

Syracuse City Planning Commission Meeting

February 21, 2012

1. Meeting called to Order and Adoption of Agenda

Planning Commission Chair Gregory Day called the meeting to order at 6:00 p.m., indicating that City staff posted the agenda 24 hours prior to the meeting and delivered copies to all Commission members. Braxton Schenk offered the prayer, and Kenneth Hellewell led the pledge of allegiance.

Members Present: Chair Gregory Day, Vice Chair Gary Pratt, Kenneth Hellewell, Braxton Schenk, T.J. Jensen, Tyler Bodrero, and Curt McCuistion as well as Community Development Director Michael Eggett, City Planner Kent Andersen, City Attorney Will Carlson, Engineer Brian Bloemen, and Administrative Secretary Judy Merrill

Excused: Dale Rackham

Visitors: Gerald Jacobs	Bill Williams	Judy Williams	Brian Duncan
Val Cook	John Lewis	Terry Palmer	Kristi Whitman
Alan Whitman	Mandy Russell	Eric Peterson	Talynn Hoopiaina
Craig Johnson	David Wakefield	Dean Rasband	Holly Rasband
Daron Fowers	Heidi Brophy	Neal Brand	Ray Zaugg
Pat Zaugg	Carol Thurgood	Julie Griffin	Dean Kreger
Curt King	Wendy McKee	Caryn Doman	Ann Anderton
Lance Butler	Josh Winward	Gen Gerlach	Shirley Hadley
Travis Gower	Pamela Recksiek	Sterling Recksiek	Sarah Porter
Darin Porter	Trisha Bodily	Jerry Smith	David Barney
Linda Barney	Allen Sorensen	Melissa Crudo	Travis Healey
Randy Abood	Randy Tanner	Brandon Stevenson	Ryan Chandler
Lisa Chandler	Lynsey Porter	Christine Kennelly	Aubrey Baxter
Wyndell Pasch	Brad Frost	Karianne Lisonbee	

Commissioners reviewed the February 21, 2012, Planning Commission meeting agenda.

GARY PRATT MOVED TO ADOPT THE FEBRUARY 21, 2012, AGENDA AS OUTLINED, SECONDED BY BRAXTON SCHENK; ALL VOTED IN FAVOR.

2. Approval of Minutes

Commissioners reviewed the February 7, 2012, regular meeting minutes.

GARY PRATT MADE A MOTION TO APPROVE THE FEBRUARY 7, 2012, MEETING MINUTES AS WRITTEN, SECONDED BY BRAXTON SCHENK; ALL VOTED IN FAVOR.

3. Legal Opinion Regarding a Moratorium of the C-2 Zone

Will Carlson, City Attorney, gave the Planning Commission a general background of moratoriums and explained the limited circumstances under which Syracuse could impose them: 1) The land use authority on record found that approving an application would jeopardize a compelling-countervailing public interest. 2) Before the City received an application, Syracuse already began the process of amending ordinances in a way that would ultimately prohibit an applicant's use. 3) The relevant area was unregulated, either by mistake or court action. He then stated that a moratorium was actually a separate ordinance establishing temporary land use regulations within any park or within all the area of a city or town. Moratoria delayed, but did not stop, development. The maximum delay was usually six months. As an ordinance, it would be up to City Council to pass it. If challenged, courts would presume that the moratorium was valid and only determine whether imposing it was arbitrary, capricious, or illegal. While the arbitrary, capricious, or illegal requirement applied regardless of which of the three reasons Syracuse used to implement the moratorium, the burden on the City and likelihood of success in its defense would vary depending on said reason. For example, if the relevant area was unregulated or Syracuse was already in the process of amending ordinances that would prohibit an applicant's use, the moratorium would be a legislative act and a court would uphold it as long as it was reasonably debatable that the decision was in the interest of the general public's welfare. However, for the City to succeed in a challenged decision based on a compelling-countervailing public interest, Syracuse would have to prove substantially more. The decision would be administrative, shifting the burden to substantial evidence in the record for proving that the requested use would have jeopardized a prevailing-countervailing public interest. An additional hurdle applied when defending moratoria that were based on what courts called the public-clamor doctrine, which developed out of the Davis County versus Clearfield City case. At a public hearing before the Clearfield Planning Commission, citizens raised several concerns related to the County's application for a permit to operate a residential-treatment facility for people with substance-abuse issues, including parking, increased crime rates, decreased property values, and the use being contrary to the residential nature of the surrounding area. At the end of that hearing, the Commission denied the application without providing reasons on record or written findings, and the City Council later voted to uphold the Commission's decision without any official findings or written decisions either. In that case, the Utah Court of Appeals noted that, while the public raised several concerns, Clearfield based their decision on public clamor rather than studies or professional assessments, which it deemed as insufficient legally. Cities had to rely on facts and not mere emotion or local opinion in making such decisions. Based on case law in Utah, if Syracuse imposed a moratorium due to public interest, its success or failure under a court challenge would depend on the amount of evidence offered on record in support of that decision.

