

PRUD Amendments - Planning Commission Minutes

NORTH OGDEN PLANNING COMMISSION

MEETING MINUTES

April 4, 2012

6. DISCUSSION REGARDING AN AMENDMENT TO TITLE 11, CHAPTER 11 PLANNED RESIDENTIAL UNIT DEVELOPMENTS.

Craig Barker referred to the Planning Residential Unit Development (PRUD) ordinance in the packet. He explained staff went through the previous meetings and listed the questions needing to be addressed. He said he gave them a list and sent it to the City Attorney. He said he believes they have a copy of the City Attorney's proposal. He has made comments on the issues in each area.

Dave Carlson, City Attorney, said he wasn't here for the last discussion but Craig Barker provided a list of concerns the Planning Commission wanted to be addressed. He asked how they would like to proceed. Commissioner Kiser said he isn't sure how best to approach it. He said he thought the changes were good. He said they need to make sure all bases are covered and nothing slips through the cracks, escrow if necessary, hold the developer accountable, and make them more liable. Commissioner Brown asked on section C, how to make it more economical, which is not the objective. She asked what the objective is. Dave Carlson suggested a change. He said there should be a trade-off; PRUDs are intended to give the developer more housing development area to be used to make the development more attractive place. That's the focus from the City's view. He said they want to make sure the developer is not just getting more density but to provide something that adds value to the community on a long term basis.

Commissioner Brown asked if she could include a modified statement, that it is not necessarily about the economics but is considered a trade-off for the benefit of the community. Dave Carlson read from the proposal. Commissioner Quinney said that issue hasn't been the problem. In the PRUD those things have happened. The problem is, with the amenities and being finished with what has been promised. He said that is not the real issue. Dave Carlson said this is the purpose statement, which lays out the City's philosophy when allowing a PRUD to differ from the normal lot size. He said they are giving concessions with lot sizes and configurations which spell out their expectations in return. What is the community getting back in trade and how will it add value in the long-term. That is the policy statement which helps to evaluate if you want a PRUD in the area and the purposes of the City. The developers will get the common area but they only look at the bottom line.

Commissioner Quinney said he wishes Commissioner Knight and Commissioner Thomas were here because they are developers. He also said that it all boils down to if the developers can keep their promises. If the home owners do not have the abilities to keep them up then it gets nasty.

Commissioner Kiser said it gets into that more as you work your way down. Dave Carlson said it is a human system and if everyone does their job they will have a tight ordinance and the security in place. If someone falls down on the job then there is no perfect system. This does correct some problems. It makes reference to a bond. We don't want to take a bond. Craig Barker said it was a mistake and used generically. Dave Carlson said let's get rid of the bond language. He said the bond means you bought a lawsuit.

Dave Carlson said it may be easier to walk through, because there aren't a lot of changes. Commissioner Kiser asked if the developer is here (he was). The Planning Commission moved back to agenda item 4.

NORTH OGDEN PLANNING COMMISSION

MEETING MINUTES

April 18, 2012

7. PRUD DEVELOPMENT

Commissioner Kiser wanted to make sure that everyone has had a chance to look over the revised item. Dave Carlson said the first is to improve North Ogden PRUD development. Commissioner Residori said that the first section was covered. Dave Carlson said the first section is purpose language and to help the Planning Commission and staff regarding decision making.

Commissioner Brown suggested turning to page two. She said, as a Planning Commission, they need to really understand this section and not approve a change later on, because they got burned in the past. She said that was one of the major distortions in one of the PRUDs. She said the Planning Commission needs to understand and take responsibility. She said that was a big problem in the past.

The Planning Commission went to page five of the proposed changes to the PRUD chapter (included in the packet).

Commissioner Knight said that common areas need to be accessible, not just usable. He said someone could say it is usable, but is not accessible. Dave Carlson agreed that it was a good point. Commissioner Kiser said it should be accessible to everyone. Dave Carlson said they have had some PRUDs with very small common area. Commissioner Brown said there is one particular PRUD that the common area is a flag lot. She said common areas can only be used for common area. She said there are some common areas that are not usable because they are covered in signs. She said they need to clarify what the common area is for the people not for the developer. She said she had complained about the signs in a particular PRUD and was told that the area is private property and the City cannot do anything about it. Dave Carlson said they regulate signs wherever they are. Commissioner Brown said that the City told her they cannot

regulate signs on private property. She said the children cannot play on the common area because the signs are in the way.

