

SOUTH WEBER CITY PLANNING COMMISSION MEETING

DATE OF MEETING: 9 December 2021

TIME COMMENCED: 6:00 p.m.

LOCATION: 1600 E. South Weber Drive, South Weber, Utah

PRESENT: COMMISSIONERS:

Gary Boatright
Jeremy Davis
Wes Johnson
Julie Losee
Taylor Walton (excused)

COMMUNITY SERVICE DIRECTOR:

Trevor Cahoon

CITY ENGINEER:

Brandon Jones

DEVELOPMENT COORDINATOR:

Kimberli Guill

Transcriber: Minutes transcribed by Michelle Clark

ATTENDEES: Paul Sturm, Rod Westbroek, Blair Halverson, Liz Rice, Brad Brown, Michael Grant, Charles Poll, Sky Hazlehurst, and Farrell Poll.

Commissioner Boatright welcomed those in attendance and excused Commissioner Walton.

PLEDGE OF ALLEGIANCE: Commissioner Boatright

2. Public Comment: Anyone requesting to comment live via Zoom must pre-register at the following <https://forms.gle/PMJFhYFJsD3KCi899> before 5 pm on the meeting date.

Comments will also be accepted at publiccomment@southwebercity.com

- a. Individuals may speak once for 3 minutes or less.
- b. State your name and address.
- c. Direct comments to the entire Commission
- d. Note Planning Commission will not respond during the public comment period.

Paul Sturm, 2527 Deer Run Drive, commented on agenda item #2. He opined the preliminary plan doesn't meet city code and needs another rezone. He is also concerned the developer is requesting a waiver from city code for the fencing requirement between R-7 and lower density zones. He questioned who is the property owner Jane Poll or Farrell Poll. He is concerned the private right-of-way may not meet city code. He queried about the fencing of nearby property owners. He is concerned about the safety factor with inside storage.

ACTION ITEMS:

3. Approval of Consent Agenda

- **Planning Commission Minutes of 10 November 2021**

Commissioner Johnson moved to approve the consent agenda. Commissioner Losee seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Johnson, and Losee voted aye. The motion carried.

Commissioner Losee moved to open the public hearing for Preliminary Plat, Improvement Plans (for entire development) & Conditional Use (for CH zone over 1 acre) for South Weber Gateway Project (62 Lot R-7 Residential) & (18,824 sq ft. C-H Commercial) located at approx. 2350 E South Weber Drive by Applicant Brad Brown from Colliers International. Commissioner Davis seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Johnson, and Losee voted aye. The motion carried.

***** PUBLIC HEARING *****

4. Preliminary Plat, Improvement Plans (for entire development) & Conditional Use (for CH zone over 1 acre) for South Weber Gateway Project (62 Lot R-7 Residential) & (18,824 sq ft. C-H Commercial) located at approx. 2350 E South Weber Drive by Applicant Brad Brown from Colliers International:

Community Service Director Trevor Cahoon explained the South Weber Gateway has been working on a potential development for the proposed site for several years. After development plan negotiations the City Council requested the developer to move forward with a rezone application. In July 2021 the property rezone request was approved by the City Council to have the front portion of the property rezoned to commercial highway (C-H) and the back portion of the property as Residential Multi-Family (R-7). The application has met all requirements of a preliminary application and has been passed forward to the Planning Commission for consideration.

The project totals 11.64 acres split into two different zones.

- 2.6 acres is commercial
- 9.04 acres is R-7 which meets the acreage allowed to be zoned R-7.

Trevor reported after a tertiary review of the preliminary application for South Weber Gateway Development, city staff recommended approval subject to the conditions listed below:

- Private Right-of-way: Developer has submitted a project that includes a private road to the residential portion of the property. This does not currently meet city code; however, the City Council is reviewing a Private Right-of-way ordinance at the December 7 City Council meeting. The road proposed does meet the requirements of the drafted ordinance under consideration. Approval would be based on the outcome of that decision. Developer was made aware of this condition and made the decision to proceed with the application without a decision.
- Buffer Yard: Recommendation to the City Council to waive the requirement for a 6-foot masonry wall in the buffer yard, in favor of a raised 3-foot berm with a 3-foot vinyl fence on the crest of the hill.