Commissioner Hellewell asked if the City could legally impose a moratorium on the C-2 Zone if they planned to amend it, by removing the residential component, or eliminate it altogether. Attorney Carlson said that defending a moratorium

imposed because the City was already in the process of amending applicable zoning was one of the easier scenarios to win. Commissioner Hellewell asked if their discussions had to begin in a public forum to successfully impose a moratorium. Attorney Carlson explained that the Commission would not need to recommend a moratorium until they received an applicable application that the City's final decisions might affect. Vice Chair Pratt pointed out that there were no applications in process, and commissioners already discussed a desire to amend or eliminate the C-2 Zone in a previous work session. While they reviewed this zone, commissioners wanted a moratorium until they made a final recommendation. He asked why the City should not place a moratorium on the C-2 zone while they deliberated its standards and how to proceed. Attorney Carlson advised him that he was simply pointing out potential pitfalls and the likelihood of success if an applicant challenged a moratorium. Vice Chair Pratt expressed his understanding that the Commission and Council needed to attach a reason. Attorney Carlson agreed but pointed out that the reason needed to be one of the three specific causes outlined in State Code. He then reminded them that the moratorium was only a 180 day delay. If the City was unable to make their final decisions by the end of that time, there would be no way to legally extend the moratorium at that point.

Chairman Day asked Attorney Carlson if he believed the City had sufficient reasons to impose a moratorium if commissioners brought up this issue over a month ago and there were no applicants seeking use of the C-2 zone. Attorney Carlson referred back to State Code and explained that, if there were no applicants and no anticipation of any applications, there would also be no need for a moratorium. Commissioner Hellewell asked for reassurance that it would not be too late to impose a moratorium if they were working on the C-2 zone for the next three months and an applicant submitted a requested use for that Zone prior to the City making a final decision. Attorney Carlson advised him that recommending a moratorium was most appropriate when commissioners became aware of a developer's request while in the process of discussing potential changes that would prevent an applicant's intended use.

Commissioner Jensen asked that the record reflect the Commission's intent to evaluate the C-2 Zone for possible amendments or elimination and to make it clear to potential applicants that the City would most likely be changing the current C-2 Zone standards.

4. Recommendation of C-2 Zone Moratorium

TYLER BODRERO MOVED TO TABLE THIS ITEM UNTIL THE PLANNING COMMISSION COULD DISCUSS IT FURTHER. T.J. JENSEN SECONDED THE MOTION. KENNETH HELLEWELL MADE A MOTION TO AMEND IT BY TABLING IT UNTIL THE CITY RECEIVED AN APPLICATION TO APPLY THE C-2 ZONE. T.J. JENSEN SECONDED THE AMENDED MOTION.

Vice Chair Pratt recommended tabling this agenda item until after agenda item 9, so they could expedite the moratorium, but others disagreed.

ALL VOTED IN FAVOR, EXCEPT FOR GARY PRATT WHO VOTED AGAINST.

Chairman Day directed staff to place the C-2 Zone on the next work-session agenda.

5. Aubrey Baxter Major Conditional Use Permit for Two-Family Dwelling

Planner Andersen explained that this structure, located at 1259 South 2000 West, was a foreclosed home, modified by a previous owner and used as an illegal triplex. The City only had record of one building permit, from the 1970s, for a single-family residential dwelling, which corresponded with the County's records. The Bank's representative said the home had three mailboxes, three gas meters, three electric meters, and no interior stairs to the upper unit. When Secretary Merrill became aware of this house, used as a triplex in an R-1 zone—which did not allow such a use as permitted or conditional—she submitted a violation form to the code enforcement officer on January 22, 2007. The officer wrote her a response, saying that there was a conditional use permit on file for this address per the City Administrator's assurance. The City Recorder searched all the City Council records, and Secretary Merrill searched all the files and Planning Commission records for anything that indicated approval of this home from a single-family dwelling to a duplex and/or triplex. There was nothing as far as approvals through either of these governing bodies or inspections by the Building Department for these modifications to the home. The Utilities Department supervisor researched the billing history and determined that the City had been charging it as a duplex since April 2002. In February 2007, the City began billing it as a triplex. Director Eggett decided that, since the Utilities Department had not been billing it as a triplex for at least 7-10 years, he would not grandfather it as a legal-nonconforming use, based on statute of limitations. Therefore, Secretary Merrill advised the Bank's representative that they had to disclose to any buyer of this property that, if they intended to use the home for anything other than a single-family dwelling, they would need to come to the City and acquire a major Conditional Use Permit for a two-family dwelling and a building permit to ensure it complied with the proper building codes. The Bank agreed, and the new owner was now working towards bringing this structure into compliance. Since the structure would most likely remain a duplex, staff recommended assigning it a second address.

