

I. CALL TO ORDER

A meeting of the Planning Commission was held on Monday, February 10, 2020, commencing at 5:30 p.m. in the Council Chambers of City Hall. Chairperson Asmus called the meeting to order.

A. ROLL CALL:

Chairperson	Shannon Asmus	Present
Commissioner	Michael Flaata	Present
Commissioner	Judy Hudson	Present
Commissioner	Larry Dahl	Present
Commissioner	Eric Mathwig	Present
Commissioner	Jeff Woods	Present
Commissioner	Tom Zens	Present
City Planner	Hannah Rybak	Present

B. ANNOUNCEMENT OF ADDITIONAL ITEMS

1. Extraterritorial Agreement Termination

II. APPROVAL OF MINUTES

It was moved by Commissioner Dahl, seconded by Commissioner Mathwig, to approve the minutes of the January 13, 2020 meeting. All members present voted aye.

Motion Carried.

III. SCHEDULED ITEMS

A. PUBLIC HEARINGS:

- Conditional Use, Variance and Easement Vacation Requests** – *by Litchfield Opportunity Zone, Inc. at 801 & 811 Cottonwood Avenue*
To allow for a twin home in an R-1 District, a zero side setback between the properties, and vacating the drainage and utility easements between the lots

Commissioner Zens and Commissioner Mathwig abstained from the public hearing due to a conflict of interest.

City Planner, Hannah Rybak, provided an overview of the request. She reviewed the consistency of the request with the standards for granting a conditional use and variance.

17 findings of fact offered by staff were presented to the Commissioners by City Planner Rybak.

Staff recommendation and potential action were reviewed.

Commissioner Dahl questioned City Planner Hannah Rybak as to whether the city can override the rules of the covenant in place? Rybak stated that cities stay out of covenants

and that they are legally enforced privately. We have not been provided with documentation on the covenant. If approved the city attorney would review and make a recommendation on it but for tonight that does not have an effect on what we are doing.

Commissioner Asmus asked if there were any letters or calls received in favor or opposition to the request. Rybak said she received one phone call for more information.

Commissioner Flaata asked if this is approved if it then sets precedence for the neighborhood. Rybak said she will leave that up to the opinion of the commission. Once there is one then we may need to approve another one in the area. Based on my experience that's what could happen. The commission would need to confirm with the interpretation or decide that it doesn't have an impact on the neighboring areas. It is entirely up to commission.

Commissioner Flaata asked if this is approved could the property be sold as two separate entities. Rybak stated that they are entirely separate properties, firewall separation, and not a unique circumstance. The applicant may retain the property or sell it right away.

Commissioner Woods asked if there was a precedence set like this in other neighborhoods where new twin homes were allowed that previously weren't; if there was a negative effect on those neighborhoods and land values. Rybak said that she was not aware of a tangible way to measure that but it's possible.

Commissioner Asmus opened the Public Hearing.

This being the time, date, and place set, with all mailed and published notices given as required by law, the hearing was opened at approximately 5:50 p.m., February 10, 2020, to consider a Conditional Use, Variance, and Easement Vacation Request by Litchfield Opportunity Zone, Inc. at 801 and 811 Cottonwood Avenue to allow a twin home to be located in an R-1 District, and a variance of ten (10) feet from the required ten (10) foot side yard setback on both properties for the placement of the twin home.

An attendance list is on file.

No written comments were received.

David Tysk from 17227 Candlewood Parkway, Eden Prairie, MN 55347 representing Litchfield Opportunity Zone. David states this is his 3rd meeting in regards to new housing in Litchfield. He has attended supportive meetings with administration, city council, county commissioners, Meeker County EDA, business owners, real estate personnel, renters, and those looking for new houses in the area. He was disappointed to learn administration had recommended denial of the C.U.P for the twin homes. He said their recommendation was based on only one factor that a twin home bridging two lots would change the character of the existing neighborhood. This is an entirely subjective finding. If the proposed twin homes were looked at closely and objectively comparing the surrounding homes on Cottonwood James and Ames one can only conclude that the project is completely consistent with the existing character of the neighborhood. The Arnolds Addition covenant and restrictions were passed to keep the character of the neighborhood. Looking at such covenants and the design before you tonight one can clearly see that everything is in compliance with the garages, the character of the

