

**Adopted Minutes
Spanish Fork City Development Review Committee
November 17, 2010**

Staff Members Present: Chris Thompson, Assistant Public Works Director; Shelley Hendrickson, Planning Secretary; Junior Baker, City Attorney; Dave Anderson, Community Development Director; Bart Morrill, Parks & Recreation Supervisor; Chris Swenson, Chief Building Official; Dave Oyler, City Manager; Joe Jarvis, Fire Marshall; Shawn Beecher, GIS Administrator; Kelly Peterson, Power Superintendent; Carl Johnston, Public Safety Officer; Jered Johnson, City Surveyor; Trapper Burdick, Assistant City Engineer.

Citizens Present: Clint Argyle, Brad Frehner, Duane Hutchings, Greg Magleby, Reed Park, Adam Castor, Bob Tandler, Tom Scribner.

MINUTES

November 3, 2010

Mr. Anderson **moved** to **approve** the minutes of November 3, 2010. Mr. Baker **seconded** and the motion **passed** all in favor.

FINAL PLAT

Legacy Farms

Applicant: LEI, Inc.

General Plan: Residential 2.5 to 3.5 units per acre

Zoning: R-1-12

Location: 400 North and 2550 East

Mr. Thompson **moved** to **approve** the Legacy Farms Final Plat for the Junior High. Mr. Baker **seconded** and the motion **passed** all in favor.

SITE PLAN - approval extension

Spanish Fork Assisted Living Center

Applicant: Steve Broadbent

General Plan: General Commercial

Zoning: Commercial 2

Location: 50 South 1400 East

Mr. Anderson **moved** to **deny** the Site Plan approval extension for the Spanish Fork Assisted Living Center. Mr. Oyler **seconded** and the motion **passed** all in favor.

SITE PLAN & DEVELOPMENT AGREEMENT

Fritzi

Applicant: Bob Tandler

General Plan: Residential 1.5 to 2.5 units per acre

Zoning: Industrial 1

Location: Cal Pac Avenue and Arrowhead Trail

Mr. Anderson explained that he did not know where the City was at with the draft on the Development agreement and that a Site Plan would need to be approved before a business license could be issued. He further explained that City staff chose to prepare a development agreement that would allow the City's required improvements to be installed in phases instead of all at once. He said the City standards were explicit and clear and the site would need to be brought to the City's standards before a business could be operated on the site. He explained that the phasing involved three pieces. The first being a fundamental life safety issue relative to the power service. He said this was the only improvement required for 1/3 of the building to be put into service so with the development agreement a business could operate, in theory, tomorrow with little additional improvement to the site. The second phase (for 70,000 square feet of building) improvements would be made to Arrowhead Trail with the third phase, being the remainder of the building, with improvements being made to Cal Pac Avenue.

Mr. Swenson explained that a fire wall separation would need to be addressed before a second occupancy.

Mr. Peterson said that load sheets would need to be updated so that the Power Department could ensure that the capacity was not overloaded.

Discussion was held regarding the landscaping plan being incomplete. Mr. Anderson explained to Mr. Magleby that he had had a very detailed discussion with Ryan at LEI regarding the landscape. Mr. Oylar said that the site would need to be cleaned up and dressed up and that the standard required a landscape plan.

Mr. Anderson explained that the plans showed parts of the site which were undeveloped and not part of the parking lot today and would need to be corrected to have a site that looks like it is open for business (not large tracks that could be nuisances with weeds). He further said that the plans would need to show how the site would meet the base standard for landscape.

Mr. Tandler asked where the landscape would need to be because he was anxious to obtain Site Plan approval. Mr. Anderson explained a typical landscape schedule.

Clint Argyle

Mr. Argyle introduced himself and explained that he felt Mr. Tandler was getting favors from the City by being allowed to do his improvements in increments or phases without

timeframe. He said he felt that Mr. Tandler should be required to meet the City's standards just like all of the other warehouse businesses in town, all in one phase.

