

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
BOARD OF ADJUSTMENT MEETING**

Wednesday, April 30, 2014

6:00 p.m.

**Cottonwood Heights City Council Room
1265 East Fort Union Boulevard, Suite 250**

ATTENDANCE

Members Present: James Holtkamp, Doug Folsom, Noor Ul-Hasan, Don Antczak, Rich Robinson

Excused: James Adinaro

Staff Present: Community and Economic Director Brian Berndt, Senior Planner Glen Goins, City Attorney Shane Topham, Special Legal Counsel Jody Burnett

Others Present: Scott Sabey, Chris McCandless, Marty Plunkett, Will McCarvill, Mark Machlis

BUSINESS MEETING

1.0 WELCOME/ACKNOWLEDGMENTS

Vice Chair Holtkamp called the meeting to order at 6:05 p.m. and welcomed those attending.

2.0 HEARING

2.1 Hearing on an appeal by CH Voters of the Planning Commission's approval of a Conditional Use Application from Kenny Nichols, Think Architecture, concerning an office building located at 7350 South Wasatch Boulevard (*Canyon Centre*)

Mr. Holtkamp stated that the purpose of tonight's meeting is to determine whether the decision of the Planning Commission was supported by substantial evidence and in compliance with applicable law.

Mr. Holtkamp disclosed that he is an associate of Ben Machlis, the applicant's son, and is participating with approval of the City Attorney. He sees no reason to recuse himself from the discussion.

Community and Economic Development Director, Brian Berndt, described the appeal of the Planning Commission's approval of the Canyon Centre project located just south of Fort Union Boulevard and Wasatch Boulevard and detailed the proposed project.

Will McCarvill, Vice President of CHVoters, thanked the Board and Planning Commission for their diligence in handling this issue.

Mark Machlis, President of CHVoters, presented the appeal and stated that the Mixed-Use zone requires the project have a residential component of which there are none. The Gateway Overlay zone specifies that no structures may exceed 45 feet. Mr. Machlis believes the Planning Commission miscalculated the average height of the Canyon Center project which should be 57.15 feet. He also is of the understanding that there was an error in the calculation of the historical grade, which should be 67.16 feet in height. The Phase 1 Options Plan shows the office height at 48.16 feet, the hotel at 49.15 feet, and the restaurant at 37.5 feet for an average height of 44.54 feet. Mr. Machlis believes each building should meet, especially under this conditional use permit, the gateway height limitation of 45 feet. Details of the measurements were discussed. The underlying zoning of the property, as well as impervious surface allowance, was described. Mr. Machlis is of the understanding that the impervious surface limitation of the Sensitive Lands Overlay has been exceeded and these items should be addressed now rather than later.

Board Member Ul-Hasan asked to see the before and after maps again showing the project with and without the residential component.

Mr. Machlis commented that at the time the property was rezoned from commercial to MU it included a residential component which is no longer part of the plan. He stated that he understands that projects evolve and questions how the residential package can be part of the future development if it's not corrected at this point.

Board Member Ul-Hasan asked if the historical grade clarification of 49.69 feet versus 49.59 feet was verified by staff.

Mr. Berndt stated that the historical grade was reviewed with the initial proposal to the planning commission and all code requirements were met.

Chris McCandless, of CW Management Corporation who manages Canyon Centre Capital, stated that the approval was not only for the master development plan, but also for the proposed office building and parking structure and not the project in its entirety. The Planning Commission's approval of the Canyon Centre complies with the code, the height issue has been discussed and debated, and there is scientific data that shows they are in compliance with the code. All who have reviewed and evaluated the plan concurred that the data is correct and in compliance. The history of the progression of the project was detailed. Mr. McCandless stated that more research has been conducted on this project than any other project he has been involved with in the past 30 years. Facts have also been presented. Conversely, the burden of proof is based on the appellant. Mr. McCandless does not consider the details of the appeal to be valid.

Mr. McCandless stated that the original rezone of this property was in 2007 and they did not own the property at that time, they began project planning in 2010. Mr. McCandless stated that representatives from CH Voters have attended every meeting, made comments, and asked questions. They also question whether this effort is a waste of time or a strategic delay. The period to file an appeal is 30 days and the appellants waited 29.95 days to file the appeal and are very knowledgeable about the issues that have been discussed for the last two to three years. Mr. McCandless detailed the timeline of the proposed project and stated that it is their belief that the Planning Commission, over three years and 108 meetings, has not made the errors identified by Mr. Machlis. In concert with the Planning Commission and the ARC's decision, they concur with staff that the Planning Commission acted on behalf of the City and are in compliance with the required provisions of the code. He asked that the Board of Adjustment deny the appeal.

Board member Ul-Hasan clarified that the zone change occurred in 2008 and not in 2007.

Mr. McCarvill stated that they missed the Sensitive Lands Ordinance and felt the Planning Commission missed it as well. He does not believe this can be ignored.

Mr. Berndt clarified the question regarding the building height as detailed in CCA 0069 of the packet. He stated that staff reviewed the explanation with the Planning Commission describing how the height of a building is measured.

3.0 ACTION ITEMS

3.1 Deliberation and possible action on an appeal of the Planning Commission's approval of a Conditional Use Application from Kenny Nichols, Think Architecture, concerning an office building located at 7350 South Wasatch Boulevard (*Canyon Centre*).

Motion: Board Member Ul-Hasan moved to go into a closed session to make the decision due to the Boards' role as a quasi-adjudicated body. The motion was seconded by Board Member Antczak. All Members present voted in favor of the motion. The motion passed unanimously.

Vice Chair Holtkamp stated that the announcement of their decision would be in writing.

3.2 Action to elect a new Chair and Vice Chair

Vice Chair Holtkamp stated that due to Chair Wilde having resigned from the Board, a new Chair and Vice Chair need to be elected.

Board Member Ul-Hulsan nominated Board Member James Holtkamp to serve as Chair. All members present voted in favor of the motion. The motion passed unanimously.

Vice Chair Holtkamp moved to nominate Noor Ul-Hasan to serve as Vice Chair. The motion was seconded by Board Member Robinson. All members present voted in favor of the motion. The motion passed unanimously.

3.3 Approval of April 30, 2014 Minutes

No action was taken. The minutes will be tabled to the next business meeting.

4.0 ADJOURNMENT

Board Members adjourned to closed session.

The Board of Adjustment Meeting adjourned at 7:07 p.m.

Minutes approved: 05/14/2014