structure, finished living area, building height restrictions, roof construction, driveway materials and other covenants and restrictions. As such, the administration's findings are without any objective bases. Just a few blocks away on 10th Street there are two twin homes built in 2006 adjacent to a \$400,000 house which is one of, if not the most expensive home in the neighborhood. The twin home before you tonight is completely consistent with the neighborhood's look, feel, and desirability. Single family, single level homes like this one that are well designed, and look great, are desperately needed in Litchfield. This home design is exactly what I was told many times, by many people, is most needed in Litchfield. The C.U.P. before you is necessary due to the sharing of an interior wall and foundation. Construction of two homes at the same time dramatically lowers the construction cost allowing the homes to be built of better design, quality, and affordability for the families. The Litchfield Opportunity Zone is now the 5th owner of these lots and there's a market reason why these homes have not been built on. These lots sit empty because these lots, like 50 others in Litchfield, are not what people need or can afford using prior building methods. Together with the City Council, the Planning Commission can take one step forward to add badly needed housing for the residents of Litchfield and new people that want to live and work in Litchfield. The restrictive covenants I mentioned for the Arnolds Addition will expire leaving the residents that live on Cottonwood, James, and Ames no protection at all. This project offers a great solution right now to the neighborhood, the city, and future residents. If you're inclined to deny the C.U.P. as the administration recommends, then I ask you to consider how the housing shortage in Litchfield is solved. The Planning Commission should approve the C.U.P. because it objectively meets all of the C.U.P. criteria and will be a first step to lessening the housing shortage in Litchfield. This commission is empowered to make recommendations and solutions that address the housing shortage and the many people in the community who are waiting for this planning commission to take the first step. Tonight I'm requesting you approve the C.U.P. so that new homes can be built in Litchfield on lots that have been vacant now for almost 15 years

Commissioner Woods asked Tysk for clarification on the 10th St twin homes. Tysk said they were blocks away from this development but on 10th Street there were two twin homes that were built in 2006, adjacent to each other. One is directly adjacent to one of the most expensive homes in the neighborhood, if not the most expensive home in the neighborhood, and on the other side of it are the other townhouses that we own.

Commissioner Asmus stated that the most expensive home under discussion was built after the twin homes were already in place, thus they knew where they were building. They knew what they were buying and building next to. The people on Cottonwood bought a single family home lot and now they're getting something they didn't expect. Wouldn't that be the argument? Tysk replied no the argument is that the twin homes are very well designed and very well built so they can't alter the character of the neighborhood that's across the street. The Arnolds Addition is the neighborhood. It's not just one street or three houses.

Commissioner Asmus responded stating you're referencing the 10th street duplex? Tysk replied on the other side of 10th Street is the Arnolds Addition. You hop across the street and its Arnolds.

Commissioner Asmus stated that the home that you are referencing at \$400,000 was built when all of that was already there. Tysk replied that the only reference I am making is the

character of the neighborhood. I'm not making any reference to when the home was built or when it wasn't. I'm saying the twin homes were built in 2006 and those town houses did not diminish the character of the neighborhood. It's a beautiful neighborhood. Commissioner Asmus responded with it is. Tysk replied that it has to be done well and it has to be well thought out which is what we have done.

Commissioner Asmus ask David Tysk if there are covenants, to which he replied yes. Commissioner Asmus asked Tysk if he had a copy of those covenants to which he replied that he does, but only one copy. Tysk states that in the covenants it says that there has to be an approval by the architectural committee, so there can't be a degradation of the neighborhood when the architectural committee, in the covenants, has to approve the plans. It's very clear. The architectural committee has to approve the plans.