Aubrey Baxter came forward with her real-estate agent, Wyndell Pasch, to answer questions. Vice Chair Pratt asked how the home was originally built and then changed. Mr. Pasch explained that the home was a single family that now had three exterior entrances, three gas and power meters, three furnaces, three kitchens, and eight exterior parking spots. The lot was over half an acre, and the home was very functional. When asked how many bedrooms per unit, Mr. Pasch said that the first had one bedroom, the second had two, and the last had three bedrooms. Vice Chair Pratt asked how they planned to change it into a two-family dwelling. Mr. Pasch said they would be adding a breezeway to connect the main level's two-bedroom unit with the upstairs' one-bedroom unit, so that each dwelling had three bedrooms.

Chairman Day referred to staff's recommendation of a second address and asked if they agreed. Mr. Pasch said it would not be a problem.

Vice Chair Pratt asked how they were going to eliminate the separate utilities. Mr. Pasch said they would simply eliminate one gas and one power meter. They had been working with the Building Official and the two utility companies on that

issue. When asked about the electrical compliance, Mr. Pasch explained that they would have to change out a full panel to meet code.

GRANT PRATT MOVED TO GRANT A MAJOR CONDITIONAL USE PERMIT FOR A TWO-FAMILY DWELLING, LOCATED AT 1259 SOUTH 2000 WEST, SUBJECT TO ALL APPLICABLE REQUIREMENTS OF THE CITY'S MUNICIPAL ORDINANCES AND THE CONDITION THAT THE SECOND DWELLING RECEIVE ITS OWN LEGALLY-RECORDED ADDRESS OF 1261 SOUTH 2000 WEST. TYLER BODRERO SECONDED THE MOTION; ALL VOTED IN FAVOR.

6. Talynn Hoopiaina Major Conditional Use Permit for Creative Daycare and Nails

Planner Andersen summarized the applicant's request, stating that she planned to provide care for up to 16 children in her home, located at 1208 South 2000 West. She would use just 669 square feet of the main floor, which included the front room, family room, kitchen, and a back bedroom. The back yard was fenced. Once she had more than 8 children in her care, she would have her mother and/or sister-in-law there as a second employee. They would park at the side of the home on a cemented parking area. When the Building Official inspected her home on February 8, 2012, he noted the finished basement, which had no building permit. He advised the applicant that the property owner would need to apply for a permit and acquire a certificate of occupancy in order for her to receive approval for a business license. After discussing it with her landlord, she was to take care of the building permit as part of their arrangement of renting to own the home. An adjacent property owner emailed the City of concerns with the requested use and asked the City to deny it. Those concerns related mostly to a previous owner with a daycare and the problems it created with his dogs and fencing. Therefore, staff recommended approval subject to installation of a 6-foot privacy fence.

Talynn Hoopiaina approached the Commission explaining that her husband left her, so she needed a job. The State inspector came out and approved her home for this use, and she planned to keep the children inside most of the time. When they were outside, she would be with them.

Chairman Day asked if she would have a problem with acquiring a building permit for the basement or with having to install a 6-foot privacy fence. She said no. Vice Chair Pratt asked if she would be caring for 16 children on a regular basis or if they would rotate on different schedules. Ms. Hoopiaina said she would most likely have a lot of part-time clients, so she did not expect to always have 16 children every day. Vice Chair Pratt then asked if she had spoken with her neighbors regarding her intentions to run a daycare. She said she had not spoken with any of them.

Bill Williams, 2040 West 1215 South, stood before the Commission to explain his concerns. He owned the chain-link fence between their properties. When the previous owner ran a daycare, the children removed the privacy slats, for which he paid over \$200 and installed himself to be accommodating and pre-vent issues with his dogs, and used them as play swords. They kicked the fence as well as balls into it, which damaged the fence by creating holes that he had to repair and which agitated his dogs that resulted in a citation by Davis County Animal Control for barking. Another adjacent lot had four small dogs that caused problems by barking at children who were walking to school or in the back yard of the subject property, and another neighbor, who could not distinguish between his and the other neighbor's dogs, would often report him to Animal Control for these disturbances. Since the children were often left unsupervised, they would scream at his dogs, put toys as well as their hands and fingers through the fence, throw their balls into his yard and then climb the fence to retrieve them after chasing his dogs around his own back yard. His dogs became sick several times after chewing toys the children pushed through the fence, costing him hundreds of dollars in veterinarian bills. He received threats of liability for injuries to children who tried to pet his dogs through the fence and then cried if the dogs licked them or ran away with the toys. He did not believe a 7-foot, solid privacy fence would alleviate the problems created by a daycare and did not consider this single-family home to be equipped with sufficient plumbing facilities or space for 16 children. He referred to the Ordinance regarding the number of dogs allowed and pointed out that the applicant had four. Ms. Hoopiaina claimed that one of the dogs was just visiting and that her neighbor had four as well. Mr. Williams concluded by saying that neither of his neighbors had kennel permits for four dogs so, if she could not obey the laws as they currently existed, he did not believe it appropriate to issue her a Conditional Use Permit. He predicted an impact to his property values and cited safety concerns with the traffic on 2000 West.

