

# AGENDA ITEM # 4

FINAL PC PUBLIC HEARING MINUTES 1/11/18

Planning Commission Minutes

JANUARY 11, 2018

## **STEAMBOAT SPRINGS PLANNING COMMISSION**

### **PUBLIC HEARING MINUTES**

**January 11, 2018**

The regularly scheduled public hearing of the Steamboat Springs Planning Commission was called to order at approximately 5:00p.m. on Thursday, January 11, 2018, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were:

Chair Rich Levy, Martyn Kingston, Vice-Chair Brian Adams and George Eck.

Absent: Buccino, Calihan, Ptach

Staff members present were Staff Planner Toby Stauffer and Principal Planner Rebecca Bessey.

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### **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

None.

### **#1: DP-17-09, Torian Plum Condos. Unit C-A Development Plan**

#### **STAFF PRESENTATION**

Toby Stauffer:

This is a request for a conditional use to allow an office at the pedestrian level in the G2 zone, Torian Plum, Unit CA. An office is a use with criteria in the G2 zone district so long as it's not on the pedestrian level. So because this one is, it requires a conditional use. Those are uses that are generally consistent but may have more impacts.

In 2013, there was a request for conditional use at this property. At that time the director made the interpretation that this unit is on the pedestrian level. Also at that time there was some discussion at Planning Commission and City Council about whether this use could be approved, and if it could be approved with or without a term. It ended up being approved with a five-year term that expires in May, 2018. So they're back to renew that conditional use request. I think we've included the same term.

There's about 29 spaces at the Torian Plum at the pedestrian level: several retail shops, offices and restaurants. We did evaluate this against the Community Plan and the Base Area Plan and find that it can be consistent with several of the goals. We find that it's also consistent with other uses and the rest of the criteria.

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On Monday we had a question about parking. There are two parking spaces required for an office use. This unit comes with two dedicated parking spaces in the parking lot below, so it should meet those standards. We haven't found any other impacts to date.

There was one public comment in your packet. Since then we've received three additional public comments: two that I just handed out to you and one phone call. An owner of a commercial unit was not in favor of this use; he didn't want to send an email but I said I would convey his thoughts to you.

## **APPLICANT PRESENTATION**

Jill Brabec, Attorney, Applicant Representative:

This space has been used for an office for the past five years, and we're looking to continue that use. I think the rationale is essentially the same as it was when we came before you five years ago. Unfortunately, not too much has changed in Ski Time Square over the past five years. We still haven't seen redevelopment. The size and location of this 600 square-foot space is not going to create the critical mass for retail vibrancy in Torian. Most importantly, it hasn't, and it is not proposed to negatively impact either the residential or the commercial units nearby. We believe that having an active use in terms of office is far preferential to having a vacant storefront with a For Rent sign. That's really the reality of it.

We would like to see retail in there, but it isn't likely to happen in the near future. There's a lot of other factors that play into it; one of them is the restrictive covenant in Torian, which precludes a lot of retail sales that would otherwise look to occupy those spaces. So as a result of that and the fact that this space does not have a floor drain – so it's not likely to ever be a restaurant – office makes the most sense. If and when we get to a point that there is retail pressure and the market changes, you're going to see that demand and somebody's going to look to convert it. But I sincerely doubt that that's even a remote chance in the next five years.

I think Toby answered the parking question. We have two parking spaces assigned to the unit that we've confirmed with the potential occupant is sufficient for their needs. So we don't see that there's any parking impact on any other uses in the Torian project.

## **QUESTIONS FROM COMMISSIONERS**

Commissioner Eck:

Toby, I think we talked a little on Monday about the whole conditional use with a time limit because I know we recently approved a conditional use for an office space downtown, and it can be an office forever.

Stauffer: We did approve another conditional use with a timeframe for a different office downtown. The timeframe does allow us to reevaluate the use in a few years; see if there's any change in the base area; if we've got a plan that's maybe dictating new things in that area. So it seems like the base area could be

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an area of change with the potential for a new plan. There's been a lot of discussion about that and some direction from the community and Council to go there. So rather than approving it long term, it gives us an opportunity to reevaluate it in a few years.