Commissioner Woods asked if Tysk needed the C.U.P before he can continue with that part. Tysk stated that is correct, the C.U.P. has to come first and then if we do something that is not in compliance with the covenants then we can be sued and have damages for not complying with the rules. So in addition to the approval of the architectural committee under the general residence restrictions it says no structure other than a single family residential dwelling, together with an attached garage, can be there and it gives the size and dimension for the garage. So this is in compliance with the covenants but there is a process to go through with the architectural committee.

Commissioner Asmus asked how can it be in compliance with the covenants? To which Tysk replied that the covenants do not talk about the side yard setbacks. Asmus stated that it says single family home. Tysk replied that it is one single family home on one lot and another single family and that they share a common property line but these are two homes on two lots.

Commissioner Asmus replied with that would be a wide interpretation of that covenant, wouldn't it? Tysk replied I don't believe so.

Commissioner Woods asked if it stated within the covenants whether or not the single family houses could be rented. Tysk stated that he didn't recall reading anything in the covenants that set forth the rules and how the community is going to be; what type of neighborhood it's going to be. When I read the covenants right now it is clear to me there are things in the neighborhood that violate the covenants. What the neighborhood does about that I don't know, but when you read the covenants and drive through the neighborhood you can see that there are properties out of compliance.

Commissioner Asmus asked Tysk if he is building these for rent or to sell? Tysk responded that we are here tonight to get the very first step in this approval; so we are not building them to rent or to sell. We are just trying to get this first step and I understand the importance of the question but we are an entity not an individual. We have shareholders and we are a for-profit corporation so we need to take the interest of shareholders into consideration. So I don't think that should be a consideration for the conditional use permit, what we would do whether we would rent them or sell them. I understand the importance, it is impossible for me to answer that unless, as part of this approval, you can tell me who the buyer is and what they are willing to pay and if you could tell me who the renter is and what they would be willing to rent at. If you could give me those two numbers then I could tell you what we want to do.

Commissioner Woods asked if Tysk has worked with these types of structures before? Has your Opportunity Zone or you worked with these people? Tysk replied that his business partner, Scott, has 35 years' experience with real estate development, so he has developed just about everything. Woods asked if they had experience in introducing these into neighborhoods where they have been strictly single family homes before. Tysk replied that he didn't know the answer because it hasn't come up in conversation.

Commissioner Asmus asked if Tysk knew when the covenants would expire, to which Tysk stated he didn't know.

Dave Marotte at 830 Cottonwood Ave had built his home in 2006. He stated he selected Cottonwood Ave partially because of the size of the lots and covenants that went along with those lots. He provided an extra copy of the covenants to Commissioner Asmus. The first item he wanted to point out was the duration of the restrictions which shall be for 30 years from 1st day of September 2004. His second point was that there were to be no structures other than a single family home. A structure in my opinion is the entire building. A building that houses two families is no longer a structure of a single family home. I know there are other areas in town that have a mixture of the two. I had an opportunity to buy another lot in town that had a mixture of the two and I chose Cottonwood. I believe the twin home violates the restriction of a single family home. I hope that the commission sees that this home violates the covenants.

Commissioner Dahl asked Dave his opinion that if we allow a twin family home that it will change the character of the neighborhood? Dave replied he believes that a twin family home will change the character compared to everything on the East side of road. One structure will look different than the buildings on the other side of the road and change the character because of it.

Kyle Bentfield at 731 Cottonwood Ave stated that he agreed with what Dave said and that he was also of the opinion that all the houses in the area, according to the covenants that were presented to him when he purchased his home were of single family houses. One structure. To him it personally doesn't seem quite right to put something in the area that intentionally has the same footprint but will be valued a little bit less, and have less of a tax burden, even though they have the same amount of resources as the rest of us. It just doesn't seem quite right to me. What Dave said is the general consensus of the area.