Mr. Baker explained that the proposal was structured in phases by the square footage use of the building. He said Mr. Tandler had three street frontages that increase his expenses considerably more than other buildings and that by phasing the improvements it was a reasonable way in getting them done. As Mr. Tandler fills up space he would have to do the improvements. Mr. Argyle expressed that if it was not financially feasible for Mr. Tandler to do all of the improvements in phase one and prove that he financially could not do it than maybe the phasing where he has cash flow from the tenants but past performance is a good indicator of what will happen in the future so he did not feel that there would be promises to do things now and not deliver later.

Mr. Oyler explained that one of the discussions the City had prior to this meeting was how can we get this proposal done. We right now we have an empty building that can remain empty and stay unsightly with no curb, gutter or sidewalk or how can we get it accomplished so sitting down with Mr. Tandler in the process a decision was made that if we phase the improvements and show the end product we would accomplish getting the end product.

Mr. Argyle said that he understood but that if anyone else approached the City to build a similar size warehouse they would have to meet the City's standards. Mr. Oyler said that with a brand new building they would be required to do the improvements upfront but that this was not a brand new building that it was an existing structure that the City was trying to work with but that if it stayed empty we wouldn't accomplish anything.

Mr. Argyle explained a process that his neighbor went through to improve his property and at his expense had to improve the curb, gutter and sidewalk and the City required him to have a cash bond and why is Mr. Tandler not being required to provide a cash bond. Mr. Baker explained that Mr. Tandler would be required to go through the bonding process.

Mr. Tandler explained the work he had already done and the amount of money that he spent. He said that he might break even in five years if the tenant moved here from Texas. Discussion was held between Mr. Tandler and Mr. Argyle regarding the improvements that had been made to the electrical system.

Mr. Oyler said the objective was how to get the site to look nice. It is a different site than a brand new site and the City was trying to do it in phases so the property would get improved. If we required it all up front than it would never happen.

Mr. Argyle said that everything Mr. Tandler had done in the last 40 years was a benefit to Mr. Tandler and no one else. He asked Mr. Oyler if the City had analyzed Mr. Tandler's financials. Mr. Oyler said no.

Discussion was held regarding Mr. Oyler and Mr. Argyle on addressing how to make the site better.

Mr. Argyle explained what had transpired over the last 40 years and said he felt Mr. Tandler should have to be required to install of the improvements up front. Mr. Oyler said it would not happen because it was too expensive. Mr. Tandler said it would not happen and what had happened was in reliance in the conversations with the City going back to May or June a phasing plan was agreed to and phase improvements had been put in place. Mr. Oyler told Mr. Tandler that he was doing the phase at his risk that life safety issues were put in there for life safety issues and the next electrical phasing (all agreed) that until a Site Plan was approved and an agreement was signed was at Mr. Tandler's risk. Mr. Tandler said he had done this all as a part of getting the Site Plan approved.

Mr. Oyler said in getting back to how to get the building presentable out there that the objective was we can phase and it will happen or if we don't phase it it will never happen.

Mr. Argyle asked Mr. Oyler how many years the phasing plan was going to be for. Mr. Oyler explained it was based on square footage of occupancy so there was no need to improve Cal Pac on the transportation side if they have no more transportation than the first phase as proposed. He said if the aesthetics as far as some of the landscape, cleaning up the property, getting rid of some of the dead spots, that it could be worked through but that he didn't feel Mr. Tandler would put the \$800,000 for water, sewer and roads at this stage. Mr. Argyle said he did not read anything in the agreement that addressed the aesthetics of the building or landscape.

Mr. Oyler asked Mr. Tandler what he could do to satisfy the neighbors concerns about the aesthetics. Mr. Tandler said that he had not studied it or looked at it because the building had been vacant. He said he could do weed control. Mr. Oyler said he was talking about more than weed control and asked Mr. Tandler if there was something he could do with the landscaping on the residential side. Mr. Tandler said that he could certainly look into it.

Mr. Argyle said he was also concerned about the curb, gutter and sidewalk and explained that a few years ago the building was completely occupied.

