



EAGLE MOUNTAIN APPEALS BOARD MEETING MINUTES

July 7, 2020, 6:00 p.m.
Eagle Mountain City Council Chambers
1650 East Stagecoach Run, Eagle Mountain, Utah 84005

6:00 P.M. APPEALS BOARD MEETING – ELECTRONIC MEETING VIA LIFESIZE

ELECTED OFFICIALS PRESENT ELECTRONICALLY: Board Chair Tom Westmoreland, Board Members Donna Burnham, Melissa Clark, Colby Curtis, Jared Gray, and Carolyn Love.

CITY STAFF PRESENT ELECTRONICALLY: Ifo Pili, City Administrator; Paul Jerome, Assistant City Administrator/Finance Director; Steve Mumford, Assistant City Administrator/Community Development Director; Pete Kane, Long-Range Planning Manager; Michael Hadley, Planning Manager; Jessa Porter, Planner; Fionnuala Kofoed, City Recorder; Elizabeth Fewkes, Recording Secretary; Chris Trusty, City Engineer; Aaron Sanborn, Economic Development Director; Jeremy Cook, City Attorney; Brad Hickman, Parks and Recreation Director; Mack Straw, Public Utilities Manager; Zac Hilton, Streets and Storm Drain Manager; Jeff Weber, Fleet and Facilities Operations Director; Ross Fowlks, Fire Chief; and Angela Valenzuela, Human Resource Manager.

Public meetings will be held electronically in accordance with Executive Order 2020-1 Suspending the Enforcement of Provisions of Utah Code 52-4-202 and 54-4-207 due to Infectious Disease COVID-19 Novel Coronavirus issued by Governor Herbert on March 18, 2020.

City Attorney Jeremy Cook stated the purpose of the Appeals Board Meeting was to evaluate the Planning Commission's June 23, 2020 approval of a conditional use permit for a 7-Eleven and explained the responsibilities of the Appeals Board.

City Recorder Fionnuala Kofoed explained the procedural adjustments due to the electronic meeting and the proposed interim adjustments to practices.

1. CALL TO ORDER

Board Chair Westmoreland called the meeting to order at 6:08 p.m.

2. 7-ELEVEN CONDITIONAL USE PERMIT APPEAL

2.A. Conditional Use Permit Appeal

Appellant Diana Anderson read the following statement: "Dear Members of City Council, Science is the basis for the growth of human knowledge. By formulating hypothesis and testing them effectively, we learn more about the world around us. The process by which the best of science is made available to humanity is through peer-reviewed publications, where experts of the same field study the experiment, scrutinizing very closely the parameters, findings and conclusions and often

reproducing the studies themselves. It is often sent back to the author for editing multiple times before meeting the impossibly high standard of publication in respectable journals.

These are the quality of studies that we have presented to the planning commission and these are the studies which they have chosen to ignore. We submitted 13 papers in peer-reviewed journals, each declaring the dangers of emissions from gas stations. And rather than accept the science for what has been shown, they chose to extrapolate their own knowledge and overrule the scientific community. They sought to address our concerns by bringing in an “environmental expert” from the state, but, during the meeting, he confessed to not know much about air quality. “As far as VOCs in the air, that’s a little hard for me to address. I’m not in air quality, so I don’t really have information on those studies and stuff. What I can speak to is that gas stations are a lot safer than they were in the past...Stage 1 vapor recovery is in place. As long as it is working properly there shouldn’t be a lot of emissions escape.”

The studies we submitted show evidence to the contrary. The 2019 study we submitted demonstrated that this stage 1 recovery system actually exacerbates the emissions, increasing the release of harmful compounds into the atmosphere. This point was emailed as a public comment however, during the public comment section of the meeting, the points in the comments were not acknowledged by the commission but rather “summarized” and dismissed, leaving the public with little assurance their relevant findings had been considered properly.

We acknowledge that the studies submitted varied in their location and experimental conditions, however they all unanimously declared that there are very real health hazards associated with the chemicals emitted by gas station. Rather than investigating more deeply the commonalities between the studies delivered and the site in question, they extrapolated their own limited knowledge and made uniformed decisions, assuming these studies didn’t apply. Further investigation would have shown that they do in fact have very real implications for us.

