

**Adopted Minutes
Spanish Fork City Planning Commission
November 5, 1997**

The meeting was called to order at 7:05 pm by Chair David Ludlow.

Commission Members Present: Chair David Ludlow, Vice-Chair Doug Christensen, and Commissioners Kevin Baadsgaard, Matthew D. Barber, and J. Wayne Nelson.

Staff Members Present: Gregory A. Comstock, City Planner; and Gina Peterson, Deputy Recorder.

Citizens Present: Mike Christensen, Karen Payne, Chamber of Commerce; Gae Grunander, Jolene Clark, Alyn Olson, David Olson, David Christopher, Jack A. May, Ben Hakes, Rowe Hakes, Jackie Mitchell, Sam Hicks, Sherrie Hicks, Mary Isaac, Frank Haymore, Allen Davis, Lynn Bradford, Patience Bernards, and Brent Sumsion, Valley Asphalt.

Amendment to Chapter 17.20.110 Light Industrial by Adding Sexually Oriented Businesses as a Use Subject to Conditions

Ordinance 20-97: An Ordinance Amending the Zoning Requirements Concerning Sexually Oriented Businesses

Mr. Christensen **moved** to open the public hearing at 7:05 pm. Mr. Nelson **seconded**, and the motion **passed** with a unanimous vote.

Mr. Comstock stated Ordinance 18-97: A Sexually Oriented Business Ordinance and Employee Licensing Act, was adopted by the Council on October 21, 1997. The Ordinance defines sexually oriented businesses and employees, regulates their conduct and where they may operate, and also establishes other rules and regulations. Mr. Comstock stated Attorney Baker felt it was wise to put the ordinance in place as current City code was silent on where sexually oriented businesses could be located. The question arose as to whether sexually oriented businesses could be allowed at all, but Attorney Baker felt the use could not be zoned completely out of existence due to constitutional reasons.

Mr. Comstock stated the next issue to address now that regulations regarding the use are in place, is where sexually oriented businesses will be allowed, and under what circumstances. Staff has tried to determine an area where this use would be the least offensive to the community. An ordinance has been drafted stating if sexually oriented businesses are to be allowed, they would only be permitted in the light industrial zone. The business could not front Main Street or any other major arterial street. The ordinance further restricts a sexually oriented business from being located within 600 feet of an

establishment which sells alcohol; 1,000 feet of a church or school; and within 400 feet of another sexually oriented business.

Chair Ludlow does not feel sexually oriented businesses should be allowed south of 1600 North.

Mr. David Olson asked what State mandate required the City to have this ordinance in place. After no response, he stated he does not feel anything from the State compels the City to have an ordinance allowing sexually oriented businesses. He expressed opposition to the ordinance and concern with the City basing the need for the ordinance solely on Federal/Constitutional reasons. Mr. Olson stated there are some areas in which communities disallow these types of businesses based on the religious beliefs of that community.

Mr. Barber noted the need for the ordinance was based on constitutional issues, including the first amendment. Mr. Olson feels communities and citizens are allowed to have a voice regarding what is allowed in their community. Mr. Comstock stated Attorney Baker researched the validity of ordinances regarding sexually oriented businesses. A good portion of the ordinance was modeled after Provo and Orem City.

Mr. Christensen said Supreme Court decisions have occurred stating sexually oriented businesses cannot be disallowed, but communities can dictate where the uses can be located. Mr. Comstock restated the City is looking for an area in town that would be the least offensive for this type of use to locate.

Mr. Jack May feels a sexually oriented business will want to locate as close to a commercial area as possible. He expressed concern with the possibility of a sexually oriented business locating around the block from the new movie theater, due to the fact that many industrial areas neighbor commercial areas. Mr. May asked the possibility of only allowing the use in heavy industrial areas. Mr. Comstock noted the heavier industrial areas are actually in closer proximity to residential areas. Mr. May then suggested a larger buffer area be required around commercial areas.

Mr. David Christopher asked the maximum distance which could be required of a sexually oriented business in locating from commercial areas. Mr. Comstock stated spacing requirements could be made so large you would end up with very limited allowable spots, or even having the use zoned out from the City. Mr. Christopher stated he would like to go on record that sexually oriented businesses should only be allowed between the Sewage Treatment Plant and the County Prison. He stated this is "where they belong".

Much discussion took place regarding boundaries in the I-1 area which sexually oriented businesses could be allowed.