- **Screening Fence:** A screening fence is not included between the residential zones to the rear of the property. Fencing is currently provided for most of the homes in the area. Preliminary approval can be given with the condition that the intent of this requirement is met. City Council will need to determine if this requirement is satisfied due to natural buffering on the south end of the property and the existence of current fencing on properties.

Additional Update:

In the C-H Zone the setback for the rear of the project needs to be 20' from a residential zone, and the side setback needs to be 10' from residential zones. The area illustrated with the building that will be in phase 3 would be out of compliance with this portion of the code. The city staff recommends add as a condition of approval to correct the setbacks.

Setbacks:

Trevor explained there have been questions about the front, side and rear setbacks. In the R-7 zone zero lot lines are not allowed; therefore, this project would have to be individual condo units to be sold. This would make this development multiple dwellings on the same lot.

In the review with the city attorney, the townhomes setbacks comply, because in South Weber setbacks are determined by the lot and not by the orientation of the building.

Private ROW:

Trevor expressed the Private ROW ordinance was continued by the City Council. This project, as it was submitted, is dependent on a private access road to the buildings. This doesn't currently meet code.

City Engineer Brandon Jones review of 1 December 2021 is as follows:

STAFF ASSESSMENT

- **Zoning:** The property is zoned C-H and R-7.
- **City Code & Public Works Standards:** The preliminary plans meet the requirements of the City Code and City Standards, except for:
 - **Private street:** The proposed private street for the townhomes is not currently allowed in the R-7 zone unless it is a PUD. This development is not requesting a PUD overlay. However, the proposed street cross section does match Section B in the private streets ordinance previously recommended for approval by the Planning Commission and currently being considered by the City Council.
- **Geotechnical Report & Sensitive Lands:** In order to meet the requirements of CC 10-14 (Sensitive Lands Development Regulations), a Phase I Environmental Assessment (dated August 27, 2021) and Geotechnical Study (dated September 17, 2021) were performed. The preliminary plans are in compliance with these studies. The final plans will need to incorporate any applicable recommendations.
- **Traffic Impact Study:** A TIS (dated November 4, 2021) was provided to the city for review. Comments were provided and the study was updated (dated November 23, 2021). A final version was submitted to the city on December 1, 2021. Manual trip counts were taken on November 17, 18, and 19 (Wednesday – Friday) to establish existing conditions. The intersections of 2100 E. and 2700 E. were studied for both existing and future conditions. The two new proposed accesses for the development were studied for future conditions. Both AM and PM peak hours were evaluated. The study determined that “during the peak hours, all study intersections

remained at the same LOS with the addition of the South Weber Gateway development. The two site access intersections will both operate at a lowest approach LOS of C.” The design recommendations include “utilizing the existing two-way left-turn lane for left turning west bound traffic entering the development. Restriping for a right turn lane is recommended for east bound traffic entering the development at the East and West Access intersections.” The preliminary plans show these improvements.

- **Phasing:** The preliminary plan includes a phasing plan that shows three phases. Phase 1 includes 31 townhomes and 3 commercial buildings (4,244 sf). Phase 2 includes 31 townhomes and 1 commercial building (2,322 sf). Phase 3 includes 2 commercial buildings (10,523 sf). All utilities necessary for each phase will be installed with that phase.
- **Buffer Yard:** Rather than install a full 6’ tall masonry fence between the C-H and R-7 zones as required in CC 10-15, the developer is proposing a berm with a smaller fence on top, as they feel it provides a better look and feel for the overall development. CC 10-15- 7 allows any provisions contained in this chapter to be waived (with just cause). If the Planning Commission agrees with this proposed change to the buffer yard, then they need to make that recommendation to the City Council.
- **Architectural Site Plan Approval:** Both the C-H and R-7 zones require architectural site plan approval in accordance with the requirements of CC 10-12. The Planning Commission “shall determine if the proposed architectural and development plans submitted are consistent with this Chapter and with the purpose and objectives of this Title.” This will need to be reviewed as part of the final approval.

Commissioner Boatright asked if there was any public comment.

