:00 PM the day of the Planning Commission meeting to have those comments distributed to the Commission members and/or have them read into the record at the appropriate time.

Register in advance for this webinar:

<https://us02web.zoom.us/j/89452428008>

After registering, you will receive a confirmation email containing information about joining the webinar.

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782 or +1 312 626 6799 or +1 929 436 2866 or +1 301 715 8592

Webinar ID: 894 5242 8008

Webinar Password: 108091

FIELD TRIP

[21-082](#)

Field Trip for 3-4-2021

6:15 PM REGULAR SESSION

Welcome

Pledge of Allegiance

Introductions

- Present** 6 - Commissioner Dave Bromley
Commissioner Monica Collard
Commissioner Jamie Tsandes
Commissioner Michael Christopherson
Commissioner Jeff Lovell
Commissioner Cameron Duncan
- Absent** 2 - Commissioner Ron Mortimer
Commissioner Daniel Schoenfeld

Public Meeting Items

1. [MISC-02-21-5994](#) Comcast Warehouse Use Determination
9602 S. 300 W.
[Community #2 - Civic Center]

Brian McCuiston presented this item to the Planning Commission.

Greg Allshouse further presented this item to the Planning Commission.

Cameron Duncan opened this item to public comment.

Steve Van Maren is in favor of this item.

Cameron Duncan closed this item to public comment.

A motion was made by Dave Bromley, seconded by Monica Collard that the Planning Commission determine that the proposed introduction of a warehouse use into the existing building is ancillary and subordinate to the primary use of the Comcast regional headquarters building, based upon the three findings and the three conditions outlined in the staff report.

Yes: 6 - Dave Bromley
Monica Collard
Jamie Tsandes
Michael Christopherson
Jeff Lovell
Cameron Duncan

Absent: 2 - Ron Mortimer
Daniel Schoenfeld

2. [CUP-07-18-5](#) Planning Commission review of CUP#-07-18-5462, Conditional Use Permit for the 7-Eleven store, granting 7 day a week, 24 hour a day business operation within 250 feet of a residential zone

711 W. 9000 S.
[Community #2 - Civic Center]

Brian McCuiston presented the information that the Planning Commission had asked for in the previous meeting on December 17, 2020, to the Planning Commission.

Jamie Tsandes asked about the building being taller.

Brian McCuiston explained that the consultants observed that the building itself was raised higher than the grade. The City surveyor did go out to see if the grades were correct, but the wall is 10 feet on the resident's side but is not 10 feet on the 7-11 side.

Ryan Kump further explained that the building being higher than the grade was made by the consultants and they were implying that they did not consider the grading plan. The grading plan that was submitted and approved did approve fill on the site for the building, but the lighting consultant did not include that in the study and the building that was built does match the plans.

Cameron Duncan asked how much higher the building is versus the wall on the 7-11 side.

Ryan Kump explained that it varies depending on the location, but it is five feet at one point.

Cameron Duncan clarified that for the headlights coming into the 7-11 site, it is effectively a five-foot wall.

Ryan Kump said yes.

Michael Christopherson thanked staff for answering the questions that the Planning Commission had and the organization of it.

Cameron Duncan asked who the 7-11 representative is.

Brian McCuiston explained that at the previous meeting it was Andrew Hickman and the franchise owner, but it looks like they are not in attendance.

Michael Christopherson clarified that the Planning Commission already held a public meeting that included extensive time for public comment. At the last meeting, the Planning Commission began deliberations and identified some gaps in their understanding of the facts and tabled this issue to gather more information. He explained that this meeting's purpose was to continue the Planning Commission deliberation and to try and come down to a consensus.

Dave Bromley and Cameron Duncan agreed.

Jen Archuleta, the applicant added that she sent more videos and pictures of the proof that Andrew Hickman did not keep his word about changing delivery times. They are still being awakened in the middle of the night and have seen minimal changes since the last meeting.

Michael Christopherson felt it would be a good idea to look at what items are still on the table for debate and speculation because the information that staff shared eliminates some of the fact and do not support the findings on some of the criteria (Section 21-33-6 of Sandy City Code).

The Planning Commission talked through the criteria and determined that criteria 1, 4, 5, and 7 still applied and 2, 3, and 6 did not.