Eck: It's either suitable as a conditional use there or it isn't, but I guess you're saying because we're expecting a new Base Area Plan, that might drastically change.

Stauffer: I think so. The office space that was approved downtown is in an area that will probably be included in the Downtown Plan; that's a similar situation here where the conditions might change. The space that was approved without a time limit is probably in an area that is not going to be included in the Downtown Plan, but it might. If the market demand is there for a retail or restaurant space, then it will likely fill up with that.

Commissioner Kingston:

I think I raised both of these during the work session: Why five years not three years, given the prospects of potentially getting a plan coming along in that three-year timeframe? Secondly, we talked a little bit about flat demand in terms of retail, and the applicant spoke well about the additional restraints on particular forms of retail in Torian Plum. Is there vacant retail space? If so, how much is vacant? How long has it been vacant? Have you looked at that?

Stauffer: I don't know the exact details. These applicants might know a little bit more. It did look like there was some vacant space – maybe a few units that I could see when I walked around up there.

Chris Paoli, Applicant Representative:

There's a space right upstairs from this to the right that's been vacant for a number of years. The owner of the space actually operated a thrift store out of there. She was fairly successful, but she was the owner of the space. We've stepped in to help her try and lease it. I think her rents were down to like \$15 per square foot, and there really wasn't anybody interested in taking it. I'd say that space is pretty similar to the one we're talking about right now in that it isn't really in the normal traffic flow, and there isn't really that much traffic. Even if we redevelop the base area and a bunch of stuff happens, it's not going to drive traffic through the Torian Plum stairwell, which I think is important for people to consider. Unless Doug Terry's building is torn down or Torian as an HOA decides to redevelop their vacant lot down there, we're not going to create any real reason to walk through the Torian Lane. If Ski Time Square gets redeveloped, the first thing is going to be the Thunderhead site because I think it's the only place anybody can make any math work. That site is going to just draw all the traffic up from Torian and Slopeside. There is vacancy up there, and it's hard to fill.

Stauffer: For the first part of your question: We considered a three-year and a five-year timeframe. We looked to the five-year timeframe because that was approved before so it seemed like a good number to work with. Also, based on our general direction from Council right now, we'll be working on a Downtown Plan over the next year or two. We may be able to do a Mountain Plan after that, but I think it's more realistic that we would get to that in five years rather than three. Those are both large planning efforts that have a lot of community involvement. If conditions were to change – either economically or

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from a plan standpoint – it seems like a five-year timeframe is maybe more realistic along the lines of what Chris said. We may not need to be talking about this in three years if nothing has necessarily changed. In five years it might have changed. It's just a guess, though, so whatever you guys think would be best.

Commissioner Adams confirmed that there's no limit to how many times they can come forward.

Stauffer: Whereas if we approve this long term, it can be an office forever.

Commissioner Ptach:

Once a conditional use is granted for a space, that is tied to the space not to the occupant.

Stauffer: Correct.

Ptach: So by doing a time limit on this, this allows us to reevaluate if necessary with a different occupant in the space.

Stauffer: Right. It's really just for the use. Any type of office can occupy if this permit is granted.

Ptach: But if we didn't put the five-year term limit on it, in perpetuity somebody could use it as an office.

Stauffer: Right, and that may or may not be the vision of Torian.

Commissioner Buccino:

Chris, is that space up for sale now?

Paoli: It is.

Buccino: It's kind of a small space and a weird location for a retail space. I was doing a lot of work up there this summer and noticed it was vacant. Have you been trying to sell it or lease it with retail in mind or were you going with anyone that wants that space? Until now, you were losing your office status; you had to come back in and ask for it, correct?

Paoli: Our goal was to find anybody in the marketplace that would be interested in using that space for something and owning it. I can tell you that there are zero phone calls from anybody trying to open a retail operation. I don't know if you've ever read the covenant, but it's incredibly restrictive. I think it says "anything that's sold in a ski magazine..." It's been crickets from anybody in the retail world up there. That's the same challenge for the space upstairs from this one.

Brabec: There is actually an offer on the table for an office use. So if this is approved, we anticipate we can move forward quickly and that space would be occupied within a 30-60 day timeframe.