Liz Rice, 7875 S. 2310 E., voiced it being difficult to have a conversation with the city’s public comment requirements. She expressed this process began before amending the general plan. She feels this is the best plan and the developer is meeting the requirement for R-7. Her family hopes the Planning Commission remembers they have done their best.

Paul Sturm, 2527 Deer Run Drive, expressed concerns with agenda item #4. He questioned if the Traffic Impact Study and dictate that UDOT restripe South Weber Drive to have an eastbound right turn lane into the development. He is concerned about the phasing aspect of the development and how the phasing agreement will be enforced. He questioned if a surety bond should be levied on this project to reduce risk to South Weber City. He opined the conditional use application is not complete.

Farrell Poll, 2316 E. 7800 S., agreed with his sister, Liz Rice, concerning public comment. He feels public comment should be following the discussion. Their family has submitted several different plans. Colliers International is not purchasing the property. He is frustrated with individuals scrutinizing every little thing. He feels this development will benefit the community and residents in a common way.

Charlie Poll, 2300 E. South Weber Drive, discussed the parking problems with Highmark School. He opined the parking problem is Highmark’s problem and not this development.

Michael Grant, 2622 Deer Run Drive, acknowledged people have property rights but rules need to be followed.

Farrell Poll, 2316 E. 7800 S., pointed out the city owned property on South Weber Drive will have traffic issues and the city should keep that in mind.

Commissioner Johnson moved to close the public hearing for Preliminary Plat, Improvement Plans (for entire development) & Conditional Use (for CH zone over 1 acre) for South Weber Gateway Project (62 Lot R-7 Residential) & (18,824 sq ft. C-H Commercial) located at approx. 2350 E South Weber Drive by Applicant Brad Brown from Colliers International. Commissioner Losee seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Johnson, and Losee voted aye. The motion carried.

******* PUBLIC HEARING CLOSED *******

Brad Brown, of Colliers International, acknowledged they are seeking a site plan approval and recognize the setback issues and with comply with the city’s private right-of-way requirements. He addressed the request for a berm, which would allow for a more open space feel. He feels they have been good partners with the city in trying to get what the city wants.

Commissioner Davis asked about the buffer yard. Trevor replied that the city code allows for City Council to waive the buffer requirement. He stated the setback is 20’. Commissioner Losee discussed a masonry fence and 20’ trees requirement for the buffer. She questioned how the 20’ setback from commercial and residential applies. Trevor explained the city code allows for multiple buildings on the same lot. R-7 allows for multi-family. Commissioner Losee referenced state code. Trevor explained the difference between a condominium (own air space) verses a townhome (own ground underneath). Brandon added a Planned Unit Development (PUD) allows for a zero-lot line and this development isn’t a PUD. Trevor explained the buildable area is 30’ from South Weber Drive.

Commissioner Losee questioned the buffer yard. She is concerned with the commercial space in the northeast section and the approach towards the retention pond and safety. Trevor discussed there is no buffer zone requirement for the area Commissioner Losee is questioning because it is in the commercial highway zone. Brad Brown discussed this development having a community feel with the berm and rail fencing.

Commissioner Losee asked the maximum height of the buildings. Trevor replied the maximum height is 35’. Commissioner Losee asked if the landscape plan is complete and how is the hillside maintained. Brad reported the Fire Chief Tolman has reviewed the plan and given approval. It was stated there will be no watering of the hillside.

Commissioner Losee addressed the geotechnical report and what needs to be done with Army Corp of Engineers signing off of the identified wetland area. City Engineer Brandon Jones reported it is not a regulatory wetland and doesn’t need to be signed off.

Commissioner Losee discussed parking. Brandon explained 4 of the 6 buildings have a drive-through and will require less parking. He reported the development meets the city code parking requirement.

Commissioner Losee asked about garbage collection for commercial. Trevor pointed out the garbage collection areas. Commissioner Losee discussed the traffic study. Trevor explained there is a right turn only into the development, which limits on street parking. He expressed with traffic studies the landowner can only control what happens on their land. Brandon explained when Highmark Charter School was approved, they stated their plan included the traffic they generate, which they are responsible for. He acknowledged the developer is accommodating what they need to do for their development.