Commissioner Jensen pointed out that City Ordinance prohibited homeowners from having more than two dogs or more than three with an approved kennel permit.

Chairman Day asked her to respond to the neighbor's concerns, to which she said that her daycare would involve a lot of structure. She intended to keep them in the front portion of her home for the most part and only outside for short periods of time due to the heat. Chairman Day asked about the dogs. She said she only owned two and that her grandmother, who lived with an Aunt who needed a break as caregiver, was visiting and brought a dog. She was not sure how long her grandmother would stay, but she and the dog would eventually return to Coleville.

When commissioners began questioning her about the nail salon, staff reminded them that the applicant only needed approval for a major conditional use permit for the daycare. Vice Chair Pratt had concerns with two businesses in a home and even with 16 children. Other daycares rarely exceeded 8 children and, when they did, used their basements. She said she was willing to use hers, if needed, by having the assistant care for some of them downstairs whenever she had more than 8. Commissioner Schenk asked about the age of children in her daycare. She said she did not plan to have any over the age of 11 and that, if she only had 8, she could not have more than two under the age of 2.

Vice Chair Pratt asked if she had a playground in her back yard. She said she had a swing set that the State inspector approved. Chairman Day asked what type of fence she planned to install for privacy or if she would just add privacy slats. Ms. Hoopiaina admitted she could not afford a vinyl fence.

Commissioner McCuiston expressed concern with the limited space for that many children. He calculated it to just 6½ feet by 6½ feet per child and asked if there were any guidelines regulating minimum space requirements for children's services. Planner Andersen referred him to the City's only reference that daycares could use a larger percentage of a home, under conditions recommended by Commission, upon a determination that it would be clearly accessory and subordinate to

the principal use for dwelling purposes, would not adversely affect the residential nature and aesthetic quality of the neighborhood, and the owner relocated any off-street parking, displaced by the daycare, elsewhere on the lot or parcel.

Chairman Day asked how she would protect the children from her nail-salon equipment. She said she stored them on the top shelf of a closet in her room upstairs, to which the children would not have access.

Commissioner Bodrero asked if the requirement for a privacy fence meant she had to install a new fence, just repair the neighbor's fence, or work out something with the neighbor. Planner Andersen preferred a new fence so that any damage done to it by the children would not impact the neighbor's property.

Vice Chair Pratt understood that the City could not dictate the type of fence needed but expressed concern for wood, due to possible splinters, the required upkeep, and the fact they were climbable whereas children could not climb over a vinyl fence. He did not believe they could deny this application if she complied with the Ordinance but recommended a condition of any motion to approve that the fence be vinyl and 6-feet high, because vinyl fencing was often several inches shorter even though manufacturers sold it as 6 feet. He considered vinyl a reasonable condition based on the neighbor's valid concerns. Chairman Day disagreed, preferring not to specify vinyl and citing the cost as an undue burden. Commissioner Schenk also stated that the Commission should not deny her a wood fence because of a potential for splinters. Vice Chair Pratt conceded but stated that any wood fence should not be climbable and that she should somehow prevent the children from sticking their hands through the chain links. He then decided that, if commissioners were unwilling to acquiesce to a vinyl fence, he preferred tabling this item for further discussion.

GARY PRATT MOVED TO TABLE THIS ITEM FOR FURTHER DISCUSSION ON TYPE OF FENCING TO REQUIRE FOR APPROVAL OF THIS CONDITIONAL USE PERMIT.

Chairman Day asked the applicant to come forward once again and address the issue of fencing before he called for a second to the motion. Ms. Hoopiaina questioned the requirement for a 6-foot fence, since the State only required 4 feet. She understood their concerns but reminded them she was not the previous daycare provider and would keep the children under control and out of the neighbor's yard. She asked for temporary approval, because of her situation as a single mother with no financial means to install an expensive fence, on the condition that they could require a different fence if there were problems.

Commissioner Schenk asked why staff recommended a 6-foot fence and if it was a requirement of the Ordinance. Vice Chair Pratt explained that it was because the current 4-foot fence was not adequate, since children were climbing into the neighbor's yard. Commissioner Bodrero asked if the 6-foot fence was a buffering requirement. Planner Andersen said that staff chose 6 feet, because that was the tallest allowed without a building permit. Ms. Hoopiaina pointed out that she would not allow her own or the daycare children to climb the fence, since they could get injured and would be trespassing onto someone's property.

Chairman Day then called for a second to the motion, which failed due to a lack of a second.

Commissioner Bodrero explained the purpose of conditional use permits so that if the neighbor had similar problems with this daycare, the City could consider revocation if the applicant did not comply with all conditions imposed for approval.