Of particular interest is a study published in 2020, citing the hazards of emissions present throughout the refueling process. We acknowledge that this article was delivered to them with little time to properly study its findings, but had they given proper attention to it, they would have found that the gas stations in the study were held to the same standards that the proposed 7-11 would be. The study showed that benzene emissions occurred not only at the beginning and end of fueling but also throughout, despite the regulatory measures enacted by the gas station. The regulatory measures in place at the gas stations in this 2020 study are held to the same standard for new gas stations across the country (except in the state of California), and yet the emissions persisted. Even more concerning is that the study researched emissions in newer vehicles that have secondary vapor recovery systems in place. The EPA began requiring these systems in vehicles as of 2012. The average age of the vehicles in Utah is 12.1 years, far preceding the protective measures currently in place, making the findings of this study even more alarming.

Of particular concern is the benzene detected in these emissions. Both the World Health Organization and the CDC have declared Benzene to be proven carcinogen and is particularly hazardous to children. Having seen these alarming results, the planning commission should have deferred its decision until the applicant could adequately refute these claims with scientific evidence that had undergone the same rigorous scrutiny of the academic community. The planning

commission called in to question every detail of the studies we submitted and yet, when asked about rebuttal studies showing the efficacy of the mitigations in place no one had read or seen the rebuttal reports that they assumed existed. This response clearly demonstrates that the same members of the planning commission who were so quick to question every point of the scientific community's findings, could not be bothered to verify that their decision would not endanger the residents of our community. The burden of proof was placed squarely on the residents of the community seeking to defend their homes and family rather than on the planning commission seeking to uphold our city's code and defend its residents. They relegated reasoning and personal investigation to unfounded and misinformed precedents, set before these recent studies were made available. They allowed fear of a lawsuit to supersede their duty to defend the rights of the residents and uphold the City Code.

For these reasons, we ask you to withhold the applicant's special uses permit until the applicant is able to produce and provide studies of equal academic rigor showing the efficacy of the mitigations proposed here in the state of Utah and the absence of benzene emissions within the diameter that would encompass our homes. Thank you."

Board Member Curtis requested clarification as to how the application violated Municipal Code.

Ms. Anderson stated Municipal Code prohibits approving a conditional use permit if the use is deemed a nuisance and said under the State law a nuisance includes as a part of the definition anything that is injurious to property or health. She stated this project required a plat amendment to divide the land, creating two lots, and Municipal Code standards prohibits plat amendments that are injurious to residents.

Mr. Cook verified that Municipal Code prohibits applications deemed to be a nuisance. He explained the responsibility of the Appeals Board is to determine if there is substantial evidence to support the decision of the Planning Commission, as the Planning Commission is the governing body for conditional use permits.

Applicant representative Ryan Forsyth thanked Ms. Anderson for her well-presented remarks, and stated he understood the concerns residents expressed. He and 7-Eleven care about and consider the health of residents and communities, and adhere to all applicable laws, ordinances, and safety standards.

Prior to the Appeals Board meeting, Mr. Forsyth spoke with the fueling contractor and the 7-Eleven architect and confirmed the vent can be relocated to the northwest corner of the property, as far from residents as possible. He stated that most studies included in the residents' materials were conducted in foreign countries with different regulations and scrutiny than the United States. He said as both an attorney and a developer, he understands the implications of an oil spill or fuel leak and the resulting penalties and punishments. 7-Eleven performs regular checkups to identify problems and prevent accidents. Mr. Forsyth stated gas stations provide a necessary service to enable residents to fuel vehicles and the master developer and landowner anticipated this type of use for the land before selling a portion of the property for residential development. The rights of both residential and commercial property owners need to be considered. He stated gas stations are an approved use for the area in accordance with the City's General Plan. He expressed the desire

and willingness to be good neighbors to the residents and said he understands it is a sensitive subject and the residents have concerns. He assured the residents and the Appeals Board that he believes the Planning Commission voted appropriately on this issue in allowing the project to move forward.

Board Member Love inquired if 7-Eleven was aware of the concerns regarding the gas station and if they had any response to the studies provided by the Oak Hollow residents.

Mr. Forsyth stated 7-Eleven must follow all the safety regulations and laws dictated by legislative boards based upon study findings. As the largest convenience store company in the world, 7-Eleven strictly adheres to monthly safety checks and other regulations. He said 7-Eleven is aware of the inherent risks in conjunction with providing essential fueling services and does everything possible to mitigate safety issues.