Mr. Christopher suggested City staff determine the most restrictions that could be placed on a sexually oriented business and still pass Court standards.

Mr. Rowe Hakes suggested restrictions be added to the ordinance which would limit the hours of operation of sexually oriented businesses.

Ms. Karen Payne feels sexually oriented businesses should not be allowed east of I-15 because of the close proximity to youth attracted by Suntana Raceway in Springville. Chair Ludlow clarified sexually oriented businesses will not be able to front arterial roads. Mr. Comstock stated the City may initiate a zone change to the business park zone in the area east of I-15, after which the S.O.B.'s would not be allowed in this area. It was also clarified that sexually oriented businesses will not be allowed in every light industrial area in the City, but only the area north of Highway 6.

Chair Ludlow expressed support to the City Council for not allowing the service of alcohol in sexually oriented establishments.

Mr. Olson feels the Chief of Police should give his feelings on the issue. He asked if any statistics were available regarding increased crime in communities that allow sexually oriented businesses.

Mr. Christopher feels the sale of alcohol should be eliminated in any I-1 zone that allows sexually oriented businesses. Ms. Payne agreed, stating restaurants could still be allowed in a light industrial area, but these restaurants should not be allowed a liquor permit.

Mr. Rowe Hanks asked if any businesses of a sexual nature are currently trying to locate in Spanish Fork City. Mr. Comstock answered in the negative. Mr. Hanks stated if an ordinance regarding sexually oriented businesses is adopted, it should do nothing to damage other businesses within the City.

A female citizen feels the City should not allow sexually oriented businesses, and then risk any chance of consequences from this decision. Mr. Comstock stated the Supreme Court, to an extent, has said this use is allowable under the first amendment. Another citizen stated if this use is allowed under the first amendment, then prayer should be allowed in public schools.

Mr. Olsen asked if there was a limit on the number of restrictions that could be placed on a sexually oriented business. Chair Ludlow explained there is likely not a specific limit, as long as the restrictions are reasonable. Mr. Barber followed saying the use cannot be zoned out of existence.

It was asked if restrictions could be placed on the size of building and signage, as well as other possible building restrictions. Mr. Comstock feels building size could be addressed with the ordinance, but he stated the City's sign ordinance is fairly restrictive already. Mr. Christopher stated signage with obscene verbiage or pictures should not be allowed.

Chair Ludlow noted these establishments will be places people drive to. He feels, because

the use will not be allowed to front major roads, people will not just happen to see it while driving by.

Chair Ludlow suggested the public hearing be continued until more research took place on various factors including: 1) Spacing requirements; 2) Hours of operation; 3) An idea if the City could limit how many possible establishments could be allowed, and how much maximum space could be allowed between different uses; and 4) The possibility of disallowing these uses east of I-15. Mr. Comstock stated he would review past court cases and research the possibility of zoning sexually oriented businesses out of the city.

Mr. Nelson **moved** to continue the public hearing discussion regarding sexually oriented businesses until the Planning Commission meeting on December 3, 1997. Mr. Baadsgaard **seconded**, and the motion **passed** with a unanimous vote.

Chair Ludlow invited citizens to stay and give additional input regarding supervisory care facilities later in the meeting.

Consideration Regarding the Revocation of CU-97-01 (Conditional Use Permit) for Valley Asphalt, Inc. for Noncompliance of Certain Conditions

Mr. Comstock reviewed that during the Planning Commission meeting on October 16, 1997, the Commission voted to initiate revocation procedures regarding two conditions not met by Valley Asphalt on their conditional use permit. These two conditions were regarding berming and landscaping issues.

Mr. Comstock stated the Commission believed berming along Mill Road should wrap around the north and south side of Mill Road for additional noise protection. Mr. Comstock visited the Valley Asphalt site today (November 5, 1997) and found berming to be complete to his satisfaction. He stated landscaping still needed to be finished on the berms. Mr. Frank Haymore feels, prior to today, berming was incomplete. Mr. Sumsion explained the berming was just finished today.

Ms. Mary Isaac expressed the concern that when fill dirt is removed from her property she will be left with no protection from the noise at Valley Asphalt. After much discussion, it was determined despite what is done with fill on the Isaac property, there will be an eight foot berm on Valley Asphalt property to protect the Isaac residence from noise. Ms. Isaac stated Mr. Oyler had told her Valley Asphalt would still have to comply with the noise ordinance when her dirt was removed.