TYLER BODRERO MADE A MOTION TO GRANT A CONDITIONAL USE PERMIT FOR A HOME OCCUPATION, LOCATED AT 1208 SOUTH 2000 WEST, SPECIFIC TO DAYCARE FOR UP TO 16 CHILDREN, SUBJECT TO ALL APPLICABLE REQUIREMENTS OF THE CITY'S MUNICIPAL ORDINANCES AND THE CONDITION THAT THE APPLICANT INSTALL A 6-FOOT PRIVACY FENCE AROUND THE ENTIRE BACK YARD, IN ORDER TO PROTECT THE CHILDREN FROM NEIGHBORING ANIMALS, AND ACQUIRE A CERTIFICATE OF OCCUPANCY FOR THE BASEMENT PRIOR TO APPROVAL OF A BUSINESS LICENSE.

The motion failed due to a lack of a second.

Vice Chair Pratt said he might support this request if the applicant assured them of how she would provide a fence, but there was not enough information for him to comfortably vote in favor of a use that did not protect the children and neighbors with a decent fence. Commissioner Jensen agreed, stating that he preferred resolving the fence issue to the neighbor's satisfaction or through some type of compromise due to the large dogs in the adjacent yard and liabilities the neighbor faced with children climbing over the fence.

Chairman Day asked again for a motion, admonishing commissioners that the applicant needed a home business, and the City needed to accommodate her. By delaying, the Commission would be exacerbating her situation. He directed commissioners to give her significant feedback if they tabled her request so that she could resolve their concerns before coming back.

Vice Chair Pratt reiterated his two issues--two businesses and the safety of the children as it related to the fence. He asked that the applicant clearly address the type of fence she would install and that it be 6 feet. If she chose something other than vinyl, he asked for evidence of the cost difference.

Commissioner McCuiston referred to the Ordinance, stating that he could find nothing that gave them authority to dictate type of fencing or to require elevations. It simply called for the back yard to be fully enclosed with a secure fence. Commissioner Hellewell agreed, saying the Ordinance did not require buffers between R-3 and R-3 zones.

Commissioner Jensen pointed out that the neighbor provided evidence that the 4-foot chain-link was not a secure fence based on a previous daycare. Although the City should not punish this applicant for the actions of a previous daycare owner, the current fence was not a secure barrier. He also had concerns with the nail salon and recommended submission of her hours of operation so they could ensure the two uses did not overlap. Commissioner Hellewell reminded him that the nail salon was a minor conditional use, which was not in their purview unless the Land Use Authority denied it and the applicant appealed. Because the Ordinance did not require buffering, the Commission's only guidelines were under major conditional uses for daycares, which required a secure fence. He believed the applicant met all the requirements, even though there were issues she needed to work out with her neighbor, such as the privacy slats. He then advised the neighbor that, if he had a complaint, he could bring that before the Commission for possible revocation of this Permit if he had sufficient evidence the use was causing damage to his property. Mr. Williams pointed out that the applicant would not have a secure fence if he

decided to remove his back fence. Chairman Day agreed and said the Commission could then revoke her Permit. Commissioner Hellewell also agreed, because she would not meet the requirement of having a fenced yard and would have to install her own.

Chairman Day expressed the need to approve the application if it met the Ordinance. Commissioner Schenk concurred but forewarned the applicant that the Commission would revoke the Permit immediately if something were to happen. They would not give her time to come into compliance, knowing the gravity of the situation with the fence and chemicals for her nail salon. Children managed to get into chemicals or jump over a fence to get close to a dog, which opened up the applicant to a lot more liabilities than losing a conditional use permit. Ms. Hoopiaina pointed out that people could complain to the State as well. She was not aware of any problems caused by her own children who played in the back yard, her house was spotless, and her family tried to be very respectful. She was confident she could run the daycare just the same.

BRAXTON SCHENK MOVED TO GRANT A CONDITIONAL USE PERMIT FOR A HOME OCCUPATION, LOCATED AT 1208 SOUTH 2000 WEST, SPECIFIC TO DAYCARE FOR UP TO 16 CHILDREN, SUBJECT TO ALL APPLICABLE REQUIREMENTS OF THE CITY'S MUNICIPAL ORDINANCES AND THE CONDITION THAT THE APPLICANT INSTALL A SECURE FENCE IN ORDER TO PROTECT THE CHILDREN FROM NEIGHBORING ANIMALS AND RECEIVE A CERTIFICATE OF OCCUPANCY FOR THE BASEMENT PRIOR TO APPROVAL OF THE BUSINESS LICENSE. T.J. JENSEN SECONDED THE MOTION.

KENNETH AMENDED THE MOTION TO CHANGE THE CONDITION FROM REQUIRING THE APPLICANT TO "INSTALL A SECURE FENCE" TO "HAVE A SECURE FENCE." T.J. JENSEN SECONDED THE AMENDMENT; ALL VOTED IN FAVOR.