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Buccino confirmed that the buyers understand that the conditional use is for five years.

Commissioner Levy:

One of the emails we have from the Hanson's about potentially having the whole retail disappear and all become office space because that's the easiest thing to do as is being presented tonight. This could create a cascade effect. Can you talk about whether this application sets precedent? If at some time we could say no, we have too much office there. Even though we've allowed it in the past, we're drawing a line in the sand of no more?

Stauffer: I don't believe that this application sets a precedent. Each unit that wanted to be an office would have to go through this same process and we would have to weigh it against the impacts and criteria. I think in different sections of Torian Plum that are identified in the Base Area Plan, office would be less supportable than in this particular unit. So we would I think continue to have a discussion, but we don't have a specific limit on how many offices and when we would call it quits up there. I think it would still be discretionary, and at some point we would stop meeting the intent of the G2 zone district. I would hope we would have a policy discussion to create that direction for the future before we have too many more use discussions on these units. But I think it would happen one way or the other. The best way for it to happen would be through a plan, but if not I think it would happen through these hearings and we would evaluate it subjectively. I don't feel like we would eliminate all retail and restaurant uses. I think these uses are conditional. It is a little unpredictable for those applicants who seek these, but there's no guarantee of approval.

Levy: I saw in the 2005 Mountain Town Plan that it said we should have a study to say what amount of retail is required. There's no doubt in my mind and probably most commissioners that the current Mountain Area Plan is outdated in many respects. But is that is still the plan of record, and we're supposed to still adhere to that as best as we can.

Stauffer: It is still the plan of record. We do try to adhere to it. I did review it for this application. It does still call for a mix of office and retail uses in that area. It has some sketches about where more critical commercial spaces would be, and Torian is included in that. It is actually sort of outlined on one side of Torian that the long side of the walk with Café Diva is included in that; so the side where this unit is is not included in that critical commercial component. It still is in our zoning code, so we don't differentiate that specifically. I think the plan still provides guidance for commercial areas. It is less relevant in some areas, but I think it still gives us a good goal for the mix of uses that we want to see up in the base area.

Levy: Can you remind us how the covenant really plays into our decision making?

Stauffer: I don't think it does. You could use it as a justification for this, but I think we really have to look at the land-use impacts from this office use. Does this office really make the rest of Torian Plum less viable? Or would a retail in this space really add to the viability of retail in that area? Those are all subjective. The covenants are a constraint. I think that can just be considered in making your opinion, but there's not a lot we can do about them.

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Ptach confirmed that the city does not enforce HOA covenants; they are a civil issue between the owners of the units.

Stauffer: From a land use standpoint in this case, those covenants sound like they do restrict retail quite dramatically, but restaurant could also be on the lower use. You heard Jill talk about the floor drain. There could also be other retail items that could happen in this space. So from a zoning and land-use perspective, other retail and restaurant could still happen here.

Adams: If HOA covenants were changed, the city would have no way to be a part of that. So making a decision based on HOA covenants does not make very much sense.

Stauffer: If those covenants change, this unit might be really viable for retail. But again I think the market would dictate, and that comes back to the private nature of all of that.

Levy noted the estimate of retail/office spaces on Page 1.3.

Stauffer: And I did go up there and walk around Torian Plum between Christmas and New Year's. It seemed like a really active area. I could see some vacant spaces and a lot of occupied spaces; lots of people using the retail and restaurants. I still believe that it's appropriate that it's on the pedestrian level.

Levy confirmed that Stauffer's estimate was that 8 out of the 29 units were office.

### **PUBLIC COMMENT**

Stauffer conveyed Ron Paul's comment that he is opposed to any changes in Torian. They don't need any more office; they only need retail and commercial.

### **COMMISSIONER DELIBERATION/MOTION**

Commissioner Ptach:

I am in agreement with staff's analysis that this proposal is consistent with the Community Plan, surrounding uses, minimum adverse impact and minimizing environmental impact.

Commissioner Eck moved to approve DP-17-09 limited to a five-year term from the date of approval. Commissioner Adams seconded the motion.

