IVINS CITY
PLANNING COMMISSION
MINUTES
November 15, 2016
435-628-0606

1) WELCOME AND CALL TO ORDER

A. Acknowledgement of Quorum

CHAIRMAN AND COMMISSIONERS: The meeting was called to order at 05:30 p.m. All present included Chairman Adel Murphy, Commissioner Bryan Pack, Commissioner Mike Scott, and Commissioner Lance Anderson.
Chairman Jeff Loris was excused.
Staff Attending: Dale Coulam-City Manager/Attorney, Sharon Allen-Deputy City Recorder.
Audience Attending: Claudette Larsen, Debra Pendleton, Gary Pendleton, Mariah Perez, Dave Appel, Kathy Barth, Jon Graf, Jan Graf, Nicole Graf, as well as others who did not sign in.

B. Flag Salute--Commissioner Mike Scott

C. Invocation-Chairman Adel Murphy

D. Disclosures--None. (Commissioner Lance Anderson arrived later (00:06:00) and disclosed his conflict with Taviawk XI-O Final Plat.)

2) REPORTS AND PRESENTATIONS --None

3) BUSINESS LICENSES -None

4) PUBLIC HEARING AND ACTION ITEMS-

A. Public Hearing on a proposed Zone Change of 24.52 acres from RA-1 (Residential/Agricultural-minimum lot size 1 acre) to RV Resort located on the south side of Highway 91 at approximately 100 West. Graf Land and Livestock-Owner. Jan Graf and Jon Graf-Applicant.

Dale Coulam stated the location of the property on the south side of Highway 91 and 200 West. We have seen this a number of times. The property owners directly to the west are the Pendletons. This has previously been discussed as a land use change. City Council granted a land use change from commercial professional to resort recreational on September 1, 2016 and that decision was appealed on two levels. First an administrative appeal, which was heard and decided on November 1, 2016. The administrative law judge dismissed the appeal due to lack of jurisdiction because he felt it was a legislative decision and he only has jurisdiction over administrative decisions. The Pendleton's had also filed a petition for judicial review with the district court and that is still pending. They also filed a motion for injunction but nothing has been heard yet that would stop these proceedings. On September 1, 2016 an ordinance was also passed creating a zoning district titled Recreational Vehicle Resort, or RV Resort for short. On November 1, 2016, after the administrative appeal was dismissed, the applicant filed an application for a zone change from its current zone of RA-1 to RV Resort. Under the Land Use Development Management Act, we are required to process an application in a timely manner. Even though there is a petition for judicial review still pending in the district court, because there is no injunction to stop these proceedings, we are still proceeding on the application for zone change. There is a final decision of the City on the land use, but the matter has not been fully resolved on judicial review on land use at this time. This is the Public Hearing on the applicant's application for a zone change to RV Resort. (**Commissioner Lance Anderson** arrived and

