

**Bountiful City**  
**Planning Commission Minutes**  
**March 1, 2016**  
**6:30 P.M.**

Present: Chairman – Sean Monson; Vice Chairman – Mike Allen; City Council Representation - Richard Higginson; Planning Commission Members – Dave Badham, Von Hill, and Tom Smith, and Sharon Spratley; City Attorney – Russell Mahan; City Planner – Chad Wilkinson; City Engineer – Paul Rowland; and Recording Secretary – Darlene Baetz

**1. Welcome and Introductions.**

Chairman Monson opened the meeting at 6:30 pm and welcomed all those present.

**2. Approval of the minutes for February 16, 2016.**

Richard Higginson made a motion to approve the minutes for February 16, 2016 with minor corrections made. Corrections include: page 1 item 2 – corrections of dates, page 4 paragraph 1 and page 8 paragraph 4 – change “us” to “City”, page 6 paragraph 9 – addition of “presumption should be reputed”, page 11 – change Chairman’s name from Smith to Monson. Von Hill seconded the motion.

Voting passed 6-0-1 in favor with Commission Members Allen, Badham, Higginson, Hill, Monson, and Spratley voting aye and Tom Smith abstaining.

**3. Further consideration and adoption of Findings of Facts for denial of an expansion of a non-conforming use daycare at 130 E 100 N, Stacey Nerdin, applicant.**

Chad Wilkinson presented the Findings of Facts. Mr. Wilkinson explained the background of the findings. Item V-12 of the Findings was added based on the Commission’s motion. Mr. Mahan explained that the staff attached the wording for this agenda item “for further consideration” to allow the members a chance to have more discussion on this item. Ms. Spratley explained she feels a concern for the direction she voted. After further consideration the expansion position is a strong position as the abandonment issue. Mr. Higginson also felt the same way and wanted to make sure that the rest of the discussion of the proposal was also supported in the Findings of Facts.

Mr. Monson asks Mr. Mahan for clarification about Bountiful Code 14-2-402 the expansion of a non-conforming use that increases the degree of non-conformance is prohibited. Mr. Mahan stated that an increase of additional space in an existing building that you had already had activity in would be part of the increase of degree of non-conformance.

Mr. Wilkinson stated that the Commission members were asked to determine at the previous meeting if the proposal was an increase of the non-conformance or whether the proposal was an expansion allowed in the code.

Mr. Wilkinson mentioned that the applicant could appeal the decision of the Planning Commission. The non-conforming use has expired for this property.

Staff discussed the clarification of the conformity of Bountiful City code.

Mr. Higginson made a motion to include the additional findings in paragraph 10 and 11 in the decision to deny the variance. Sharon Spratley seconded the motion. Voting passed 6-0-1 in favor with Commission Members Allen, Badham, Hill, Higginson, Monson and Spratley voting aye with Tom Smith abstaining.

Mike Allen made a motion to approve the Findings of Facts for denial of an expansion of a non-conforming use daycare at 130 E 100 N. Dave Badham seconded the motion. Voting passed 6-0-1 in favor with Commission Members Allen, Badham, Higginson, Hill, Monson, and Spratley voting aye with Tom Smith abstaining.

**4. PUBLIC HEARING - Consider approval of a variance to allow disturbance of areas with slopes greater than 30 percent located at 565 Hidden Hollow Ct, Jason Orvis, applicant.**

Jayson Orvis was present. Chad Wilkinson presented staff report.

In September 2015, the City received an application for a variance to allow the installation of a solar array on slopes exceeding 30 percent on the applicant's property located above Hidden Hollow Circle. During the review of the application, staff conducted a site visit and discovered that a large pole barn (approx. 1,800 sq ft) had been constructed on areas that were previously shown to be over 30 percent slope. Based on aerial photography, the pole barn was constructed sometime between June 2013 and June 2015. The applicant has indicated that he believed that he was not required to obtain a building permit for the structure at the time of construction and has cited state code which exempts certain agricultural buildings from building permit requirements. State law exempts certain agricultural buildings from the requirement to obtain a permit under a very specific set of circumstances but does not exempt these buildings from complying with the zoning ordinance. Section 14-1-105 of the Bountiful Land Use Ordinance states that activities that do not require a building permit are still subject to the provisions of the zoning ordinance.