7. Public Hearing: Second proposed amendment to the Trailside Park Subdivision Phase 2

Director Eggett explained that staff worked closely with Brad Frost, the new land owner, on Trailside Park Phase 2. He complied with all staff and engineering reviews in addition to the current comments listed in their packets. Mr. Frost submitted a landscaping-improvement amendment and asked that he discuss it with commissioners and explain how he would apply it to this project.

Brad Frost, Owner of Ovation Homes, provided a brief history of his experience building active-adult communities. He was under contract with the current developers to purchase this Subdivision and planned to close next week. He met with every homeowner in an HOA meeting and went over their proposed plans. All the homeowners were very excited. The only change to the plat would be the building envelopes to accommodate different floor plans.

Chairman Day asked if they would be changing the number of units, to which Mr. Frost said no.

Vice Chair Pratt asked if staff considered the turnaround as adequate for fire trucks. Director Eggett explained that this was an subdivision previously approved by the City, and the applicant was only requesting an amendment to specific lots. Therefore, commissioners could not necessarily change the design and functionality of the development.

Chairman Day opened up the meeting to public hearing.

John Lewis, 2330 South 950 West, came forward to ask whether this was a mobile-home park, since he was not familiar with it. Chairman Day advised him that it was a cluster development of single-family homes and that the request was to modify the sizes of the building envelopes.

No one else came forward, so Chairman Day closed the public hearing.

Commissioner McCuiston questioned the location of Pad 20, but Director Eggett assured him that staff reviewed those setbacks and verified that it complied with the Ordinance.

BRAXTON SCHENK MADE A MOTION TO APPROVE THE AMENDED TRAILSIDE PARK SUBDIVISION PLAT FOR PHASE 2 IN ORDER TO AMEND THE ORIGINALLY-APPROVED LANDSCAPING PLAN AND LOTS 10,14 17, 18, 20, AND 23-31, LOCATED AT APPROXIMATELY 1850 WEST 2900 SOUTH, SUBJECT TO THE PLANNING STAFF'S RECOMMENDATIONS, DATED FEBRUARY 17, 2012, AND THE CITY ENGINEER'S REVIEW, DATED FEBRUARY 16, 2012. THE MOTION WAS SECONDED BY T.J. JENSEN; ALL VOTED IN FAVOR.

8. Proposed Amendments to Land Use Ordinance Specific to Animal Standards

Planner Andersen reviewed just the newest changes as requested by commissioners or as a result of questions raised. Commissioner Rackham suggested adding a square footage conversion table as well as an example. Staff added language regarding the keeping of hens to exempt them from the point system. The next section addressed whether the Ordinance should exempt service animals, e.g. guide, signal, and comfort animals, from the limit of household pets. This question came from a resident, Sterling and Pamela Recksiek, who had six psychological-service animals, approved by the Federal Department of Justice, and were in attendance that evening. The current Ordinance only allowed two dogs, with service animals not an exemption. Attorney Carlson explained that, "After reviewing ADA requirements in relation to animals, the most frequently addressed issue is denying a person access to public accommodation because they have an animal with them. Restrictions on the number of animals has not given rise to an ADA claim. A resident has every right to a service animal under the ADA. Similarly, the City has every right to reasonably regulate the number of animals and the requirements for going beyond that number. Theoretically, the number restriction could come into conflict with ADA if Syracuse did not allow any animals, but that is not the case. A resident with six comfort animals can reasonably be regulated in the same manner as someone with six pets." This legal opinion coincided with a statement from Clint Thacker, Director of Davis County Animal Care & Control: "Regarding your service dog issue; we have contacted the ADA on the same issue. They told us that there is currently no statute stating you can have more than the legal limit in your community. We have chosen to go with that. So if the limit is 2 in Syracuse, then the service animal must be one of the 2. No exceptions."

Sterling Recksiek, 3727 West 800 South, explained how the dogs performed certain tasks for his wife, Pamela, due to her medical conditions. The dog his wife was currently holding assisted her during the onset of panic attacks by sensing her increased heart rate and jumping onto her chest to let her know she needed to calm down before it got worse. Another dog

was trained to remind her to take certain medications at certain times. These medicines often depressed her appetite, so she had another dog dedicated to reminding her to eat so that she did not develop further health issues. Another dog was trained to get her to bed at a certain time, while all of them provided her comfort to help her deal with the fact that she could not have children. Each dog's training was dedicated to a certain task, and the dogs were all small and regarded as her children. Mrs. Recksiek displayed the dogs' pictures and licenses. Mrs. Recksiek added that they have proven that their property is clean, because they clean up after the dogs every day, and Mr. Recksiek emphasized the fact that they did have a fully-enclosed fenced yard. All the dogs went through training and received their certifications, national-service animal registrations, tags, and everything they needed as far as the government was concerned.

Commissioner Jensen asked if they had documentation of her medical conditions and the training of the dogs for those specific tasks. Mr. Recksiek said they did and that the veterinarian signing off for the service animals' documentations. Commissioner Jensen recommended language that allowed medical-exception so that not just anyone could have six dogs.