Monica Collard explained that she went down to the site last night and the homes are very close to the wall and the store is so bright and that because of the grading she felt that there was a big impact on the homes.

Dave Bromley asked why the representatives for 7-11 are not in attendance.

Brian McCuiston said he has reached out multiple times but has not received a response.

Michael Christopherson asked if it is the Planning Commissions role to try and preserve the Conditional Use Permit (CUP) if mitigation measures can be made before it can be revoked.

Darien Alcorn explained that it is the same as when someone is asking for a modification, so if the mitigation measures can be done than it should be changed, or it can be revoked if they cannot mitigate the impacts.

Jeff Lovell asked if the CUP can be suspended until mitigation measures are made.

Darien Alcorn said she would need to look further into the code but did not think it could be suspended.

Jeff Lovell explained that he is concerned that it has been two months since they last met, and no honest efforts have been made to mitigate any of the impacts and that the representatives from 7-11 are not in attendance and feels they are not taking this seriously and they need to protect the residents.

Michael Christopherson explained the code and that a CUP is limited to modification or revocation, not suspension.

Darien Alcorn explained that the City is also pursuing code enforcement for the violations of the code regardless of if there was a conditional use permit or not.

James Sorensen agreed and clarified that the code enforcement would deal with the early morning trash and delivery because it violates the code with or without the conditional use.

Michael Christopherson believes there are two issues, the first being the trash and deliveries during all hours of the night and the second being the light and sound mitigation. He then explained that the Planning Commission made a previous decision based on a study that did not consider the grade in the light and sound studies.

Dave Bromley explained that the light is a bigger issue than the sound and that it needs the biggest mitigation.

Michael Christopherson asked how long it would take for the trees to reach maturity and if a 20-foot wall would be necessary to mitigate the light and sound.

Jamie Tsandes said it would take about 10 years for the trees to reach enough maturity to mitigate anything.

Cameron Duncan asked if the Planning Commission needed to determine the mitigation measures or if it should be left to the applicant and 7-11 representatives.

Michael Christopherson explained that he thought the Planning Commission needed to come up with them because it does not seem the like the 7-11 representatives will.

Cameron Duncan explained that he is frustrated that the representatives are not here because we cannot discuss mitigation measures with them.

Dave Bromley expressed that he would like to find a way to structure something where we can identify the mitigation problems and have the solutions developed by the 7-11 group and staff and have them come back for the Planning Commission's approval and if that is not achieved by a certain date then it would be revoked.

Michael Christopherson asked how we would include the residents in the mitigation efforts. In the beginning everyone relied on studies and good faith from the developer that we are now finding that it was based on a disconnect in the studies and the mitigation measures are insufficient.

Dave Bromley explained that he thought that if the 7-11 group were given a date to have some proposed mitigation measures then they could come back to the Planning Commission to receive public comment and possible approval for the new mitigation measures. If this doesn't happen within a specific time frame, then the CUP would be revoked by the Planning Commission.

Cameron Duncan asked what happens if the mitigation is a 20-foot wall.

Dave Bromley clarified that the residents would be able to respond to the suggested measures the Planning Commission would make the decision.

Michael Christopherson asked Ryan Kump if a 20-foot wall is a realistic mitigation.

Ryan Kump explained that you need to think about what is the lesser of two evils and that a 14-foot wall would be more realistic to address the headlight issue but the sound of the garbage trucks at 5:00 am needs to be dealt with no matter what happens with the wall.

Dave Bromley explained that it should be up to the owners what the mitigation measures are and see if the neighboring residents are okay with it.

Michael Christopherson agreed that the Planning Commission should not be the body that comes up with what they need to do but maybe the owner should not be either. He expressed that the Planning Commission should hear from Jen Archuleta and other residents to find out what they think would be reasonable mitigation measures. He then explained that 7-11 said they hardly have customers between midnight and 6:00 am and so maybe it is not reasonable to build the wall or buy mature conifer trees so maybe it would be better just to get rid of the 24-hour business hours.

Dave Bromley asked Darien Alcorn if the Planning Commission could revoke the CUP if certain conditions were not established.

Darien Alcorn explained that it would be because it is the same as not being able to mitigate the detrimental impacts if there was an inability or unwillingness to meet that date.

Dave Bromley expressed that he agreed with Jeff Lovell that the residents have been living with this and that there needs to be some way to reach a decision on this issue and if it is not done then it needs to be revoked.