Commissioner Johnson is concerned about the density and asked if the hillside was included in the calculation. It was reported this development followed city code with density calculation, fire code, parking, and ingress/egress.

Discussion took place regarding the trail. Farrell Poll expressed the city needs to approach Mark Fernelius. Brandon stated the developer has identified the trail on the plat; however, the city will need to work with surrounding property owners.

Commissioner Boatright feels this development is a nice balance of residential and commercial. He trusts the city staff review and recommendation for this development. He favored the berm and rail fencing.

Sky Hazelhurst, of Colliers International, stated if this follows code, he requested approval with conditions.

Commissioner Losee voiced her hesitation to approve this development tonight when the private right-of-way ordinance hasn't been approved by the City Council.

Commissioner Davis moved to approve the Preliminary Plat, Improvement Plans (for entire development) & Conditional Use (for CH zone over 1 acre) for South Weber Gateway Project (62 Lot R-7 Residential) & (18,824 sq ft. C-H Commercial) located at approx. 2350 E South Weber Drive by Applicant Brad Brown from Colliers International subject to the following conditions:

- 1. Recommend approval of the buffer yard alternative proposed by the Developer to the City Council.**
- 2. The required screening between R-7 and lower density zones has been satisfied in accordance to City Code and present conditions on the property.**
- 3. Final Subdivision Plat includes proper setbacks for all zones.**
- 4. A decision of the Private Right-of-Way ordinance that facilitates the current layout of the development.**
- 5. All other recommendations notated by the City Engineer and City Planner have been incorporated into the final application.**

Commissioner Boatright seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, and Johnson voted aye. Commissioner Losee voted nay. The motion carried 3 to 1.

5. Discussion: Landscape Ordinance

The Planning Commission agreed to move this item to another meeting.

6. Planning Commission Training: Property/Vesting Rights

Community Service Director Trevor Cahoon conducted training for the Planning Commission on property/vesting rights.

Trevor explained one of the most important rights associated with property ownership is the ability to adapt or develop it for some profitable or desirable use. Development and use of property supports economic growth and contributes to the public welfare.

May the Government Regulate the Uses and Improvements on my Property?

All property is subject to reasonable control and regulation by government entities. Local governments regulate the uses and improvements of property to protect and promote the health, safety, and welfare of the public. Proper zoning ordinances promote economic growth and help maintain strong and vibrant communities.

What if I disagree with a Zoning Ordinance's Restrictions?

Any citizen may petition their local government to consider a change to zoning ordinances. Local governments have wide latitude to adopt and amend zoning ordinances as a part of their authority to promote the public welfare. Unless it can be shown that the zoning ordinance does not advance the general welfare, or that the ordinance violates constitutional rights or some other controlling statute, the regulation will be upheld.

What If I Don't Want a Proposed Development to be approved?

Any aggrieved party may participate in public hearings concerning proposed developments. Notices of public hearings are available at local government offices or websites, in certain other public places, and in local newspapers. There are some "routine" zoning decisions or interpretations of a zoning ordinance and certain other matters that are made without a public hearing. Any aggrieved party may appeal a final decision on a proposed development.

When do I have a right to Develop?

The Vested Rights Rule provides that an applicant for subdivision approval or a building permit is entitled to approval if the application is complete, and complies with the zoning requirements in place on the date the application is submitted. Put simply, the vested rights rule means that the government cannot change the zoning rules after an application is filed.

What is meant by the "Vested Rights Rule"?

The "Vested Rights Rule" means that an applicant for a land use or a development is entitled to consideration and approval if the application is complete, and if it complies with all zoning requirements in place at the time of the application. Put another way, the right to develop "vests" when a complete application that complies with zoning ordinances is submitted.

What do vested rights mean to an applicant? An applicant whose rights have vested is entitled to consideration of the application under the ordinances in place when the application is filed, and approval of the application under the zoning ordinances in place, even if the ordinances are subsequently changed.

Are There Exceptions to the Vested Rights Rule?