The building must still comply with the zoning ordinance which prohibits construction on slopes greater than 30 percent without first obtaining authorization from the City (Bountiful Code Section 4-5-106). The only way that the City may authorize construction on slopes exceeding 30 percent within the R-F zone is to grant a variance to the standards of the land use ordinance.

The pole barn included construction of a retaining wall. While state law may exempt the pole barn from building permits, state law does not exempt retaining walls from permit requirements. Should the commission approve the requested variance; a building permit will be required for the existing retaining wall in order to verify the structural integrity of the wall, particularly since the wall is retaining slopes exceeding 30 percent. Although not explicitly stated in the application, any variance allowing the pole barn must also include a variance for the retaining wall since the wall supports the pole barn roof structure.

In a letter dated September 30, 2015, staff outlined several compliance issues that would be required to be resolved prior to the processing a variance for solar panels to be installed on slopes exceeding 30 percent. Besides the need to resolve the issues surrounding the construction of the pole barn, the applicant will be required to resolve the other issues, including lot consolidation, prior to processing of any variance or conditional use permit request for solar panels on the property.

Staff recommends denial of the requested variance.

Mr. Orvis showed commission members the location of the Kern River Pipeline on his property. The pole barn is located on top of the disturbance for the pipeline. He stated that the pipeline had received an easement to build a second pipeline on his property. Staff asked about the tanks that are located on his property. Mr. Orvis stated that the tanks are water holding tanks. He currently has water rights and had drilled a well on his property to help with the water he is using on his property.

Mr. Monson asked for clarification on the 6 ft cut into the hill. Mr. Orvis stated that vegetation had been planted around the pole barn to cut down on erosion from the pipeline installation.

The pole barn is a utility barn. There is no other place to put the pole barn on the property that won't be facing other property owners or that is not on a 30% slope. The pole barn would improve the erosion issues. Erosion and damage of vegetation was done by Kern River and the location of the pole barn is in a hole with the roof touching the slope. The proposed solar panels will be placed to be hidden from the neighbors.

Mr. Rowland confirmed that Kern River Pipeline that came through and confirmed that there was disturbance of the 30% slope and clarified the lot is not an approved lot but a parcel. He believes that if Mr. Orvis moved the pole barn 15 ft west, he would avoid the need for the cut back into the hillside and a variance.

Mr. Orvis confirms that the area of the pole barn was part of an easement that Kern River used as a working area for machinery. Kern River scraped off the top of the soil and left the area disturbed.

Chairman Monson opened and closed the Public Hearing at 7:19 p.m. without comments.

Mr. Badham asked if the other properties owned by Mr. Orvis have any buildable areas. Mr. Rowland explained that there are small areas at the top of the ridge and the bottom of the gullies that have slopes less than 30%. Mr. Badham voiced his view about the likes of the project and that this project was not intentional.

A question from the audience: Is the 30% slope code based on erosion? Staff stated that building on 30% slopes have many things that are taken into consideration, visual, erosion, open space, preservation of vegetation, and restricting fills for erosion.

Mr. Wilkinson stated that Bountiful code says that any lot with an accessory building must have

a primary structure on it. Staff discussed the need to have all parcels combined into one parcel.

Mike Allen made a motion to deny the variance for the property located at 565 Hidden Hollow Court as the applicant has not satisfied each of the conditions necessary to grant it. Richard Higginson seconded the motion. Voting passed 5-2 in favor with Commission Members Allen, Hill, Higginson, Monson, and Spratley voting aye and Badham and Smith voting nay.

Mr. Mahan discussed the procedure of appeal process to Mr. Orvis.

**5. Planning Director's report, review of pending applications and miscellaneous business.**

1. New Business in Bountiful - Downeast Outfitters will be moving into the Savers building.
2. Next Planning Commission meeting to be held on March 16, 2016.
3. Next City Council meeting to be held on March 15, 2016.
4. Upcoming agenda items.

Chairman Monson ascertained there were no other items to discuss. The meeting was adjourned at 7:42 p.m.



Chad Wilkinson, City Planner