

**City of Talent**  
**Planning Commission Meeting Minutes**  
Talent Community Center  
206 East Main St. Talent, Oregon  
October 24, 2013

**I. Call to Order/Roll Call 6:30 P.M.**

**Members Present:**

Chair Wise  
Commissioner Abshire  
Heesacker  
Commissioner McDonald-Gibson  
Commissioner Reid

**Members Absent:**

None

Commissioner

**Also Present:**

Zac Moody, Community Development Director  
Dave Maynard, Community Development Assistant  
Betsy Manuel, Minute Taker  
Don Steyskal, Council Liaison

**II. Brief Announcements**

There were none.

**III. Consideration of Minutes for September 26, 2013**

Reid requested that page 4 paragraph 4 of the minutes be changed from "jet ski" to "boat", and a Typo on page 6 be corrected so that the motion reads "Commissioner Reid seconded and the Motion carried unanimously." McDonald Gibson also noted that page 4 paragraph 8 stated that the phrase "not to exceed 10' in length" should be changed to "20' in length".

*Commissioner Reid moved to approve the minutes dated 09-26-13 as amended. Commissioner Heesaaker seconded and the motion carried.*

**IV. Public Comments on Non-Agenda Items**

There were none.

**Action Items:**

- V. Public Hearing (quasi-judicial) (CUP 2010-001) A Conditional Use Permit request to establish a pre-school on the property located at 417 James Circle (381W26BD) The request is subject to TMC 8-3L.244. Applicant Ariel Pavlak.**

Chair Wise read the opening statement. Members Wise and Abshire visited the site but there was no ex-parte conversation by any of the Commissioners.

**Staff Report:**

Director Moody stated that the requested action was consideration of a Conditional Use Permit

to allow a preschool to be established in a residential zoning district. He stated that the subdivision where the property was located, was surrounded by RS-7 zoning. He noted that the 120 day limit for consideration would expire by January 28, 2014.

Director Moody stated that the requested preschool would operate Monday through Friday, from 8:30 AM to 12:30 PM. He noted that the preschool applicant would be living offsite, while the property owner would be residing in the home. Preschool operations would be housed in a portion of the dwelling, garage and backyard.

Moody stated that there were two requests for public comments received: one for and one against. In addition, two letters expressing concerns given the special needs of a resident nearby were submitted after the staff report was prepared.

Moody noted that the proposed use met the approval criteria of 8-3L.244. Findings indicate that the impact on the neighborhood would be minimal as long as the number of students was limited to no more than twelve. Moody recommended approval of the application with the condition that the enrollment of students at the preschool not exceed twelve.

#### **PUBLIC HEARING OPENED.**

Applicant **Ariel Pavlak** was called forward.

Ms. Pavlak stated that the number of students would be no more than twelve, noting that two living in the residence were included in that number, as well as one of her own. She stated that the neighbors were supportive of the venture, and the hours of operation would be limited.

Property owner, **Kari Miller** of 417 James Circle was called forward.

Wise asked whether the home was currently tenant-occupied, and whether the number of vehicles in the driveway would remain. Ms. Miller replied that she would be taking possession of the property from the tenants as of November 1, 2013. She stated that the property would be cleared, cleaned and organized and she would be the only occupant along with her two small boys. She emphasized that the property would be improved as much as possible.

Commissioner Abshire asked about signage. Pavlak responded that there was no sign planned, as participation was limited and advertising that would be restricted to word of mouth. In response to a question by Wise, Pavlak stated the State does not require a license to operate a preschool, but that she was a licensed teacher authorized to teach grades pre-school through eighth grade. She noted that it was a State requirement that preschool be limited to no more than four hours per day.

**Suzy Stotler-de Ruyter** of 319 ½ S, First Street, Talent was called forward.

**Stotler-de Ruyter** spoke against the proposed use. She submitted two letters for the record. She stated that she was concerned about livability, noting the proximity of the property to hers, and the potential for excessive noise. She stated that for health reasons, quiet rest was essential.

In response to a question by Commissioner Reid, Ms. Stotler-de Ruyter noted that noises such as a barking dog could be heard while inside her residence. She described the way sound carries from the house on James Circle to her residence on First Street, noting that backyard conversations at the proposed preschool site could be heard.

Suzy Stotler-de Ruyter asked whether the property owners had proposed any mitigating solutions. She asked whether the students would be limited to pre-school age and what the time constraints were for picking up students from the school. She suggested that a possible solution for mitigation of the noise might be to conduct all outside activities in the front yard.

Applicant Pavlak noted that while she was licensed to teach older students the preschool would be limited to ages three through five. She addressed other concerns, noting that there would be two recesses only of approximately 10 minutes each time. She stated that the activities would be supervised, and play would be somewhat restrained. She commented that during the winter, activities would most likely be indoors.

Pavlak noted that the property owner had considered fencing, but understood that there was a permitting process prior to installation. In answer to a query from Stotler-de Ruyter, Pavlak stated that she loved teaching, and research indicated a need in the community for additional preschool services. She noted that she anticipated continuing the program for two to three years, or at least until her children and those of the property owner advanced to kindergarten.