Commissioner Hellewell suggested adding an exception, under household pets, Subsection 3, for medically-necessary animals. Attorney Carlson said it was certainly an option but there were problems with creating specific language about a medical exception. The City could end up requiring private citizens to provide medical information that could then become a public record. Listing it as conditional could avoid that. He then pointed out that he was not prepared to give a legal opinion on the differences between comfort and service dogs, since there had never been an ADA claim for service animals in a municipal context. He was given the factual basis that these dogs were only comfort animals, but the ADA considered comfort and service animals as completely different. Service animals were trained to perform specific tasks, which appeared to be the types of dogs the Recksieks owned.

Commissioner Hellewell suggested that this exception be a minor conditional use, and Commissioner Schenk agreed. Chairman Day directed staff to add that as a minor conditional use.

Planner Andersen then referenced the next question of harvesting farm animals. From both Animal Control Director Thacker and Attorney Carlson, it all boiled down to intent as to whether the person intended to harm or harvest the animal. For example, Mr. Thacker stated that "Killing a chicken for 'kicks and giggles' and killing...for consumption are totally different issues...It would be impossible to include everything in our ordinance that is not against the law, otherwise we would constantly be updating it. It is all about the intent of the individual doing the act. Did they want to cause harm and terror and ultimately death or did they want to kill the animal to eat it? If the person was going to eat the chicken but first caused it terror and harm, that would be animal cruelty, etc." Attorney Carlson agreed with this interpretation. A follow-up question was whether the County's ordinance regulated where citizens could harvest their animals. Director Thacker responded by stating that, "If the harvesting is for personal use, then there really is no regulation. If it is for commercial use, then the FDA must inspect the area, and the individual must have a permit to do so." Staff recommended language that said, "The harvesting of animals shall be conducted within the rear yard of the lot, in an area not visible from the street or neighboring properties."

Commissioner Schenk agreed with the proposed language and did not believe it was too restrictive. Commissioner Jensen pointed out that A-1 properties did not usually have rear yards and suggested changing it to just residential land.

Commissioner Schenk then asked how anyone could prove intent. Director Eggett explained that it would require an investigation to look at the burden of evidence. If there was none, there would not be a case. Commissioner Bodrero stated that this information addressed the question of whether a person would get in trouble for harvesting their animals, which would be no.

Karianne Lisonbee, 4334 West 1700 South, stated that, when she brought this issue forward at their last meeting, she cited the original animal-cruelty bill the State legislature passed and also the feral amend-ment that Rep. Oda attempted to pass at the subsequent legislative session. She was still concerned about the City leaving intent as a decision of a County or City employee. She believed it would be clearer and would protect the citizens and their rights more if the City Ordinance allowed the harvesting of animals by those who kept farm animals, because the language in the County ordinance was very clear that anything that caused death to an animal or fowl was animal cruelty. She considered that language too ambiguous and left little protection for citizens. For instance, the reason Rep. Oda proposed the feral amendment was because of an incident in Weber County where a feral cat attacked a gentleman who shook the cat off his arm. The cat subsequently died, and he was charged with animal cruelty for protecting himself. So if her husband harvested some of their chickens that were not laying anymore, he would be in direct violation with the Davis County Animal Ordinance unless the City had language that protected such actions.

Chairman Day suggested it say that the harvesting of animals was allowed and shall be conducted in the rear yard, etc. Commissioner Jensen recommended the beginning of that sentence to say "within residential zones" so it did not affect agricultural operations.

Attorney Carlson explained that, if the Council adopted this language, he would be given two options as the criminal prosecutor for Syracuse. He could use the Davis County animal cruelty ordinance or the State code to prosecute someone. The State code did exempt animal cruelty for livestock if the conduct towards the creature was in accordance with animal husbandry or customary farming practices, which would resolve all the concerns without addressing rear yards. His preference was to use State code. However, even if the City adopted the County's ordinance as written, he would still probably continue using the State code on this specific issue, that that did not mean that he had to or any future prosecutor had to use it.

Commissioner Hellewell asked whether State code addressed residents raising and harvesting turkeys. Attorney Carlson said it did and, in fact, defined turkeys as livestock. The burden of proof would be whether the actions followed animal husbandry practices or standard farming practices. If it did, then it was not animal cruelty. Commissioner Jensen suggested citing the State statute into the City's Ordinance. Attorney Carlson said it would be Section 76-9-301(2).

Vice Chair Pratt was comfortable with referencing State code and adding the last sentence, which made sense in a residential area so that people were not harvesting animals in their driveway. Commissioner Hellewell recommended just referencing State code, rather than the Section, because it could change.

Vice Chair Pratt did not agree with exception 2 in the point system, because it would allow larger properties to have more animals—as much as 12 hens. Commissioners discussed this at length, with Commissioner Schenk pointing out that farm-animal keeping was a permitted use so the City should lean towards allowing more animals.