### **DISCUSSION ON MOTION**

Eck: I don't see the need for this five-year approval. We're talking about how the area might change or the plan might change. That's true about any property anywhere in the city. It either is suitable now as a conditional use or it's not. I don't see why we are throwing on strings just because the area could change in the future. So I would omit the five-year sunset.

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Ptach: If we had a new Base Area Plan, I would probably go along with you on that. I prefer to put the five-year limit on it at this point in time pending a new Base Area Plan. Then if it comes up again in five years, i.e. we haven't adequately addressed it or at least allowed it, then we've got a good picture of what's going on. My anticipation is that this type of space would – well, my crystal ball is not that clear. But I don't welcome the friendly amendment.

Adams said he agreed with Ptach.

Adams: To kind of build on Rich's question earlier, if we are still working on the '05 Base Area Plan, those goals are still suggesting that retail is much more preferred. I think the time limit makes a lot of sense – at least at this point. If we do a new Base Area Plan, and if that plan looks in a different direction, then I think it makes a heck of a lot more sense. So for tonight, Toby's findings you're your recommendation I very much agree with.

Levy: I'll be supporting the motion as well. For me the main factor is the current economic and development situation there. We certainly hope that things are going to change. If things don't change, we're going to have bigger problems and discussions than whether we put an office in a 600-square-foot space. If redevelopment happens and everything else stayed the same, I would be pushing for retail on ground level. I actually voted against the previous request. Five years have gone by and things certainly have not gotten better up there.

Kingston agreed with Levy.

Kingston: I'll be supporting the motion for several reasons: The data on the mixed-use portion of the 2005 plan and coming back with general findings of 8 commercial spaces amidst 29 total commercial spaces including retail. I also was taken by the difficulty in the retracting market generally in retail at ski areas and the fact that this 600-square-foot unit when you look at the cost per square foot for that type and size of unit makes it pretty unlikely I think that retail is going to occupy that unit in the foreseeable future. We've certainly seen some difficulty with filling retail space coupled with the fact that the HOA restrictions make it less likely that we'll see those retail units filled. I go down there quite a lot, and I'm not fully convinced by Toby's statement that it's an energetic space. If you go down there, three quarters of the year you're looking at a desolate, bleak place. When you bring office workers into a place like that, I think you can only bring some life and a little bit of vitality, which is much needed there. So I'll definitely support Tom's motion.

### **VOTE**

The motion carried unanimously.

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## **#2: TXT-17-04, Public Notice and Corrections Amendment**

### **STAFF PRESENTATION**

Rebecca Bessey:

This is the first of probably several text amendments that we will be considering this year because as you all know, we just adopted the new Community Development Code, and I assure you it was not perfect when we adopted it. So we are going to find some errors that we need to clean up, and in addition to that, we've committed to addressing some policy discussion items that have been on your agenda for quite some time. We anticipate a number of text amendments coming through Planning Commission and City Council this year, this being the first.

The majority of this one is cleaning up a couple of minor errors that we found in the recently-adopted code. The conditional use process and the appeal of decision process we incorrectly listed the final form of decision as a letter. Since both of those items go to City Council, they are actually passed by resolution.

We had some incorrect section referencing in the Dimensional Standards of some of the TND zone districts, so we're cleaning that up.

Section 600 of the code was incorrectly titled "General Provisions" so we're proposing to change that to "Organization of Standards."

The last error we're cleaning up is an incorrect spelling of chicken coops, which occurred three times in that section.

The more substantive part of this is proposing to slightly revise the public notice requirements for zone map amendments, specifically addressing the property posting requirement. Those are the yellow signs that get placed on property whenever there's a development application that comes into the Department for review. For rezonings of a large number of properties, placing a sign on every property or even in meaningful locations that would give the public some understanding of which properties were proposed for rezoning, we don't believe is practical to achieve. It's easy when it's an applicant coming to us with a development proposal; we can tell them that's required that they place the yellow sign on their property. When it is city-initiated rezoning it becomes a little bit trickier to make sure that those signs are placed on private property.