Mr. Tandler explained that the building had been maintained in its condition because it was an old building that had been there for 40 years and that the City had not required a building that had been there that long to make changes and that he had not made changes. He said a tenant had made changes against his knowledge and that he had offered to tear it down. He said he was trying to get the building back on line in good faith, working with the City, to bring the building back into useful life and offered to discuss, with the neighbors, what they could do along Cal Pac but curb, gutter and sidewalk there was just no way.

Mr. Argyle asked if the phasing was allowed in City rules or regulations. Mr. Baker said it was not allowed with new buildings but had been done with existing buildings and explained what had been done in the past. Mr. Argyle asked at what point do you condemn the building and require that it be torn down. Mr. Baker said it could be there forever; that it was more of a building code issue.

Mr. Oyler said that phasing was not prohibited in the ordinance.

Mr. Tandler asked Mr. Baker why he was being called a developer in the agreement and could it be changed to be owner. Mr. Baker explained why the agreement was written with developer but said he could make the change from developer to owner. Mr. Tandler said he was fine with the agreement and would take care of updating the landscape plan.

Mr. Oyler asked how they were going to address Mr. Argyle's issues. Mr. Tandler said he did not know how he was going to address them because he did not know about them until one hour ago.

Mr. Baker asked Mr. Tandler and Mr. Scribner how they would feel if he put in the agreement a deadline for the improvements. Mr. Tandler said that if he could not get tenants in the building that it wouldn't matter what day or what year it was the improvements would never happen and he would not agree to a deadline.

Mr. Scribner said that what a deadline in the agreement would force would be the very thing that was trying to be avoided and if the neighbors and the City say that you have to put in \$750,000 worth of improvements before you can lease one square foot that it will force us them into litigation over whether or not this is a pre-existing use and grandfathered and exempt.

Mr. Anderson said that he felt everyone involved had already come to an understanding of what State Law says relative to non-conforming uses and asked Mr. Baker if they were still debating what a non-conforming use was. Mr. Baker said that Mr. Tandler and Mr. Scribner had never agreed with the City. Mr. Tandler explained he had a tenant moving a new business to Spanish Fork.

Mr. Anderson said that he appreciated where Mr. Baker was going with some kind of a timeframe (for the improvements) so the City could say, with some confidence, at some point in time the site would be improved.

Discussion was held regarding the agreement.

Mr. Johnston asked about the landscape and what was required. Mr. Oyler explained the phasing with regard to landscaping.

Discussion was held between Mr. Argyle and Mr. Tandler regarding past tenants. Mr. Tandler said he would walk the property with Mr. Argyle and discuss his issues and try to

be a good neighbor further discussion was held regarding the life safety issues with power.

Mr. Oyler explained the reasoning behind the agreement.

Mr. Tandler explained that he was changing his property management so he would have more of a professional company taking care of things.

Mr. Argyle expressed that he would still like to see a timeframe on the improvements that he had a vacant lot that he had to take care of. Discussion was held between Mr. Argyle and Mr. Tandler regarding improvements.

Mr. Argyle said that he felt if the tenant stayed in the first 70,000 square feet forever would Mr. Tandler be required to make any other improvements because he felt if the same tenant stayed in the first phase of the building for any length of time that Mr. Tandler should be required to make more improvements. Mr. Oyler explained that the first 70,000 square feet did not address anything.

Mr. Anderson asked Mr. Baker what the situation of the building was that the City had not issued a business license for any part of the building to be used since 2007. That the building had been vacant or well over one year now and what is the situation with the building. Mr. Baker said he felt that they had lost the non-conforming use.

Discussion was held regarding litigation.

Mr. Argyle said he would like to see a performance clause in the agreement. Mr. Oyler explained he felt the performance was very clear in the agreement.

Mr. Baker **moved** to **continue** Fritzi Site Plan and Development Agreement for one week in order for the applicant to complete a landscape plan, work out minor details on the development agreement and for Mr. Tandler to meet with the neighbors. Mr. Thompson **seconded** and the motion **passed** all in favor.

OTHER BUSINESS

There was none.

ADJOURNMENT

Mr. Peterson **moved** to **adjourn**. Mr. Thompson **seconded** and the motion **passed** all in favor at 11:27 a.m.

Adopted: December 1, 2010

Shelley Hendrickson, Planning Secretary