Commissioner Quinney said Mayor Harris made it clear he does not want to PRUD's because of all the issues. He said he thinks City Council is leaning that way too. The City has just as much responsibility for these PRUD's as the developer. He said that the City has dropped the ball, and that disturbs him. It then requires the City to become the enforcer. Commissioner Kiser said that is what they are trying to do with these changes. Craig Barker said they discussed it as a group and the Planning Commission decided to keep PRUDs. Commissioner Quinney said they believed that the changes will help the City run a tighter ship.

Dave Carlson discussed the issues with The Cove Subdivision, which was done as a PRUD. He said the reason they chose to develop it as a PRUD is because they wanted to have common ownership of the private drives. He said that subdivision could have been completed as a regular subdivision. The problem is that the City Staff and Planning Commission did not enforce it as a PRUD as written. Then it will always be an issue, it has to serve a purpose.

Commissioner Knight said there have been a few successful PRUD's, and a lot of unsuccessful ones. He said the common denominator of the failed ones is the HOA monthly fees. He said when there are 12 lots in the PRUD and they can't afford to maintain that PRUD. The Cove is mostly affluent people but with the cost of water connections they will be able to afford the HOA fees. He referred to the PRUD by Big O Tires. He said there are very few lots and they will not be able to afford the HOA fees. He said that is the common denominator for him. He said PRUD's have to be a certain size and level to succeed.

Commissioner Kiser said there are a lot of people who like PRUDs and who can afford them. He said they provide a lot of benefits that a subdivision cannot. Dave Carlson said if there is going to be an HOA and property owned by an HOA the developer needs to show the Planning Commission the calculations to demonstrate that the HOA can do it. He said big developers will hire someone to do the assessment for them to determine the costs to maintain the improvements. In Utah, there was a huge law change regarding HOA's. He said now developers are responsible for the upkeep and maintenance of the improvements even after they have sold the property. He said there can be some liability for the developer who doesn't set up the HOA properly.

Commissioner Brown asked who would make the developer accountable. Dave Carlson said the HOA can sue the developer. Commissioner Knight mentioned the PRUD should be self-sustaining; their roads should match City standards. Dave Carlson said that private roads and water systems could be a problem. Those are generally the issues; the HOA has problems with repairing and maintaining them. He said that roads have to be a standard. Gary Kerr said all roads have to be built to City standards.

Commissioner Quinney said a PRUD is for the benefit of the developer. He said they have to ask what the City will get in return. Craig Barker said that there are some benefits to the residents, too. He also said there is no density bonus. He said PRUDs benefit the developer when the lots are not perfect, such as if there is a rectangular lot. He explained how they determine density for PRUDs.

Commissioner Quinney mentioned Lakeview Heights and that the City receive a lot of relief from not having to build parks. He said the City received no benefits from Quail Ponds and neither did the residents. Commissioner Quinney said it was a disaster. Dave Carlson said that is not a good example because that is not typical in a PRUD. He said PRUDs are helpful if there is a piece of property with a difficult shaped to develop, it allows for more creativity in placement of lots. It's supposed to be a tradeoff. He said PRUDs can allow a development to be aesthetically pleasing and enhance the quality of life to the people who live there through creative placement of the lots.

Commissioner Kiser said they need to decide to go forward or discuss if they want to consider PRUDs in the future.

Commissioner Residori said he thought they already decided to keep the PRUD. He said if someone applies for a PRUD the Planning Commission always has the option to reject it. Commissioner Knight said the City Council may not approve it. Craig Barker said that the Planning Commission is required, once they have preliminary approval, to send it to the City Council for review. He said the City Council wanted to be part of the early approval rather than being involved towards the end.