When we adopted the updated CDC, I had explained to you that there would be a zoning map amendment coming shortly after that would adopt the Entry Corridor Overlay zone. Those are not new standards, but it is a new overlay zone to the map, so we have to go through a formal zoning map amendment to place that overlay zone on a large number of properties. We don't feel that it's practical for us to be able to place a sign on each of those properties. So what this amendment would do would place a footnote in that public notice table that would indicate that for city-initiated rezonings that include multiple lots and multiple property owners, the Planning Director has the discretion to waive that requirement. So if it's achievable, we can do it. We don't want to grant a blanket waiver. It would be left to the Planning Director to have that discretion of when it's practical and when it's not. All other public notice requirements would still be met, so there would be the mailing to all the property owners

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who are proposed for the rezoning as well as all the property owners within 300 feet of those properties, as well as the newspaper publication and the website publication that we do.

## QUESTIONS FROM COMMISSIONERS

Adams: I really like that it does say “may be waived” and that it doesn’t necessarily have to if it doesn’t make sense. But if the city initiated a zoning map amendment change to say a Public Park or something to change it, and it’s not multiple lots or property owners, is the Planning Director allowed to say no, we’re not going to tell anybody about it?

Bessey: That’s certainly not the intent, and I think the way this is worded, the discretion is only there if there are multiple lots and multiple property owners – especially if it’s a city-owned piece of land, we have the ability and the authority to place the sign out there. So the intent here is not to circumvent any reasonable effort to give public notice. Even if it’s a city-initiated rezoning of five lots, and it’s reasonable, and the property owners agree that we place the signs out there, we’ll do that. With the Entry Corridor Overlay zone, we’re talking about every piece of property that fronts US40 and Elk River Road outside of downtown. That’s a pretty significant number of properties; it’s not practical to place these on every property. I don’t think it’s practical or informative to place them in certain locations because then you don’t see it as a cohesive zoning request. It may give the impression that there’s different things going on several properties apart.

Levy: In the cases that you describe there’s going to be a larger public outreach and public discussion time. How are we assuring that the people who may have normally seen the yellow signs are now going to be reached and notified, and if that should be included in the footnote somehow – whether it’s extended public outreach, public hearings...

Bessey: I trust that the Planning Director would always be acting in good faith to make those efforts. I hesitate to codify something like that when we don’t know what that means. Are we going to debate what length of additional publication or publicity that we have to go through? In addition to that, I don’t anticipate that this is a scenario that we’re going to see very often. The city doesn’t typically initiate rezonings, although we do have the authority to do that.

Levy: How does that work with the future land use map? We don’t do any types of postings if we’re making amendments to that?

Bessey: We do. The future land use map amendments – every Community Plan amendment if it is specific to a piece of property, we do notification (mail/posting.) So if we had someone come in who wanted to change the future land use designation on a certain parcel or group of parcels to precipitate a rezoning request, we do notification for that. If it’s a general future land use or Community Plan amendment or update that deals with the entire community, then we don’t do a posting or mailing, but we certainly publicize that and go through a long, public process to address those – similar to a text amendment. We put this in the newspaper, but we don’t mail to everybody in the city and we can’t post

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a sign that advertises this type of change; it affects everybody equally, so we rely on the newspaper notification.

## **PUBLIC COMMENT**

None.

## **COMMISSIONER DELIBERATION/MOTION**

Commissioner Eck moved to approve TXT-17-04.  
Commissioner Buccino seconded the motion.  
The motion carried unanimously.

### **#3: Approval of Minutes: November 9 Public Hearing**

Commissioner Adams moved to approve the November 9 meeting minutes; Commissioner Ptach seconded the motion.  
The motion carried unanimously.

### **#4: Approval of Minutes: November 16 Public Hearing**

Commissioner Eck moved to approve the November 16 meeting minutes; Commissioner Buccino seconded the motion.  
The motion carried unanimously.

## **Director's Report**

Bessey: The Tuesday work session is the first of our policy work sessions this year where we're kicking off our work program to move through our list of policy changes. We'll be discussing Planning Commission final decision-making authority.

## **Adjournment**

Commissioner Ptach moved to adjourn the meeting at 5:45 p.m.  
Commissioner Eck seconded the motion.  
The motion carried unanimously.