disclosed that he had a conflict with Taviawk XI-O Subdivision Final Plat.) **Chairman Adel Murphy** opened the Public Hearing. (All documents discussed by Gary Pendleton are included as part of the minutes and are available at City Hall upon request.) Gary Pendleton stated he lives at 227 West Old Highway 91. He felt he was preaching to the choir because he feels that the Planning Commission has understood the issues they have tried to raise. He wants to go over what the basis for his judicial review has been. The provision of the Ivins City Ordinance states that a General Plan shall be considered an advisory guideline in all land use decisions. No amendment to the land use plan, zoning district map or official map may be recommended by the Planning Commission or approved by the City Council unless such amendment is found to be consistent with the General Plan. The problem we have today is the application is consistent, because they changed the General Plan. There are 6-7 criteria items that need to be met to approve the application to amend the General Plan. #4 criteria states: the compatibility of the proposed use of nearby adjoining properties. When this was used in the context of a change in the Land Use Plan, this Planning Commission recommended unanimously denial of amending the Land Use Plan. After the meeting in June, Dale Coulam drafted an ordinance as part of the agenda, and it acknowledged that the Planning Commission had unanimously voted to deny the proposed land use application. According to the proposed ordinance, they changed the plan just by deciding that this use would be nice somewhere in the City. It was changed in an ad-hoc application on a site-specific application. Commissioner Lance Anderson had asked if it was appropriate to make a recommendation to create a transition zone like out on the east end of Center Street. On the hearing August 18th, we appeared and made our case with the City Council. Showing a picture of 1986 of our land, there is nothing in sight. It has basically been zoned RA-1 the whole time we have been there. We showed the City Council our property, his daughter's property and the Graf property. 3D Google Earth shows graveyard wash and the border between our properties and gives an idea of what the contour of that property is like. Parkway Partners made an application to amendment the Land Use Plan, they owned a piece of property on the east end of Center Street. and when it came to Planning Commission discussion they talked about granting the Land Use Plan because there was a bubble of recreational land use on the property and they wanted it expanded. Ultimately, there was a transition zone created so that people wouldn't be bordering right on the resort property. People purchasing would know what they'd be purchasing next to. So he presented the same format to the City Council regarding a transition. Zion River Resort has been used as a model for the Graf's so he showed that, and the different configurations of it. We were well received at City Council. We expect to be treated fairly. If it was a legitimate concern to have a transition zone on Parkway Partners property, we should have that same consideration. If you live somewhere 30 years and don't see something coming, they need a transition zone. Every City Council member expressed the concern to give us a transition zone. After that hearing, Dale Coulam drafted a another proposed ordinance and in it he added a finding to conform with what was established during that City Council hearing. He added that Ivins City Council has determined to balance the property rights of both the applicant and the property owner to the west, there should be a transition zone between the two. This version of the ordinance left describing that transition zone to be determined by the City Council as Exhibit A. Then we got to the hearing on September 1, 2016 there was no more comment and it was obvious that no one cared anymore about balancing our property rights. There were two members that voted no, but there were three members that voted to adopt the ordinance and just striking that language and any reference to any transition zone. So we appealed that to the administrative court. It is our position that when you are considering a site-

specific application that involves one piece of property and you are asking the City Council to amend the City ordinance, the City Council is bound by its own law to consider these things. They are not acting legislatively and they are talking about one piece of property. The City at that hearing was able to convince Judge Barney on a site specific application that to change the plan was a legislative act and that the City Council is not applying the law, that it can make its own decision. Based upon that argument, and applying that argument to that zone change case, to the dismantling of our City plan, our appeal was dismissed on the basis that it was legislative rather than administrative because they weren't administering the law, they were applying the law. They were making new law. We will see what the district court thinks about that. One light at end of tunnel in this process, of saying it was legislative action, the Utah Supreme court in the Saratoga Springs case said that the landowners have the right to a referendum. We have the right, once this zone will change, and he is sure City Council will change it, we have right to seek referendum and see what the town of Ivins really wants. That is a poor substitute for a plan. The right to participate in the political process is a poor substitute for a plan that is applied and used. He would like the Planning Commission to deny the application even though City Council won't. Deny it on principle. Thank you. **Jon Graf** stated he is representing Graf Land and Livestock. He has gone through the process and met with the Planning Commission and know the opinions and have done everything we have been asked to do. He has done lots of research on our end and it will be nice for the community. He has spoken with Snow Canyon State Park, other RV Parks and they are loaded and it would be good to have this in the community. Ivins wants to not just be a bedroom community but also draw people to the area and stay the night. People have stated that RV Parks are trashy. The Ordinance requires it to be extremely nice and well kept, professionally done, and it will be a beautiful place. A week ago, he got an email and a gentlemen asked if we were looking to build an RV Resort. He had recently sold his home in Ivins and would like to bring his RV down and stay for the winter. It will attract a good positive crowd. He talked with Tuacahn, and it would be great opportunity for people that want to come to the shows, possibly shuttle them, and to come stay. He has studied this out and we have been over a year trying to figure this out. It has been in the family for close to 100 years and is not something that we came upon lightly. We don't want to develop the land and sell lots. That has been suggested. We didn't want to put commercial properties on there. We do that and it is gone. We wanted to keep the property and enjoy it with other families. We are excited and think it will be a beautiful thing. We hope we have your support. **Nicole Graf** stated that she appreciates the Pendletons' position and change is never easy. She knows it's frustrating for them and she hopes they can come to a resolution and move forward on their project. On the buffer or transition zone it wasn't particular to our property, they asked us to meet with the Pendletons and we did try to come up with a solution we could all live with. They would not budge whatsoever on their proposal of a transition. It made it difficult to move forward. If we did a buffer it would take too many lots to even make the project worthwhile. The plan that was shown earlier was our original plan and we did sit down with them to try to come up with a compromise. They have gone through the proper channels in this process. We have put in all our applications, paid the money, come to the meetings, worked with the City. We think it's a great location. We understand that future plans are commercial, that includes all of the properties, including the Pendletons' and Movara. The plan was that it was never meant to stay the same. That's the reality of a city that is growing. There will always be residential up against commercial and someone disgruntled about the growth coming into their area. When they got their property it was all agricultural back in the 80's. All of Ivins was. It isn't anymore. It has changed. There are growing pains throughout the