Raleigh DeBoer at 820 Cottonwood Ave and 810 Cottonwood owns the house at 820 Cottonwood Ave and the land at 810 Cottonwood Ave. They are connected. He stated that he agrees with Dave and Kyle. I have two lots there. I bought the lots and built the house 3 years ago with every intention that this was a single family home community and I stand with the covenants. I don't see anything in the covenants that would follow or agree to what is on here. It's straight forward for me that we should oppose something like this.

Jason Manning at 900 Cottonwood Ave stated that he has seen about 80% of the houses built on that street. He has been there a long time and has one of the original houses that was built by Litchfield Lumber. One of the main reasons he chose this location was because it was going to be a newly built community, there would be more single dwelling homes and they stated that nothing else would ever come into that development. He

strongly opposes anything like that because the main reason he bought the house was because it was supposed to be a single family dwelling and nothing else could actually come in there.

Dave Tysk asked if there was a representative of the architectural committee at the meeting since there was lengthy conversation about the covenants so that he might ask some questions of them.

No further comments were heard and the hearing was closed at approximately 6:05 p.m.

Commissioner Hudson asked City Planner Rybak if it is typical of a twin home to have a lot division going right down the middle or if they are usually on one lot. Rybak replied that it can go either way. You might have 4-8 twin homes that are all under sole ownership on multiple lots or they might be privately owned. I'm not familiar enough with housing stock to answer whether it's usually done one way or another.

Commissioner Flaata stated that there were two new developments that are going to have town homes, and he thought this area should remain a single family dwelling.

Commissioner Woods asked for Flaata to elaborate on the two new developments. Flaata replied that they are set up to have townhomes in their plans. There are places to build townhomes. With the two new developments going through, there are 6 or 8 in one and there is room for a bunch in the other one. This is a single family housing all the way down the street and in my opinion it should stay that way.

Commissioner Dahl stated that his concern was whether or not we are setting precedence by allowing a twin home in this neighborhood and is that going to be the norm going forward. Are we going to put twin homes wherever there are two lots? He is having issues with the covenant also but if the city is not enforcing that then it is a moot point. Commissioner Asmus stated that even though the city isn't enforcing them per say, why would we want to open a can of worms to have a lawsuit. Commissioner Dahl confirmed that was his point. Commissioner Asmus replied that then we push the burden back onto the residents of those home owners.

Commissioner Woods was conflicted and stated that as a consideration of the planning commission and the other covenants involved, we have been told is something to take up with the City Attorney. There is a part of him that says for that 10 ft. of spread things would look about the same. So we are talking about 20 feet, to have two single families living there in one structure. Each family assuming they are going to be sold, which is maybe a stipulation that we can make, then each one of those would have the ability to sell theirs, which would be the same as the other structures in the neighborhood. His question earlier was could they rent? The Commission could have a stipulation that they couldn't be rented. As far as what Dave Marrotte was saying earlier in regards to the meaning of the word structure in these covenants. At the end of the day you still have two families whether they are separate or together. My other question was does the look affect the property values? As a Commission he doesn't want to be the factor that says we're not interested in housing in our community because housing is talked about a lot. He doesn't want to discount this, but as Commissioner Dahl said we have to be careful about precedence. We have to be careful about Mr. Schilling's proposed project over there where there are single family housing and the covenants that they might have. He

doesn't want to get into the covenants tonight because he doesn't think that we know, but people are already talking about Willmar Avenue. Commissioner Asmus stated that the Schilling property was already designed and ready for a trailer park so the covenants are on the other side of that street. Commissioner Wood replied with yes, but that is also R1 and there are C.U.P.'s that need to be achieved or rezoning. Again he stated we have to be careful of which direction we go. I'm up in the air as to why the city has decided, with the single criteria, to not be acceptable. It had nothing to do with covenants. It had to do with a zero set back. This is all one ownership group that owns that. Other than being together, customer A owns one and Customer B owns the other. Are we really changing and bringing two families into the community and for this to be our responsibility to look at and to consider?