- An applicant cannot claim vested rights if the process to change a zoning ordinance that would affect the application has been initiated before the application was submitted, and the ordinance changes is ultimately approved.
- An applicant may not gain vested rights if the local government can show that there is a “compelling, countervailing” public interest that would be jeopardized if the proposed development were carried out.
- The Utah Code provides that The “Vested Rights Rule” means that an applicant for a land use or a development is entitled to consideration and approval if the application is complete, and if it complies with all zoning requirements in place at the time of the application. Put another way, the right to develop “vests” when a complete application that complies with zoning ordinances is submitted.

When is an Application Considered Complete?

An application is complete when it is submitted in a form that complies with the applicable requirements of a local zoning ordinance and all required fees have been paid.

What if an Ordinance Changes before an Application is Complete?

- The Vested Rights Rule provides that an applicant is entitled to approval if the development application complies with the zoning ordinances in place when the application becomes complete.
- The “Vested Rights Rule” means that an applicant for a land use or a development is entitled to consideration and approval if the application is complete, and if it complies with all zoning requirements in place at the time of the application. Put another way, the right to develop “vests” when a complete application that complies with zoning ordinances is submitted.

Western Land Equities v. City of Logan

- An owner of property holds it subject to zoning ordinances enacted pursuant to a locality’s police power.
- An applicant for subdivision approval or a building permit is entitled to favorable action if the application conforms to the zoning ordinance in place at the time of application, unless changes in the zoning ordinance are pending which would prohibit the use applied for, or unless there are compelling, countervailing reasons to deny the application.
- An applicant for approval of a planned and permitted use should not be subject to shifting policies that do not reflect serious public concerns. It is incumbent on a local government to act in good faith and not reject an application to simply substitute the judgment of current officials for that of their predecessors.

Scherbel v. Salt Lake City

- A city council under the council-mayor form of government should not hear appeals from zoning decisions made by the planning commission.
- An applicant for subdivision approval or a building permit is entitled to favorable action if the application conforms to the zoning ordinance in place at the time of the application, unless changes in the zoning ordinance are pending, which would prohibit the use applied for, or unless there are compelling, countervailing reasons to deny the application.

- If an application does not conform to the requirements of a zoning ordinance, it cannot serve to vest any right in a particular zoning classification. Thus, if an application does not meet the requirements for a land use, no rights in that application vest.

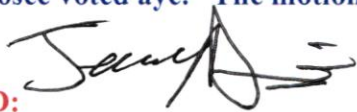
7. Planning Commission Comments

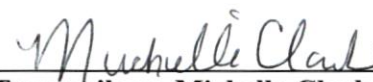
Commissioner Losee: requested if a plan is a PUD and HOA, it should be included in the preliminary plat. She doesn't favor the buffer yard, doesn't agree with setbacks, and parking for the preliminary plat on tonight's agenda.


Commissioner Davis: directed Trevor to look at policy procedure for public hearing public comments and the location on the agenda. He noted public comment is not for discussion purposes.

Commissioner Boatright: thanked Mayor Sjoblom and Councilman Winsor for their service to the city. He is looking forward to serving with Rod Westbroek and Joel Dills.

ADJOURNED: Commissioner Johnson moved to adjourn the Planning Commission meeting at 8:06 p.m. Commissioner Losee seconded the motion. Commissioners Boatright, Davis, Johnson, and Losee voted aye. The motion carried.

APPROVED:  1/13/22 Date
Chairperson: ~~Gary Boatright~~ Jeremy Davis


Transcriber: Michelle Clark


Attest: Development Coordinator, Kimberli Guill

**Comments to South Weber City Planning Commission
for 09Dec21 Meeting
by Paul A. Sturm**

**Public Comments Agenda Item #2 Discussions on South Weber Gateway Development
Public Hearing & Action on Preliminary Plat, Improvement Plans (for ENTIRE development).**

1. Packet Page 15 of 299 - Subdivision Dashboard - Planning Commission
 - a) Please Note that under "Quick Stats" this preliminary plan **DOES NOT** meet City Code. This is particularly surprising since the Gateway concept has been under development for over a year.
 - b) Also, this plan will also require **YET ANOTHER** rezone. It appears that the developer is just throwing his plans against the wall to see what sticks.
 - c) Another concern is the developer requesting a waiver from City Code for the fencing requirement between R-7 and lower density zones. Their presentation appears to address only the two zones within their development, but not the zones on the development boundaries such as the Charter School and others. It should also be noted that the Mark Fernelius property abuts the Gateway property and should be fenced if Mark Fernelius so desires. Other owners bordering the Gateway development should also be consulted.