Commissioner Brown asked why they have to give a preliminary approval and why not just a final approval. Craig Barker said the State Law requires a preliminary approval and final approval. He said in the PRUDs they give a Preliminary Plan Approval is not the plat approval. He said the final plan has to be very detailed.

Dave Carlson said they have to approve, the State Law does not address PRUDs. He said according to State Law everything is a subdivision. If the property owner comes to the City and submits an application for subdivision approval and their proposal meets the requirements of the City ordinance, they are entitled to approval. Commissioner Brown asked what happens when the City Engineer have other requirements. Dave Carlson said the City Engineer's approval is included as part of the requirements that must be met.

Commissioner Quinney asked when the developer has to prove fiscal responsibility. Craig Barker said that he does not recall. Commissioner Thomas said that they must provide escrow funds. Dave Carlson stated that they included that requirement. Commissioner Quinney said there are certain guarantees; he asked if they pass that on in their recommendation. Craig Barker said the developer has to determine how he will put in the guarantee. He said the City Engineer decides the cost of the improvements. He said the City requires 10% of the guarantee to be held for two years after it is completed. He said Blair Gardner's engineer will provide the City's Engineer a cost estimate for the Orton property. Commissioner Quinney said they have already approved it. Commissioner Thomas said they cannot record until the escrow account is established.

Dave Carlson said the City requires improvements for roads, lights, and infrastructure of the City. Craig Barker said everyone should have a copy of what improvements are required. He said that is located in the Subdivision Ordinance of the City.

Commissioner Residori and Commissioner Dalpiaz said they have no questions about the proposal; it was well written. Commissioner Knight suggested adding in the comment that the common area must be accessible. Commissioner Kiser agreed that statement would be good to add.

Dave Carlson said these changes are a way to address the issues, but there are no guarantees and it's still going to be up to the City enforce its own rules. Commissioner Kiser agreed and added if the City does not enforce the ordinances they won't matter.

Commissioner Kiser said his concern is item 6; if the City has to designate the PRUD as a special assessment area, is that a common thing to do. He asked if this is another responsibility for the City. Dave Carlson said this regulation is not new; many cities have used this approach to solve issues. Commissioner Thomas asked for example, if The Cove was not finished could the City put in the parks themselves and assess the lot owners. Dave Carlson replied yes. Commissioner Kiser asked if the City wants that responsibility. Dave Carlson said that is a policy issue they have to decide. He said he discussed it with a few people. He said the only danger would be a moral hazard; by the City volunteering in case the HOA doesn't function. He said there could be HOAs that realize that the City will take care of the improvements if they do not. Commissioner Knight said he likes how it has been worded because it does not put the obligation on the City. It requires them to hold a public hearing first. Commissioner Thomas said the City could assess higher HOA fees as well. Commissioner Knight said that may make them more motivated to make the HOA work on their own without the City's help. Commissioner Brown replied not necessarily.

Commissioner Kiser said in most PRUDs, the City is responsible for the streets. Craig Barker said they have made that requirement in the past few years. Commissioner said Item 1, page 5, they must have the CCR's in place for private or public streets and they must meet City standards. Craig Barker said they allow private streets, but they must be built to the City's Public Street Standards in case the City has to take the street over.

Dave Carlson said usually if it is a private street are then it is a private water system. Commissioner Thomas said that is an issue because there are some private streets with the City's water system. Gary Kerr said there are some private water systems in some of the PRUDS. Commissioner Thomas asked if there was an issue with Cold Spring's water system. Gary Kerr replied Cold Spring's HOA is responsible for their water system.

NORTH OGDEN PLANNING COMMISSION

MEETING MINUTES

May 2, 2012

6. DISCUSSION REGARDING AN AMENDMENT TO TITLE 11, CHAPTER 11 PLANNED RESIDENTIAL UNIT DEVELOPMENTS.

Craig Barker introduced himself as the Community Development Director for the City. He said that part of his job is to prepare the agenda items for the Planning Commission's review.