Commissioner Asmus stated that he struggles with the thought that the property owners purchased the property with a copy of the restrictive covenants and the purpose of these restrictions are to ensure that the use of each lot be for single family residences only, to prevent nuisances and to prevent the impairment of the property. It is clear that when they bought their home they had restrictions and those restrictions are good for 30 years, so we open a can of worms for the residents to file a lawsuit. Commissioner Asmus disagrees with Mr. Tysk when he says that he can't have the conversation about the two homes because he can go around and knock on the doors and have these conversations with the neighbors and explain the quality of the home, height of the home and have some of these neighbors on his side. He failed to do that. He still can but he hasn't done that.

Commissioner Woods asked in the past, in the year 2000, what was in that development that Litchfield Opportunity now owns? What was there? Commissioner Asmus responded that it was a field. Commissioner Woods replied it was a cornfield, that's what was next to them. Is it an eye sore to have this type of building there as opposed to a farming operation? Commissioner Asmus responded that we're not talking about the property on the other side. Commissioner Woods replied that as we look at the neighborhood and what was near it, I'm trying to work through my mind the visual and picture.

Commissioner Hudson stated again that they built their single family homes there knowing that there was a farming operation, and built there knowing it was single family residences. I think this twin home will be very different than the other homes.

Commissioner Flaata stated that It looks like it would be a beautiful home building, looks very nice, I just don't think it fits, and obviously the city didn't either since they put it in there under criterion #2.

Commissioner Woods stated that he wished he knew more about the interpretation of the covenants. I'm not sure that I have all the information that I need. I'm not one way or another right now, I'm in the middle. This only just came up. Commissioner Hudson replied that we have to look at our ordinance. Commissioner Woods replied that we are a planning commission and we are limited by code.

Commissioner Asmus stated that we wouldn't say no to this if it was in an area already with a multi-family home. We are not saying no to the idea of investing in townhouses in our community. We are saying find a lot that isn't designed or set aside for a single family. Commissioner Woods agreed.

Commissioner Hudson stated that people are building there every year; single family homes.

Commissioner Woods stated that he doesn't mean to be the devil's advocate but to discover all. Commissioner Asmus responded that Woods has a vote here. Everyone has a vote. And it will be a public vote.

Commissioner Dahl asked if we would deny this and wait for an interpretation from the City Attorney, how soon could they come back and reapply for this? Commissioner Flaata replied back asking for an interpretation of what; they don't deal with the covenants. Commissioner Asmus added that we don't enforce the covenants and that it goes back to the home owners.

Commissioner Flaata stated where he lives you're not allowed to park a camper in your driveway. There's no one policing that.

Commissioner Woods asked for clarification in regards to what Hannah had mentioned earlier. If it went the other way and we did accept the C.U.P., then someone is going to have an interpretation of the covenants done, then get together with the city, and have a lawsuit that would contain the City Attorney at that time.

City Planner Rybak states that the city would not be involved in any lawsuit. We would want the city attorney to look over the covenant to make sure that the city is not blatantly permitting something that is very defensibly legally not allowed. That is the extent of what I know on that. The City Attorney would need to look at that and may or may not make a recommendation to the Council based on that. But again we do not enforce the covenants and if the neighbors were to begin litigation then the city would not be involved in any way shape or form.

Commissioner Asmus responded to the question of if Mr. Tysk could come back and when. If Mr. Tysk and his group would like to come back for another C.U.P. they can do that if they have talked to the residents and neighbors and get their support. If this is as nice as they believe it is, then there is nothing wrong if the residents accept it.

Commissioner Woods stated that if it's a matter of their values, which is why I asked if they've seen these in other neighborhoods where they weren't before, how did that affect the values. Those are things the residents need to consider.

Commissioner Asmus states that Mr. Schilling built some over on Geinitz and the residents came and supported him saying that these homes are not bad. There was concern at first but they came and supported later on and we approved them.

Commissioner Flaata made a motion to recommend denial of the requested Conditional Use Permit to allow a twin home to be located in an R-1 District, at the property located at 801 and 811 Cottonwood Avenue, based on the findings of fact and submitted plans. This motion was seconded by Commissioner Dahl. Upon roll call vote, all members present voted aye.