2. Packet Page 16 of 299 - Preliminary Application - Project Information
 - a) The "Owner" is shown as Jane M Poll - Trustee. Whereas, on Packet Page 23 of 299, The "Property Owner is shown to be Farrell Poll. Which is it?
 - b) Staff Review Summary - -Bullet #1 clearly states that the "Private Right of Way proposed does not meet City Code, yet they chose to proceed anyway. Do they want?
 - c) "Most" homeowners on the south side of the Gateway development have fencing. What about the rest? Suggest that the developer, if the resident wants a fence, should install one! Also see Packet Page 18-19 of 299 - PL-8-Landscaping R-7 - Complete with conditions Bullet #2

3. Packet Page 18-19 of 299 - PL-8 - Landscaping - R-7 - Complete with conditions
Bullet #2 requires a six foot tall solid screening fence between R-7 and lower density zones. What about the Charter School, property owners and the storage units?

4. Packet Page 19 of 299 - PL-10 - Outdoor Storage Space - R-7 Complete
Once again, the developer is requesting a waiver to sidestep existing City Code! Inside storage **IS NOT** outdoor storage! I have two major concerns with approving this waiver:
 - a) Moving the storage inside will reduce the size of the garage area.
 - b) There is a major safety factor to be considered with having inside storage. Where will a resident store any flammable material that they may have such as camping fuel and supplies?..This is a safety issue for not only a single resident, but to all attached townhomes!

5. Packet Page 20 of 299 - Staff Assessment - Bullet #2 - City Code & Public Works Standards
This addresses the fact that, as mentioned before, **NO** Private Streets are currently permitted in the R-7 zone!

**Comments to South Weber City Planning Commission
for 09Dec221 Meeting
by Paul A. Sturm**

Public Hearing - Agenda Item #4

Public Hearing & Action on Preliminary Plat, Improvement Plans (for entire development) & Conditional Use (for CH zone over 1 acre) for South Weber Gateway Project (62 Lot R-7 Residential) & (18,824 sq ft. C-H Commercial) located at approx 2350 E South Weber Drive. by Applicant Brad Brown from Colliers International

1. Packet Page 20-21 of 299 - Staff Assessment - Bullet #4 Traffic Impact Study TIS)
 - a) Can this TIS dictate that UDOT restripe SR-60 (South Weber Drive) to have an eastbound right turn lane into the development?
 - b) What impact will this have on South Weber Drive parking adjacent to the Charter School?

2. Packet Page 20-21 of 299 - Staff Assessment - Bullet #5 - Phasing
 - a) I believe the Phasing aspect of this development needs to be carefully addressed, assessed and strictly defined so that it can be enforced.
 - b) How will the phasing agreement be enforced and development not run rampant with regard to project phasing? As was discussed during Planning Commission meetings, there is a C-H element to this development that is of great importance to SWC, and was one of the determining factors when the property rezone was approved..

3. Packet Page 21 of 299 - Staff Assessment - Bullet #6 - Buffer Yard
Once again, the developer is requesting another waiver. I have lost count on how many waivers have been requested so far. To me this appears to be another Lofts-type development where there are so many requested changes and challenges!

4. Packet Page 23-24 of 299 - Land Use Application and Conditional Use Application
 - a) Another concern I have regarding Phasing enforcement is that, as is currently presented in the Conditional Use Application document, it indicates that Farrell Poll (current), (or whomever is really the owner), is anticipating selling the Gateway development property to Colliers International (proposed).
 - b) My concern is that, since, Colliers International is a "Canada-based diversified professional services and investment management company with annualized revenues of \$3.6 billion (\$4.0 billion including affiliates)" [Note: description was extracted from their website]. It would be an extremely large company with which SWC would be doing business when trying to enforce the Gateway phasing or any other agreement. I do not know if a possible surety bond should be levied on this project to reduce risk to SWC.
 - c) The information in the Conditional Use Application is not complete. It does not identify all of the Bordering Zones and Surrounding Land Uses present for this property, thus it is incomplete!