**PUBLIC HEARING CLOSED.**

McDonald-Gibson stated that he found it difficult to determine whether there was criteria in the codes that would assist with determining whether noise from the pre-school would be excessive. He compared the noise of a barking dog, to occasional playtime for children, noting that noise generated by children most likely would be modulated.

Director Moody, stated that he reviewed other applications for residential daycare to identify the precedents set in the past. He highlighted the most recent example, approved in 2006, located on the corner of Creel and Talent Avenue. He pointed out differences in the application but stressed that the location for that application was also surrounded by residential properties, and that no special conditions had been imposed.

Moody reviewed the findings in the staff report that noted minimal impact for traffic and noise, given the constraints of limited enrollment. He stated that most home occupations were a permitted use in the residential zones, and he talked about types of home businesses that were known to generate some noise, yet permitted to function without conditions. He acknowledged that the criteria for noise generation was subjective, and usually managed on a complaint basis.

McDonald --Gibson stated that in his opinion, there was a difference between occasional and continuous noise. He noted that if noise becomes too troublesome, then any complaints could be reviewed. Moody noted that conditional use permits could be revoked, should the need arise.

In response to a question by Heesaker, Moody noted that construction noise, was permitted between the hours of 7:00 AM and 9:00 PM.

Heesaker asked about the possibility of measuring decibel units if a complaint was generated. Moody cautioned that such a condition would be difficult to enforce, and an appeal could be problematic given the lack of criteria in the code. He stated that while crafting such a condition was within the prerogative of the Planning Commission, he would not recommend doing so.

Heesaker asked about recourse if the application was approved, and proved to be disrupting to the neighbors. Moody stated that a specific criteria must be violated prior to revoking a condition use permit. He noted that "liveability" per say, would not be specific enough. Moody further stated that there was an elementary school less than a block away from the proposed preschool site that was a permitted use. Moody warned against targeting this property owner for noise issues when the neighboring properties, including the nearby elementary school were not subject to the same requirements.

Heesaker clarified with Stotler-de Ruyter the necessity for quiet during all hours of the day. He asked about signage for the preschool and it was noted that home occupations were permitted signage as long as it was no larger than 2 square feet. Moody stated that such a sign would not impact outward visibility, but would require approval by City staff.

Heesaker noted the conditions recommended by staff, asking about an administrative review versus a new conditional use permit should circumstances change. Moody replied that he attempted to build in some flexibility for the provider, of that business could continue if a change was deemed to be insignificant to the conditional use.

Applicant Pavlak noted that there would never be more than 12 students on the premises at one time. Moody suggested amending condition #2 to restrict the number of children to 12 on site at any given time.

Abshire noted a concern about noise. Reid suggested that the neighbors work together toward a solution that would work for both parties. He noted that if it was not possible to do so, then the matter could then be referred back to the Planning Commission for further direction.

Wise asked whether a conditional use permit could be renewed. Moody replied that there was no mechanism to enforce such a provision, nor were there criteria in the code that called for renewals of conditional use permits.

There followed discussion about the transfer of a conditional use permit when a property sells. Moody noted while there was nothing in the code to prohibit transfer of the permit when the property is sold, the conditions related to the use were very specific, making it difficult to utilize unless the buyers of the property replicate the use exactly.

*Heesaker moved to approve the conditional use permit with the conditions listed in the Director's recommendation, with an additional condition that the hours of occupation be limited to 8:00 AM to 1:00 PM. The motion failed for lack of a second.*

Moody amended condition #2 to read "the preschool shall not exceed twelve at any given time without approval by the Community Development Director or administrative review."

Steyskal addressed the noise issue, noting difficulty in developing criteria that would be viable. He reminded those present that livability goes both ways (for those seeking a quiet environment and those seeking a small scale preschool). He stated that children in any residential property could be noisy in their play and it would be difficult to legislate the proper amount of noise permitted.

Heesaker stated that in his opinion, it would be difficult to deny the application because of subjectivity when determining the amount of noise permissible. He stated that the conditions limiting the number of children on site, and the hours of operation should be sufficient. He highlighted a remedy that the conditional use permit could be revoked if there was a public outcry.

Wise asked the applicant if she would be willing to utilize the front yard for outside play, fencing it for safety. The applicant indicated she would be open to the compromise. Stotler-de Ruyter agreed.

*Wise noted the original motion by Heesaker and amended the original motion to include a provision that recesses be conducted in the front yard. The amendment was seconded by Abshire and the motion was carried.*

The property owner interjected that the back yard would be used to garden and would upon occasion include participation by the children. It was understood after further discussion that recesses (construed as playtime) would be limited to the front yard, but that structured instruction on gardening would be acceptable in the back.

*Heesaker moved to approve the conditional use permit with the conditions listed in the Director's recommendation as amended, and adding a condition limiting the hours of occupation to 8:00AM to 1:00 PM. Wise seconded with a further amendment to limit preschool recesses to the front yard.*

Moody suggested removing condition #1, as listed on the staff report noting that the conditions of approval have been modified.