Motion Carried.

Commissioner Woods made a motion to recommend denial of the requested Variance to allow a ten (10) foot variance from the required ten (10) foot side yard setback on the properties located at 801 and 811 Cottonwood Avenue, based upon the decision to deny the coordinating Conditional Use Request. This motion was seconded by Commissioner Flaata. Upon roll call vote, all members present voted aye.

Motion Carried.

With the Conditional Use and Variance requests denied, no action was necessary on the utility and drainage easement vacation.

IV. **NEW BUSINESS**

A. TAX PARCEL SPLIT REQUEST – *by Kim Olson, Re/Max & Barb Nelson, Owner at 61961 Hwy 12*

City Planner, Hannah Rybak, explained the request, outlining the staff report that was included in the packet.

Kim Olson was present to answer any questions and explain the proposal.

Commissioner Asmus asked if the new parcel will need to be annexed in if the city will be providing public utilities. Do you know if that is the intent here? City Planner Rybak replied that she wasn't sure.

Commissioner Asmus asked if the tax parcel split was for Kim Olson dba Re/Max; is Kim the applicant or is it Re/Max? City Planner Rybak replied that Kim is representing Re/Max and that is who she is with.

Kim Olson with Re/Max - 309 N Sibley Ave states that she is not the applicant. She is helping out the owner of the property as she is elderly and couldn't be here tonight.

Commissioner Asmus stated she is splitting the property for future sale or whatever she wants to do with it. Kim Olson agreed with Commissioner Asmus and added that the land is in a trust between Barb Nelson and her son. Barb wants to split this off because the buildings are deteriorating and she doesn't want to have to deal with that.

After discussion, Commissioner Woods made a motion to recommend approval, as submitted, of a Waiver of Subdivision Regulations for a tax parcel split at 61961 Hwy 12. This motion was seconded by Commissioner Dahl. Upon roll call vote, all members present voted aye.

Motion Carried.

B. TAX PARCEL SPLIT REQUEST – *by Litchfield Opportunity Zone, Inc. on PID 27-2878000*

City Planner, Hannah Rybak, explained the request, outlining the staff report that was included in the packet.

David Tysk, with Litchfield Opportunity Zone, Inc., was present to answer any questions and explain the proposal.

Commissioner Woods made a motion to recommend approval, as submitted, of a Waiver of Subdivision Regulations for a tax parcel split on PID 27-2878000. This motion was seconded by Commissioner Flaata. Upon roll call vote, all members present voted aye.

Motion Carried.

C. REVIEW PROPOSED AMENDMENTS TO SECTION 154.297 – LIST OF SPECIAL USES

City Planner Rybak reviewed the proposed amendments to Section 154.297 – List of Special Uses. The Planning Commission saw no issues with the proposed amendments. Commissioner Dahl made a motion to request the City Council set the public hearing for the proposed amendments for the March 9th Planning Commission meeting. This motion was seconded by Commissioner Hudson. Upon roll call vote, all members present voted aye.

Motion Carried.

V. OLD BUSINESS

- A. JOINT PRESENTATION ON DEVELOPMENT PRACTICES – for City Council & Planning Commission**
Presented by WSB on Thursday, February 20th, 2020, 4:00 p.m. at City Hall

VI. ADDITIONAL ITEMS

A. Extraterritorial Agreement

Meeker County terminated the extraterritorial agreement on February 5, 2020 and becomes void as of March 6, 2020.

VII. SET HEARING DATES AND TIMES

The next scheduled meeting is Monday, March 9, 2020, at 5:30 p.m.

VIII. REVIEW OF COUNCIL ACTIONS

- A. CONDITIONAL USE REQUEST GRANTED – by Gary & Catherine Irons at 809 South Gilman Ave**
To allow for an accessory structure relocation onto the property

IX. ADJOURNMENT

Commissioner Asmus adjourned the meeting at 6:55 p.m.

Hannah Rybak
City Planner