City. She hopes that the Planning Commission will consider that this affects everyone over the last 30-40 years in Ivins as far as growth is concerned and that won't change. Southern Utah isn't going to stop growing anytime soon. That covers our side of it and please approve the zone change for property. The property is a good location because it has one side with BLM land, one side has the highway and the wash on one side. There are three sides not affecting anyone else. **Deborah Pendleton** stated that Nicole Graf made it sound like we are being unreasonable and unwilling to compromise. To let you know, that transition zone was a huge compromise because we don't want it there at all. We don't want to live next to an RV Resort. We felt like that was a win-win. Give a buffer to protect the view. They wanted to shift their project around but not give up anything. We are expected to give up peace and quiet we have always enjoyed. They make it sound like we are opposed to the noise, which we are, but we would rather hear kids playing in their backyards than RVs pulling in and out and their recreational vehicles. It is not the same and to make it sound like we are being unreasonable is not fair. We talked about the transition zone and Gary Pendleton had several different configurations. We are not asking for one where the property drops, just up where we live. The subject came up what they would do in the transition zone and they could keep it in agriculture, you could put one acre lots on it, and Nicole Graf stated that no one would want to live there. But she wants to force it on us. It will have an impact far greater than anyone else in the City. City Council does not consider that an entrance, but it is. It breaks my heart that will be our entrance to see a bunch of RVs there. She hopes the Planning Commission will vote against it on a matter of principle. We just want to be treated fairly, like those that live up on the Parkway, such as the people that Mayor Hart built a home for and Council Member Densley, who benefitted from the Parkway transition zone. Even though the ordinance has been approved, please deny this plan. Thank you. **Mariah Perez** stated that they just wants to be treated fairly. Mayor Hart built a home and Council Member Densley was directly affected by it. Dale Coulam stated that a transition zone would be required. Those people also didn't see this coming but it is not required for us. When we met with the Graf's, Jon Graf thought they were putting in a transition. The only compromise was to put cabins along the fenceline. The fenceline falls directly in front of Gary Pendleton's house. So he suggested a 90-degree angle for a transition zone. We were trying to work it out. We left feeling like we could work it out. It felt like there were meetings behind closed doors. City Council when we left were all open to a transition. Then all the sudden there was no more discussion and City Council removed it. We keep getting a story about their feasibility reports if they were to lose any pads the whole project couldn't go forward. That is not on the City, that is their responsibility. She is friends with Burgess' and there would most likely be an impact fee per pad and Jon Graf said no. Gary Pendleton called the WCWCD and they stated there will be an impact fee. She is worried that his feasibility is already skewed. It is upsetting that they did the Land Use Plan change on one specific project and site instead of thinking of Ivins overall. What if the City works so hard just to find out they haven't done an accurate feasibility study and we allowed them to change the zone. It scares her. **Kathy Barth** stated that she lives on Wisteria Court. She attended a good portion of the meetings and she can understand concerns on both sides. She doesn't live near the property being discussed but she is an Ivins resident, and looks out for open land in Ivins. She is the President of an HOA. She was hopeful over the summer that if the new Land Use Plan was put into effect that there would be a transition zone required. She has lived in Ivins 20 years here. We did our research when we bought the property and what the potential uses were. Change does happen, however, it is also fair to property owners that there are accommodations and transition zones that can be developed. The City has granted a transition zone to another neighborhood that