*Heesaker moved to amend the motion to include removal of condition #1 and approve the conditional use permit with the following conditions: 1. That the hours of occupation be limited to 8:00 AM to 1:00 PM; 2. That attendance would be limited to no more than 12 children on site at any given time; 3. That preschool recesses would be limited to the front yard. Reid seconded and the motion carried.*

#### Other Items:

##### **VI. Commissioner Candidate Interview**

Moody noted that Ms. Hazel was not able to attend the meeting. Heesaker stated that he could recommend Ms. Hazel, as she had been active in the community and on the Parks Commission. He spoke in favor of making the appointment without delay.

Moody noted that if approved, she would be an alternate Commissioner. He stated that if the Commission approved a recommendation, then Hazel could be ratified at the next Council meeting.

There followed testimonials from Councilor Steyskal and Commissioner Reid.

*Heeksaker moved to recommend Felicia Hazel to the City Council for an alternate position as a Commissioner of the Planning Commission. Reid seconded and the motion carried.*

**VII. Study Session: Discussion on current chicken ordinance and zoning districts where they are allowed.**

Moody introduced the topic, noting that the Council had halted enforcement of the existing ordinance because of the lack of clarity in the codes. He presented some ordinances from other jurisdictions for review, noting that most cities address the issue (permitting chickens) in the municipal codes rather than in the land development ordinance.

Steyskal noted that the ordinance in place was not necessarily wrong – rather, it did not address zoning as it was on the ground rather than as mapped. He pointed out that there was an area in Talent that was zoned for Manufactured Homes, that in reality was mostly settled with stick-built homes in a medium density zone.

He suggested that the ordinance be modified to permit chickens if the residence was not in a mobile home park or an apartment complex. Moody recommended that approval should be predicated on lot size rather than zone. He gave examples of lot coverages that would facilitate a chicken coop with room for chickens and those that would not.

Steyskal suggested that all references to chickens be removed from the land development ordinance, and a new ordinance be created rather than attempting to rule by exceptions.

There followed a discussion about the best way to proceed. Moody asked for “skeletal” directions to begin to structure a new ordinance.

**Ariella St. Clair** of 314 Meadow Slope Dr. Talent was called forward.

She stated that she wanted to continue to house chickens on her property, noting that her lot was 6000 square feet. She explained that the medium density housing across the street allows chickens on the property but because of the MH zoning on her side of the street, she was prohibited from keeping her 5 chickens.

There followed discussion of the optimum number of chickens to have per lot. St. Clair stated that other jurisdictions allow 1 chicken for every 1000 square feet of lot. The Ashland code was an example that would allow 1 chicken in a 5000 square foot lot with an additional chicken for each 1000 square feet above that. Moody noted that Talent currently allowed one chicken per 1000 square feet independent of lot coverage requirements.

Reid noted an informal poll in his neighborhood was mixed on the subject of permitting chickens with half for chickens in the neighborhood and half non-committal. McDonald-Gibson stated that he believed the permitted use should be private and not intended for business purposes. He noted that criteria should be established as far as the maximum number of chickens regardless of lot size.

Moody offered to poll the Oregon Planning Network to see what the experience had been in other jurisdictions, and what issues have arisen. Wise suggested that the Gresham Code be the starting point for amending or changing Talent's code. Reid and Steyskal both objected to a provision in the Gresham Code that allowed chickens by permit only.

McDonald-Gibson stated that he would like further discussion regarding other criteria for the health and welfare of the chickens. Ms. St. Clair explained that the matter had come to the attention of Council because there had been an issue with roosters and a noise complaint.

Moody asked for direction regarding criteria based on lot size or the zoning. McDonald-Gibson noted concerns about using lot size because it might become too restrictive. He contrasted the requirements for keeping a dog, (in little amounts of space) versus a larger amount of space for chickens (lot size).

There followed a detailed discussion about lot sizes, density, and setback restrictions. It was noted that the Talent code does not prohibit roosters. It was agreed that other jurisdictions should be polled for issues and the Gresham code should be utilized as a template.

Reid stated that goal was to maximize the pleasures involved (in raising chickens) while minimizing the impact for neighbors. Abshire stated that he was less concerned about the noise that hens would make as he was in finding the right balance between lot size and the amount of land needed to house healthy chickens.

**VII. Commissioners Open Discussion**

There was none.


**VIII. Next Meeting**

Moody stated that he had proposed the next meeting to be held on the 14<sup>th</sup> of November due to the Thanksgiving holiday. He stated that it was apparent that a continuance of the discussion about chickens was not necessary until later in the year, to allow for sufficient staff time to conduct research and prepare a draft ordinance for review. He stated that there were no known land use applications slated for future meetings.

It was also noted that the December holidays would also interfere with a regularly scheduled meeting. No action to postpone the December meeting was taken, but it was understood that the meeting might be cancelled if there was nothing pressing on the docket.

**IX. Adjournment:**

There being no further business to come before the Commission, the meeting was adjourned at 8:55 PM.

Submitted by: 

Date: 1/23/14

Attest: 

1/23/14 