Michael Christopherson asked Dave Bromley to clarify because it sounds like Dave is suggesting that the Planning Commission should make a motion tonight to have the owners come back at a set date with new mitigation measures for the impacts and if they do not, then the CUP is revoked.

Dave Bromley said that is correct and that they need to come back to the Planning Commission so that we can determine if the new measures would mitigate the current impacts.

Cameron Duncan explained that he liked that thought but has concerns about the cost of new mitigation measures versus just cutting the business hours but would like 7-11 to be part of the conversation.

Cameron Duncan asked to hear from Jen Archuleta.

Jen Archuleta, the applicant, expressed that she is annoyed that the 7-11 group is not in attendance and that it is just one more opportunity to drag this out and now the residents must deal with the repercussions. She explained that the 7-11 group never rescheduled the dumpster pickup and delivery times and feels like 7-11 is not taking this seriously and if the wall is replaced then the residents will have to deal with the dirt falling in their backyards.

Jeff Lovell expressed that there really is not a good way to mitigate these impacts of the light and sound given the current circumstances and it might not be cost effective for

them to make the changes, but they are not here to tell us one way or another. He then asked if they do revoke the CUP, can 7-11 come back with a new request that is able to mitigate the current detrimental impacts.

Jamie Tsandes agreed and asked if the CUP can be reinstated if it is revoked.

Cameron Duncan excused Monica Collard for the rest of the meeting.

Darien Alcorn explained that generally anyone who is meeting the requirements can have their applications looked at. A rezone application that has been denied and seeks the same request does have to wait one year before applying again. A Conditional Use Permit is not limited to the 1 year waiting period.

Michael Christopherson clarified that nothing the Planning Commission decided tonight would prevent them from coming back again.

Jamie Tsandes has concerns about the constructability of a 14-foot wall and that the footings to hold it would be very damaging and is in favor of revoking the CUP. If 7-11 wants to come back with new mitigation measures they can do so.

Jeff Lovell agreed.

Michael Christopherson explained that he understood that the Planning Commission needs to determine how we are going to reach a conclusion under the four criteria that still applies and then articulating findings and conclusions under them.

Cameron Duncan agreed.

Darien Alcorn explained that it is appropriate to include findings and conclusions. If the Planning Commission did not do this now then we would have to come back at a future meeting to identify and adopt the findings and conclusions.

Michael Christopherson read through the first criteria.

- (1) The actual detrimental effects or impacts are greater than anticipated.

Michael Christopherson expressed that he thinks the Planning Commission can support a finding that the detrimental impacts of the extended hours are significantly greater than expected. One of those findings is that the studies that they relied on did not take into account the grading plan.

Cameron Duncan asked if the revocation is for the business hours to go back to 10:00 pm or midnight.

Michael Christopherson asked what the applicant asked for in the application.

Brian McCuiston explained the applicant asked to revoke the 24-hour business hours.

Darien Alcorn explained that it would go back to the permitted hours of 6:00 am to 10:00 pm

Michael Christopherson asked if there are two different conditional use permits.

Brian McCuiston explained that they modified the original conditional use so there is only

one.

Dave Bromley asked why the Planning Commission does not just modify the conditional use it back to midnight.

Cameron Duncan explained that if we revoke the conditional use permit than we should consider a complete revocation because it will still be impacting the residents after 10:00 pm when kids and the residents are going to bed.

Michael Christopherson explained that the findings are not limited to midnight to 6:00 am, the findings are detrimental impacts, and it depends on whether you are making a motion to fully revoke the conditional use permit.

Cameron Duncan asked if there were other elements to the conditional use permit.

Brain McCuistion said that the conditional use permit also included gas sales.

Michael Christopherson clarified that they could still modify the conditional use permit.

Brian McCuistion said that was correct.

Michael Christopherson asked if everyone agreed to that finding.

Dave Bromley said he agreed to those factorial issues.

Michael Christopherson asked what the conclusions would be.

Dave Bromley explained that a grading plan was not considered for the study that the Planning Commission relied on in the original approval.

Darien Alcorn clarified that the conclusion is that the actual detrimental effects or impacts are greater than anticipated, the findings are the facts that lead to that conclusion.