Craig Barker said that this was reviewed at the last Planning Commission meeting. He said there was very little proposed to be changed but there was an issue about the language of common space. He referred the Commissioners to page five of the proposed amendment included in their packet. He said that the Planning Commission had asked that to be clarified to some degree, and has added the statement, "Common activity areas shall be configured to provide appropriate, accessible and usable spaces. Spaces that are too small, too steep, too narrow, etc., or otherwise configured in a way that the space provides questionable utility for the homeowners in the PRUD shall not be credited towards the developers open space requirement." Mr. Barker asked if that meets their requirements. Commissioners Brown and Dalpiaz approved of that change. Commissioner Brown said there is one that had become a flag lot. Craig Barker said he thinks the City is getting a lot better at it and PRUDs can be successful and valuable to the City. He said his concern is that the higher density PRUDs can be difficult to work with; single-family PRUDs tend to be better.

Commissioner Brown mentioned regarding item C, calculations, on page 5; she said if the developer does not complete his project his calculations aren't worth anything. She said that if a developer plans to build 64 homes and runs the development on a calculated amount of money; when he only really builds 34 homes and then goes away the home owners are left holding a project they can no longer financially support. Commissioner Knight mentioned the calculations will have to be done by phases. He said if the Planning Commission approves it; the developer has to show them it's going to work. Craig Barker said that in their plan every phase has to be able to stand on its own. A developer can't do a portion with a higher density, that doesn't have the supporting space. In terms of space, each phase has to support itself. He stated that Commissioner Brown's concern is legitimate because there are some developments that don't get completed.

Commissioner Residori said on page 13, there is some language that makes it more difficult for the developer. He referred to item 1, which states that the City shall require the applicant to submit for recording covenants, conditions and restrictions which will provide adequate guarantee. He said that if it says guarantee, then they have to have a method to make sure it stays in place.

Chairman Dalpiaz said he thought the language looked pretty good. Commissioner Brown agreed. Commissioner Residori said this is what the Commissioners were looking for. Craig Barker said that that is under item "B: Covenants and Restrictions." He said that the developers will submit covenants and restrictions in phases as they come in. He said the developer should have a master copy of the CC&Rs, and as they add additional phases, they get added to the plan, if they have structured their CC&Rs correctly. He said that the Planning Commission is going to do an overall final development plan for all the area the PRUD is going to cover and then the developer shows them how he will break them down into phases. He said when the developer does the CC&Rs they are going to be recorded with the first original phase.

Commissioner Brown said that this has been a very good learning experience, because there is one phase that has no common area. She said that at one point the City had nothing to do with CC&R's, but the time is right for the City to review the CC&R's. Craig Barker said that this now covers that point. He said that it mandates two people to review the CC&R's.

Chairman Dalpiaz said he likes, on page 16, the new wording that takes out bonds and requires escrow for 110%; it really strengthens the financial sureties. If they do go defunct hopefully there is money there to complete everything.

Commissioner Quinney said he reviewed page 13, paragraph D and the Commissioners should be aware that the homeowners may be liable for any unfinished improvements and the City can force them into that. For future homeowners signing up with a PRUD, they should really understand that paragraph. Craig Barker agreed.

Commissioner Quinney said size should really be taken into consideration. He said if there are enough homeowners they can handle the costs, but if not, it buries them. Craig Barker said it depends on the expected expenses in their development. The developers can paint the rosiest pictures of what the development will look like, so it's really important that homeowners know what they are getting into.

Commissioner Knight asked about the issue with The Cove that on the plat it states that the developer controls the HOA, but doesn't have to pay fees equal to the homeowners. He asked whether that has been addressed with this proposal. Craig Barker said he has read through it, but doesn't remember seeing it. Commissioner Knight said he recalls that was on the plat. He said he just wasn't sure if that was being addressed now. Craig Barker said that it should be mentioned when the developer comes in, and it should become part of the CC&Rs that are reviewed.