it should be expected that they also have the right. **Chairman Adel Murphy** stated she received a letter by Fritz Sawyer and also a Graf letter. **Dale Coulam** stated that he never said a transition use or zone was required. He drafted a version of an ordinance based on the parties getting together to negotiate, but he never said, nor does he hold the opinion, that a transition zone is required. It is within the discretion of the City Council to go that direction, but the majority wanted to see the parties negotiate a solution that they could all agree on. When it was reported there was no resolution, then three of the five did not determine to impose a transition use area. One Council Member voted to deny the use entirely, one Council Member would have imposed a transition use. As for representations from Gary Pendleton and his arguments on the administrative appeal, the attorney who represented the City in the appeal may have a slightly different version of some of the details. Hearing no further comments, **Chairman Adel Murphy** closed the Public Hearing.

B. <u>Discuss and consider recommendation on a proposed Zone Change of 24.52 acres from RA-1 (Residential/Agricultural-minimum lot size 1 acre) to RV Resort located on the south side of Highway 91 at approximately 100 West. Graf Land and Livestock-Owner. Jan Graf and Jon Graf-Applicant.</u>

Commissioner Mike Scott stated there were good comments from both sides and in the past we have recommended against the Land Use Plan and the zone change. With the legal issues that are underway potential, the City is in an awkward spot. City Council approved the Land Use Plan and has approved the creation of the zone district but the Land Use Plan will be legally disputed. If successfully overturned, and we approve a zone change, we would be in awkward spot. **Dale Coulam** stated it could unravel the issue, yes. **Commissioner Mike Scott** stated that the Land Use Plan has been approved by the Council and the zoning district and in normal situations if the application for the zone change meets the Land Use Plan and the zoning district, it is our duty to recommend approval. **Dale Coulam** stated generally speaking. **Commissioner Mike Scott** inquired if we can we recommend denial because of timing? **Dale Coulam** stated that he has heard at a land use conference a panel ofexperts reference timing as a valid basis to deny a zone change. As Planning Commission you have consistently been against this use for this property, or for Ivins period. You see the potential, if the appeal is successful and ultimately unraveled a zone change anyway, would it be prudent to recommend a zone change? Is that a fair characterization of what you are asking? **Commissioner Mike Scott** stated that until the Land Use Plan issue is resolved it seems appropriate to me to deny the zone change until that is resolved. He would like to continue to deny the change and hasn't heard anything that has changed his mind on that. **Dale Coulam** stated that the zone change case on the Saratoga Springs property was found to be legislative. I believe you have come up with a reasonable basis to deny the zone change. Timing has apparently been raised as an issue for denying zone changes. You are just a recommending body anyway, but it is not arbitrary to say that you want to deny it on the basis you stated. **Commissioner Bryan Pack** stated we wouldn't add much either way. If City Council votes for the zone change, it would be tacked on to the appeal. There is no prejudice one way or the other. What we do on this particular application will not make much difference. It is a difficult situation and there is a lot of emotion either way. We were firmly against the Land Use Plan amendment before and haven't heard anything different on my view. He wouldn't be put out if City Council allows it. We have done a good job on drafting the ordinance if the City Council approves it. He can see why it would be good for the City of Ivins to have. If the Land Use change occurred, timing would be his only reason to deny this. **Commissioner Lance Anderson** stated that when Bruce Parker worked on the land use