Michael Christopherson explained that the detrimental impacts are that the Planning Commission relied on the studies to dictate the height of the wall as a sufficient mitigation measure and it is not being met because of the disconnect of the grading plan, so the light is shining into the resident's windows at all hours of the night and is not being mitigated.

Cameron Duncan agreed.

Dave Bromley clarified that the western residents don't have a wall and asked if that should be discussed since they still have impacts that are not being mitigated.

Michael Christopherson said yes and that all the residents among the boundary are being impacted.

Dave Bromley asked what the Planning Commissions options were.

Darien Alcorn explained that depending on what the criteria is, if the actual detrimental impacts are greater than you anticipated and those are impacts because the use is within 250-feet of residential homes.

Michael Christopherson asked if an additional conclusion needs to be made that none of

the impacts can be mitigated because 7-11 does not own the neighboring parcel to mitigate impacts of residents within the 250-feet.

Brian McCuistion explained that the parcel to the right is owned by Wright Development.

Dave Bromley explained that the entrance is off to the right, so even the parcel to the west is being impacted even if the wall was able to extend to the west.

Brian McCuistion said that is correct.

Michael Christopherson read criteria 4.

(4) One or more of the conditions of the permit have not been met.

Michael Christopherson expressed that the only finding he found was the trash pick-up and deliveries are being made outside of what is permitted. That could be mitigated if 7-11 would just comply with the code.

James Sorensen explained that staff is working with Code Enforcement to have them comply with the code.

Michael Christopherson explained that the Planning Commission asked 7-11 to mitigate it and they did not, and we asked again, and they still did not, and they have continued to violate it.

Dave Bromley expressed that the finding is that there is evidence of violation of the condition.

Cameron Duncan thought the proximity of the store being within 250-feet of the residential homes that the gas station sales would include the noise from the cars.

Michael Christopherson suggested that the subsequent consultant review undermined that.

Cameron Duncan explained that 90th south is busy road, but he thinks that the cars congregating there would not happen there if it was a different use than a gas station.

Michael Christopherson expressed that they just discussed both criteria 4 and 5 and thinks they should move onto criteria 7.

Jamie Tsandes asked if the CUP is revoked does it take effect immediately.

Dave Bromley said it would be once the minutes are approved.

Michael Christopherson read criteria 7.

(7) One or more of the general standards have not been met.

Michael Christopherson expressed that the finding that was identified is the detrimental impacts that have been discussed in criteria 1 have exceeded what a permitted use would result in for these same residents within the 250-feet proximity.

Dave Bromley asked if the Planning Commission has evidence of other hotels (a permitted use in the zone) that had to apply for CUP because they are within 250 feet of

homes.

Brian McCuiston said he did not think so and that most of the hotels and motels in the city are in commercial zones.

James Sorensen agreed.

Michael Christopherson explained that the Planning Commission has hypothetically talked about some possible mitigation measures but do not have the benefit of 7-11's input on the cost benefits of those mitigation measures.

Cameron Duncan asked if all these findings and conclusions need to be in the motion.

Michael Christopherson said that it is in the record so it should be fine if we say based on the discussion.

Jeff Lovell asked if the Planning Commission is thinking of modifying the hours of operation to midnight or back to 10:00 pm.

Michael Christopherson asked what the Planning Commission thinks about eliminating the extended hours.

Jeff Lovell is in support to going back to the permitted business hours from 6:00 am to 10:00 pm

Jamie Tsandes agreed.

Dave Bromley and Cameron Duncan both expressed that they could go either way.

Jen Archuleta expressed that she is not above a compromise but thinks that it should go back to 10:00 pm.

Michael Christopherson said from an appeals perspective, 7-11 could claim that modifying the hours back to 10:00 pm is a regulatory taking because their business has been rendered crippled.

Dave Bromley expressed that he leans towards letting them be open to midnight.

Jamie Tsandes explained that 7-11 can always come back to extend their hours again.

Michael Christopherson asked if modifying it 10:00 pm is just kicking this down the road and if we leave the extended hours to midnight in place then the Planning Commission is not inviting them back as readily as they would be if they reduced the hours back to 10:00 pm.

The Planning Commission talked through each of the applicable criteria found in 21-33-6 and came up with conclusions and findings. The table below is a condensed version of the Planning Commission discussion.

1) The actual detrimental effects of impacts are greater than anticipated.