Mr. Baadsgaard does not feel noise measurements are representative of what neighbors are actually hearing. He stated noise from Valley Asphalt may increase as you get farther away from the plant, because noise goes over the berm. Mr. Comstock stated berms should have a beneficial effect as you get further away. Mr. Baadsgaard feels a mistake was made when Mill Road was used to determine the height of berming. He stated the floor of Valley Asphalt should have been used. Mr. Comstock noted recent noise

measurements have indicated Valley Asphalt is not violating the noise standard.

Mr. Allen Davis stated the level of noise depends on the weather. He expressed displeasure with various aspects of Valley Asphalt, including noise. Chair Ludlow reminded citizens the Commission was discussing two conditions which had not been met by Valley Asphalt, and was not discussing the possibility of shutting them down for other issues. He told Mr. Davis if he had issues regarding the noise ordinance they need to be brought to the attention of the Police Department. Mr. Davis left the room. Mr. Baadsgaard explained that Mr. Davis was discussing noise issues because it was a condition addressed in Valley Asphalt's Conditional Use Permit.

Mr. Haymore noted he could not verify that berming was complete because he had not been home. Mr. Sumsion stated Mr. Comstock had verified the berming was done, but Valley Asphalt would be more than happy to extend the berm for Mr. Haymore if he was not satisfied.

Mr. Comstock stated Valley Asphalt has complied with the berming requirement and has partially completed the landscaping requirement. Due to weather conditions, Mr. Comstock stated the Commission may want to extend approval on the landscaping. Mr. Sumsion feels March or April would be a more suitable time to seed the berms. He stated the precipitation occurring during the winter months has a tendency to wash the seed off.

A **motion** was made by Mr. Christensen to accept Valley Asphalt's completion of conditions for the conditional use permit to Mr. Comstock's approval with the exception of landscaping, including seeding, which has been extended to the end of April. The motion was **seconded** by Mr. Nelson, and it **passed** with a unanimous vote.

Mr. Baadsgaard stated the citizens in the area will likely hire an industrial hygienist to address citizen concerns regarding Valley Asphalt.

Mr. Christensen made a **motion** to close the public hearing at 8:15 pm. Mr. Baadsgaard **seconded** the motion, and it **passed** with a unanimous vote.

Discussion of Supervisory Care Facilities: What are they and what aren't they?

Chair Ludlow related background regarding a request received by Ms. Courtney Johnson to allow Supervisory Care Facilities in the industrial zone. He stated this specific scenario would be a home for teenage boys.

Members of the Commission expressed the feeling that Ms. Johnson's use would not fit under the City's current supervisory care facility definition. Mr. Comstock asked if the definition should be broadened to include uses like Ms. Johnson's, and if so what would these facilities be called, and where would they be allowed.

Mr. Barber stated the public hearing held during the City Council meeting on November 4,

1997, was continued until the Planning Commission more clearly defined supervisory care facilities. Mr. Comstock noted that based upon the Planning Commission's interpretation of supervisory care facilities, the Council will not be able to act on Ms. Johnson's request.

Mr. Rowe Hanks stated the airport is not a place for kids to hang out. He expressed concern with the abundance of expensive aircraft coming into the airport which could be easily damaged.

Mr. Nelson feels the Commission should be given background on how these facilities are being defined and incorporated into other cities. He stated there is definite need for these types of uses. Mr. Nelson feels Spanish Fork City produces some amount of youth needing to attend these facilities, and as a community should be willing to put forth our share to take care of them.

***NOTE: Commissioner J. Wayne Nelson was excused at 8:34 pm.*

A general discussion took place regarding what types of care facilities to allow in the City, and possible locations these facilities could be allowed. Some citizens did not feel these types of facilities should be allowed in any residential areas. Chair Ludlow asked if these operations should be limited to youth or opened to all ages. One citizen stated she was not against helping the youth, but she did not want the right next to her home either.

After further discussion, a consensus was felt that the City has an obligation to allow facilities for youth corrections. Mr. Comstock was directed to survey how other cities have dealt with care facility issues, including facilities that only house youth. The Commission also requested Attorney Baker's input regarding the elimination of adults care facilities.

Adjournment

A **motion** was made by Mr. Barber to adjourn the meeting of the Spanish Fork Planning Commission at 8:44 pm. The motion was **seconded** by Mr. Christensen, and it **passed** with a unanimous vote.