Craig Barker said the City has to make sure they know how it is to be recorded and structured. He said to make sure everybody knows what the developers' responsibilities are and what responsibilities the homeowner has. Commissioner Brown referred back to Quail Ponds, and reminded the Commission that was approved in 1998 and this is now 2012. She said the developer is stopping with two phases never to be done, and other than phase three, has only sold three homes. She asked how long the liability hangs on the necks of those homeowners. She said there is a point when the developer is not proving himself to be trustworthy. Craig Barker agreed, and said that might not be something to be included in the CC&Rs but needs to be reviewed.

Commissioner Knight said that they are looking for the developer to prove the viability of the development, and if that means the developer pays his \$30, \$100 or \$500 per lot until someone else owns that lot and that contributes to the HOA.

Commissioner Brown mentioned another concern about how most CC&Rs require insurance to be carried on the lot common areas. She mentioned that in a particular development, the developer stopped paying insurance on it over a year ago, and the home owners had no idea. She said that she doesn't see any verbiage in the handout about insurance. Craig Barker said he

doesn't recall seeing any wording about that either. Commissioner Brown suggested adding wording that the City requires them to have insurance, not just the CC&Rs. Craig Barker said that is fine, but he would like to call Dave Carlson in to go over that. Commissioner Knight said he thought that should be handled with the HOA. He said he didn't know that the City would force them to have a certain amount of insurance. He said the developer needs to carry the insurance because he carries the HOA. Craig Barker said that this needs to be addressed and suggested that perhaps a checklist would be appropriate about how they will manage insurance on a project. He said he doesn't know if the City wants to get into all of that.

Commissioner Quinney said that the City may be crossing the line with that one, because the City doesn't require homeowners to keep insurance on their houses. Commissioner Knight mentioned the mortgage company does. Commissioner Quinney said the City is not responsible to make sure the developer has insurance on the project; that's not the City's business. Commissioner Knight agreed. He said he thinks it will end up taking care of itself. Commissioner Quinney said it needs to be taken care of, but it's not the City. He said it has to be between the developer and the homeowners.

Craig Barker said how the developer participates with the HOA to provide for the upkeep costs, this should be part of the discussion they have with the developer. Commissioner Brown said she is more than happy to see the City starting to iron this out.

Ronald Chandler, City Manager, said he applauds the City's efforts on this but personally he is not a fan of PRUD's. He said that usually with CC&R's there is always something built in that can change them; where they can be altered when they're done. He said the developer will hold the majority voting rights. He said we need to be careful to make sure not to drag the City into any lawsuits about private property rights, and generally when CC&R's are being talked about, it's usually about private property rights.

Chairman Dalpiaz asked what the Planning Committee wanted to do.

Commissioner Quinney made the motion to recommend the proposal as altered with exception to clarification on the homeowners and developer relationship. Commissioner Knight said that along with the CC&R's that should be left to those parties. Commissioner Quinney suggested that the homeowners somewhere along the line need to take responsibility to what they are signing up for. Craig Barker agreed. He said that many people go into this process blindly and know very little of their responsibility. He suggested that the Real Estate community educate their purchasers as to what obligations they have when they buy into a PRUD. He said he bought into a PRUD and because he is in the business he read all the documents but he thinks most people don't.

Commissioner Quinney mentioned how realtors are obligated to use disclosures, stating everything that puts the buyer at risk. He said if they don't do that they could lose their job and could be liable for some damages. He said that if the purchasers use realtors, they are pretty well protected but if they go straight through to the developer, the developer doesn't have that obligation of the disclosure. Commissioner Knight mentioned the role of the mortgage lender, and the relationship between the lender and the buyer. He said that if the City is doing their jobs,

it gives them the ability to filter the good from the bad because there are some good situations out there. He mentioned gated communities and said that some are set up and work really well.

Craig Barker said his plan is to develop a checklist that has the questions and concerns from the Planning Commission to present to the developers.

Commissioner Quinney motioned to move this along to the City Council as it was approved by the Planning Commission, without any amendments. Commissioner Knight seconded.

Voting on the motion:

Vice-Chairman Dalpias	yes
Commissioner Brown	no
Commissioner Quinney	yes
Commissioner Residori	yes
Commissioner Thomas	yes
Commissioner Knight	yes

Motion passed with 5 to 1.