A) Conclusion: The actual detrimental effects or impacts **are** greater than anticipated.

i) Findings of Fact:

* Planning Commission relied on the studies to dictate the heights of the wall as a sufficient mitigation measure. This is not being met because of the disconnect of the

grading plan and the previous study. The light is shining into the resident's windows at all hours of the night and is not being mitigated.

* None of the impacts can be mitigated to the homes west of the boundary wall because 7-11 does not own the neighboring parcel to mitigate impacts of residents within the 250-feet.

2) The permit was obtained by misrepresentation or fraud.

A) Conclusion: The permit was **not** obtained by misrepresentation or fraud.

i) Findings of Fact:

* There was no evidence provided of misrepresentation or fraud.

3) The use for which the permit was granted has now ceased for at least six consecutive calendar months.

A) Conclusion: The use for which the permit was granted has **not** ceased for at least six consecutive calendar months.

i) Findings of Fact:

* There was no evidence provided of discontinuing the use.

4) One or more of the conditions of the permit have not been met.

A) Conclusion: One or more of the conditions of the permit have **not** been met.

i) Findings of Fact:

* The neighbors have provided evidence that trash pick-up and deliveries are being made outside of 7:00 am to 10:00 pm.

* 7-11 is aware that this is an issue and they continue to violate the approved hours of delivery and trash pick-up. No other reasonable mitigation efforts can be made, especially without 7-11 representation in attendance.

5) The holder or user of the conditional use permit has failed to comply with any City, State or Federal law governing the conduct of use.

A) Conclusion: The holder or user of the conditional use permit has **failed** to comply with any City, State or Federal law governing the conduct of the use.

i) Findings of Fact:

* The neighbors have provided evidence that trash pick-up and deliveries are being made outside 7:00 am to 10:00 pm.

* 7-11 is aware that this is an issue and they continue to violate the approved hours of delivery and trash pick-up.

6) The holder or user of the conditional use permit has failed to construct or maintain.

A) Conclusion: The holder or user of the conditional use permit has **not** failed to construct or maintain.

i) Findings of Fact:

* There was evidence shown that the construction and maintenance has met the approved plan.

7) One or more of the general standards have not been met.

A) Conclusion: One or more of the general standards have **not** been met.

i) Findings of Fact:

* The detrimental impacts that have been discussed in criteria 1 have exceeded what a permitted use would result in for these same residents within the 250-foot proximity.

8) As an additional finding, Planning Commission determined whether detrimental impacts could be mitigated.

A) Conclusion: The only reasonable mitigation effort is to modify the hours of operation

and leave other conditions the same.

i) Findings of Fact:

* Limiting the hours of operation to 6:00 am to midnight would lessen the detrimental impacts to adjacent residents.

A motion was made by Michael Christopherson, seconded by Jeff Lovell that the Planning Commission modify the conditional use permit that is subject to this application to return to the permitted hours of operation from the current 24/7 hours configuration to 6:00 am to midnight based on the finding of facts and conclusions that have been articulated in the deliberations that took place this evening and which the Planning Commission directs staff to summarize and accurately characterize in the meeting minutes.

Yes: 5 - Dave Bromley
Jamie Tsandes
Michael Christopherson
Jeff Lovell
Cameron Duncan

Absent: 3 - Monica Collard
Ron Mortimer
Daniel Schoenfeld

Administrative Business

1. [21-081](#) Planning Commission minutes 2-18-21 (Draft)
An all in favor was made by Jamie Tsandes, seconded by Michael Christopherson to approve the meeting minutes for 02.18.2021
2. Sandy City Development Report
3. Director's Report

Adjournment

A unanimous motion was made to adjourn.

Meeting Procedure

1. Staff Introduction
2. Developer/Project Applicant presentation
3. Staff Presentation
4. Open Public Comment (if item has been noticed to the public)
5. Close Public Comment
6. Planning Commission Deliberation
7. Planning Commission Motion

In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to 2 minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed 5 minutes to speak. Comments which cannot be made within these time limits should be submitted in writing to the Community Development Department prior to noon the day before the scheduled meeting.

Planning Commission applications may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. No agenda item will begin after 11 pm without a unanimous vote of the Commission. The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regular scheduled meeting.

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, or if you have any questions regarding the Planning Commission Agenda or any of the items, please call the Sandy City Planning Department at (801) 568-7256