Commissioner Jensen referenced Section (E), regarding household pets, and pointed out that there were some residents who had more than two cats, birds, etc. Since the County was allowing up to three, he suggested a compromise by amending the City's Ordinance to allow more than two if they were all spayed and neutered.

Planner Andersen referred to the next Section (D), regarding kennel regulations, which proposed an allowance of up to four dogs with a permit. Commissioner Schenk did not see a need for limiting the number, because there would be circumstances the City did not understand and because the conditional use process would oversee any issues. Commissioner Hellewell pointed out that the State changed the way cities could apply conditional uses. If it was not in the Ordinance, they could not limit the number of dogs. If a lot qualified for a kennel permit, and the homeowner wanted seven dogs, the City would have to grant it unless the Ordinance specified a limit. Vice Chair Pratt considered four dogs as reasonable when considering that most pet owners paired them up for breeding. He recommended approving the three changes, deleting Subsection (E)2, and adding the number of dogs in the kennel regulations with a reference to State code. Commissioner Hellewell preferred keeping Subsection (E)2. Commissioner Bodrero agreed.

GARY PRATT MOVED TO RECOMMEND APPROVAL OF THE PROPOSED AMENDMENTS TO THE LAND USE ORDINANCE SPECIFIC TO ANIMAL REGULATIONS, INCLUDING LANGUAGE THAT "THE HARVESTING OF ANIMALS SHALL BE ALLOWED BY THOSE WHO KEEP FARM ANIMALS BUT SHALL BE WITHIN THE REAR YARD OF RESIDENTIAL LOTS, IN AN AREA NOT VISIBLE FROM THE STREET OR NEIGHBORING PROPERTIES" AND A REFERENCE TO STATE CODE AS WELL AS THE ELIMINATION OF SECTION 10-6-040(E)2, AND TO FORWARD IT TO CITY COUNCIL.

Director Eggett asked if there would be an exception for service animals.

GARY PRATT AMENDED HIS MOTION TO ADD A MINOR CONDITIONAL USE FOR ADA REGISTERED SERVICE ANIMALS WITH APPLICABLE DOCUMENTATION AND A MAJOR CONDITIONAL USE FOR KENNEL PERMITS FOR UP TO FOUR DOGS.

The motion failed due to a lack of a second.

TYLER BODRERO MADE A MOTION TO RECOMMEND APPROVAL OF THE PROPOSED AMENDMENTS TO THE LAND USE ORDINANCE SPECIFIC TO ANIMAL REGULATIONS WITH A CHANGE TO SECTION 10-6-040(C)2(a) TO ADD A CONVERSION TABLE, SECTION 10-6-040(C)2(c) TO ADD EXCEPTION 2, SECTION 10-6-040(E)2 TO ADD AN EXCEPTION FOR SERVICE ANIMALS AS A MINOR CONDITIONAL USE WITH NO LIMIT ON THE NUMBER, AND SECTION 10-6-040(D) TO MAKE KENNELS A MAJOR CONDITIONAL USE WITH A LIMIT OF FOUR DOGS, AND FORWARD IT TO CITY COUNCIL. KENNETH HELLEWELL SECONDED THE MOTION;

T.J. JENSEN MOVED TO AMEND THE MOTION TO AMEND SECTION 10-6-040(E) TO "NO MORE THAN TWO OF THE SAME SPECIES SHALL BE KEPT, EXCLUDING DEPENDENT YOUNG, UNLESS ALL THE ANIMALS ARE SPAYED AND NEUTERED, EXCLUDING DOGS, TO ALLOW UP TO FOUR HOUSEHOLD PETS."

Commissioner McCuiston asked if the motion as proposed included language to require the harvesting of animals to be within rear yards of residential lots, in areas not visible from the street or neighboring properties, because he had a neighbor who harvested cattle in an R-1 Zone who would not be able to comply with that requirement. Commissioner Bodrero advised him that his motion did not include that language. He believed the current State code applied whether the Ordinance referenced it or not.

Chairman Day called for a second to the amended motion, which failed due to a lack of a second.

ALL VOTED IN FAVOR, EXCEPT GARY PRATT WHO VOTED AGAINST.

9. Proposed Amendments to Land Use Ordinance Specific to Conditional Uses

After a brief review of these amendments, Commissioner Hellewell recommended approval.

GARY PRATT MADE A MOTION TO RECOMMENDED APPROVAL OF THE PROPOSED AMENDMENTS TO THE LAND USE ORDINANCE SPECIFIC TO CONDITIONAL USES, AND FORWARD IT TO CITY COUNCIL. T.J. JENSEN SECONDED THE MOTION; ALL VOTED IN FAVOR.

10. Adjournment

T.J. JENSEN MOVED TO ADJOURN AT 8:05 P.M. AND TO REMAIN IN THE CHAMBERS FOR THE WORK SESSION; ALL VOTED IN FAVOR.

Gregory Day
Planning Commission Chair