Mr. Forsyth stated he was unaware if 7-Eleven's safety ratings were readily available to residents. He said the monthly checks, as explained by the State expert during the Planning Commission meeting, ensure the equipment, including the venting system, emission recapture system, sensors, and double-walled tanks, is functioning safely and properly.

Board Member Clark stated the residents should be able to request 7-Eleven safety compliance reports from the applicable State government agency and asked how long the property had been zoned commercial.

Mr. Cook reiterated the Appeals Board's responsibility is to determine if the Planning Commission had sufficient evidence to justify their decision and not to debate or evaluate the merit of the decision or to introduce evidence outside of the record.

Board Member Curtis asked what the standard of review by the Planning Commission for a conditional use permit is and if the Planning Commission has the legal authority to require the applicant to prove the gas station is safe, as requested in Ms. Anderson's appeal statement.

Mr. Cook stated the Planning Commission's responsibility is to evaluate if the requested conditional use permit complies with Municipal Code requirements per Chapter 17.95.060 regarding desired use; health, safety, and welfare; compliance with title; and the General Plan. He said the Planning Commission determines if reasonable conditions can be required to mitigate negative impacts, and if reasonable conditions can be imposed to mitigate impacts, they should approve the conditional use permit. He explained the standard differences between the approval and appeal process.

Board Member Clark requested that staff address public comment procedures and obligations.

Ms. Kofoed explained the accepted forms of public comment due to COVID-19 social distancing requirements included remote, in-person, phone, or email comments. She said that if time permits, a comment may be read verbatim, if requested, and said the legal obligation regarding public comments is to note the individual's name and a brief summary of the comment. She said public comments are generally summarized, especially if several comments contain duplicate information.

or due to time constraints, and if any individuals request that a comment be read during the meeting, the City tries to accommodate the requests, time permitting.

Ms. Kofoed stated only one resident requested their comment to be read during the June 23, 2020 Planning Commission meeting; however, due to a technical issue the text of the comment was not included in the correspondence. The Commissioners had been provided the resident communications prior to the meeting, and they had the opportunity to read the full comments. She and the Planning Commission Chair determined before the meeting, to summarize the comments during the meeting due to the length and number of comments, the similarities in comment content, and the interests of time. Had she been informed that the residents desired to have their comments read, she would have tried to accommodate the request.

Ms. Anderson thanked Mr. Forsyth for his willingness to relocate the vent. She said the 2019 study she submitted addressed the double-walled tank system and determined the double-walled system is worse than a single-walled system. She stated she did not believe the Planning Commission properly understood that study when they made their decision.

Board Member Curtis inquired regarding the role and division of authority between local government, State, and other regulatory entities.

Mr. Cook stated that although State officials supersede City government, they cannot negate local officials; however, in most cases, local authorities cannot enact any laws inconsistent with State regulations. As a State agency representative was present at the Planning Commission meeting on June 23, 2020, the Appeals Board is tasked with determining if the information he provided to the Commission was sufficient.

Mr. Forsyth stated they provided an expert from the State, engaged in multiple hours of discussion, reviewed all of the presented studies, met all of the distancing requirements, and agreed to move the vent even farther than standards required. He addressed Ms. Anderson's concerns regarding the double-walled tanks and stated the double-walled system is in place to prevent liquid releases into groundwater and that he is unfamiliar with the study and issues she cited. He said he believed adequate information had been provided to the Planning Commission in order for them to make an informed decision.

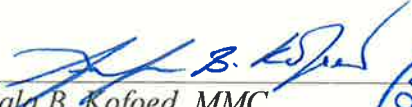
MOTION: *Board Member Burnham moved to affirm the Planning Commission approval of the 7-Eleven conditional use permit and instructed legal counsel to draft an opinion. Board Member Curtis seconded the motion. Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis, Jared Gray, and Carolyn Love. The motion passed with a unanimous vote.*

3. ADJOURNMENT

MOTION: *Board Member Gray moved to adjourn the meeting at 6:51 p.m. Board Member Curtis seconded the motion. Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis, Jared Gray, and Carolyn Love. The motion passed with a unanimous vote.*

The meeting was adjourned at 6:51 p.m.

Approved by the City Council on July 21, 2020.


Fionnuala B. Kofoed, MMC
City Recorder