plan, we did transitional houses to be fair. The corridor plan is still in effect and the City will ask for 30 feet along highway 91. City Council has said people can stay 180 days. He doesn't like that at all. He also doesn't like horses in there. If we approve we would need a transitional zone but 300 feet is excessive. If the Planning Commission is compelled to do a zone change, there needs to be a layer of RE-15 or RE-20 along the Pendletons' house. He wanted the cabins in there to soften. That didn't go off very well, but he feels for both sides. Gary Pendleton had stated that the Land Use Plan needs to be similar. The problem is it is always changing. We have changed dramatically from 600 people to what it is today. There are never similar things going in next to a property. The transition zone is to balance, some give and take to make it work, and help give a little relief. If he was to recommend a zone change that is what he would request is a transition zone. To deny on timing is just prolonging the inevitable. We are a recommending body if we want to stick with what he have from day one and deny, or be helpful and come up with a solution and approve with a transition. **Chairman Adel Murphy** stated that we have always been against it from day one and we don't think it is a good choice for Ivins. The Land Use Plan language states that the Ivins City Council determined there was a need for this type of recreational use, for visitors who prefer to travel and stay in recreational vehicles, small cabins or tents rather than the more traditional types of hotel lodging. We wrote an ordinance to give them an RV Resort. To her, giving them horses and 180 days changed it to an RV Park. If they had stuck with our ordinance maybe, but if there is pending legal action going on, and we were against it from the beginning, she is inclined to say she would not recommend it. **Commissioner Mike Scott** stated that was the direction he was going in. City Council hasn't appreciated our denial in the past on the land use or the zone, maybe if we make a recommendation with a transition area, it may be more fruitful. **Dale Coulam** stated it is too late on using residential zones as transitional areas. The land use is resort recreational. There is no residential component. The transition opportunity was at the land use stage. You can't do it at zoning if the zoning doesn't fit the land use. **Commissioner Mike Scott** stated he proposes recommending denial of 24.52 acres. on the basis that the Planning Commission has been against this use and the timing is wrong until district court review of the Land Use has been finalized. **Commissioner Lance Anderson** stated he pushed for a transition zone, he was against horses, and the 180 days. We either amend the ordinance or deny it. He doesn't like the tension because these families have known each other for years.

MOTION: Commissioner Mike Scott moved to deny recommendation on a proposed Zone Change of 24.52 acres from RA-1 (Residential/Agricultural-minimum lot size 1 acre) to RV Resort located on the south side of Highway 91 at approximately 100 West. Graf Land and Livestock-Owner. Jan Graf and Jon Graf-Applicant, on the basis that the Planning Commission has always been against this use, and we do not believe the timing is right to recommend changing the zone to RV Resort until the district court review of the land use has been finalized.

SECOND: Commissioner Lance Anderson

VOTE: The motion carried.

Chairman Adel Murphy	AYE
Commissioner Bryan Pack	AYE
Commissioner Mike Scott	AYE
Commissioner Lance Anderson	AYE

5) DISCUSSION AND POTENTIAL ACTION ITEMS-

A. <u>Discuss and consider approval of Final Plat for Taviawk XI-O, located approximately 451 W Tearasinab Way. Kayenta Development-Owner. Lance Anderson-Applicant.</u>

Commissioner Lance Anderson recused himself. **Dale Coulam** stated this Final Plat is for one lot and although he did not attend the TRC, they did meet and recommended approval and found it to be in compliance with the Preliminary plan.

MOTION: Commissioner Bryan Pack moved to approve Final Plat for Taviawk XI-O, located approximately 451 W Tearasinab Way. Kayenta Development-Owner. Lance Anderson-Applicant.

SECOND: Commissioner Mike Scott

VOTE: The motion carried.

Chairman Adel Murphy	AYE
Commissioner Bryan Pack	AYE
Commissioner Mike Scott	AYE
Commissioner Lance Anderson	RECUSE

B. <u>Discuss and consider approval of the Ivins City Planning Commission minutes for November 1, 2016.</u>

MOTION: Commissioner Bryan Pack moved to approve the Ivins City Planning Commission minutes for November 1, 2016.

SECOND: Commissioner Mike Scott

VOTE: The motion carried.

Chairman Adel Murphy	AYE
Commissioner Bryan Pack	AYE
Commissioner Mike Scott	AYE
Commissioner Lance Anderson	AYE

6) REPORTS

A. Planning Commission

B. Chairman

C. Building & Zoning Administrator, Kevin Rudd

D. <u>City Attorney, Dale Coulam</u>

Chairman Adel Murphy stated that it is not the same without Kevin Rudd here. Dale Coulam stated that Kevin Rudd should be going home next week. He is making progress but it is going to take some time for him to recover.

E. Items to be placed on future agendas

7) <u>ADJOURNMENT</u>

MOTION: Commissioner Lance Anderson moved to approve ADJOURNMENT

SECOND: Commissioner Mike Scott

VOTE: The motion carried.

Chairman Adel Murphy	AYE
Commissioner Bryan Pack	AYE
Commissioner Mike Scott	AYE
Commissioner Lance Anderson	AYE