City of Taylorsville
Planning Commission Meeting
Minutes
November 9, 2010
Pre-meeting – 6:00 p.m. - Regular Session – 7:00 p.m.
2600 West Taylorsville Blvd – Council Chambers

Attendance:

Planning Commission
Ted Jensen, Chair
Kristie Overson
Garl Fink
Steven Faurschou
Ernest Burgess
Dale Kehl
Anna Barbieri
Dan Fazzini, Jr. (Alternate)

Community Development Staff
Mark McGrath, Director of Community Development
Michael Meldrum/Principal Planner
Dan Udall/City Planner
Jean Gallegos – Admin Assistant/Recorder

PUBLIC: Barbara Hisle, Debbie King, John King, Kevin Carlson, Shannon Carlson, Randy Hillam, Vickie Stevenson, Cindy Middleton, Mitch Visley, Murray Moffat, Doug Hillam, Katia Lopez.

WELCOME: **Commissioner Jensen** assumed duties as Chair and welcomed those present, explained the process to be followed this evening and opened the meeting at 7:00 p.m. He outlined the items on the Consent Agenda and asked if there were anyone in the audience wishing to speak to any of them or any changes deemed appropriate by the Planning Commission. There being none, Commissioner Jensen asked for a motion regarding the Consent Agenda. 19:03:02

CONSENT AGENDA

Agenda/File #	Application	Applicants	Action
1. 7H10	**Home Occupation – Massage Therapy**	**Barbara Hisle 4553 South Edgeware Lane**	**Approved with staff recommendations.**
2. 3C10A	**CUP Amendment to Commercial Day Care**	**Smart Kids – Katia Lopez 2271 West 6200 South**	**Approved with staff recommendations.**

MOTION: Commissioner Garl - I move for approval of the Consent Agenda consisting of Agenda #1 and #2
SECOND: Commissioner Barbieri
Commissioner Jensen restated the motion to approve the Consent Agenda consisting of Agenda Items 1 and 2

VOTE					
Commissioner	**Vote**	**Commissioner**	**Vote**	**Commissioner**	**Vote**
Faurschou	**AYE**	**Fink**	**AYE**	**Burgess**	**AYE**
Kehl	**AYE**	**Barbieri**	**AYE**	**Jensen**	**Chair**
Overson	**AYE**			**Fazzini**	**ALT**
Motion passes 6 to 0.					

CONDITIONAL USE

3. 13C10 **Club DJs (Murray Moffat) – 3849 West 5400 South** – Conditional Use Permit for an Outdoor Patio (Michael Meldrum/Principal Planner) 19:06:01

3.1 **Mr. Meldrum** presented this item. This item was re-noticed in order to properly inform the neighbors. **Mr. Meldrum** showed pictures of the structure. 19:09:02 This application was first heard on April 13, 2010 by the Planning Commission. At that time, the Planning Commission determined that additional information was required and the item was continued until the June 8, 2010 meeting. The additional information requested by the Planning Commission was a sound test for the property. Staff has contacted the Salt Lake Valley Health Department (SLVHD) regarding the conducting of this test. Specifically, Staff has been working with Mr. James Bennett. The SLVHD had not given approval for the plans at the June 8, 2010 Planning Commission meeting. At that meeting, the Planning Commission gave instructions that the applicant, Murray Moffat, needed to secure approval of plans from the SLVHD before coming back to the City with his Amended Conditional Use Permit application. Since that time, Mr. Moffat has worked with Mr. Dale Keller of the SLVHD. Approval has been granted by the Health Department in a letter which says that this proposal is compliant with the Utah Clean Air Act and the applicant is requesting approval for an Amended Conditional Use Permit to erect a patio cover on the south side of the building. The intent of this patio cover is to provide a covered area for customers that desire to smoke. The applicant proposes not to serve alcohol under the patio and no music will be played in this outdoor area; however, alcohol could be brought out into this area by the customers.

The last public hearing included complaints from the nearest neighbors. The Police Department has been responding to these complaints. According to Health Department regulations, a designated smoking area must be located a minimum of 25 feet from the building. The International Building Code requires that an accessory structure be located a minimum of 6 feet from the primary building. The applicant can meet the minimum building separation requirement but the Health Department is concerned with the ability to have the designated smoking area at least 25 feet from the building. Staff is concerned with requiring the applicant to provide adequate mitigation

for noise coming from the patio area. The Planning Commission may wish to consider a condition that makes this a smoking patio only, with no alcohol allowed in that area. This could be a mitigation measure to reduce potential negative impacts on the adjacent residential properties to the south. Based on testimony previously heard during public hearings, it seems that the patio is the area which creates the most noise. **Mr. Meldrum** reviewed aloud the findings of fact for the audience's information and recommended approval with the eight staff recommendations, which he also reviewed aloud for the audience.

3.2 **Findings of Fact: (File #13C10)**

1. The use is a conditional use in the C-2 zoning district.
2. A patio cover has been erected for which a building permit was not obtained.
3. According to Building Code requirements, the patio cover must be located at least 6 feet from the main building.
4. A designated smoking area must be located at least 25 feet from any door, window, or other air intake.
5. The applicant is responding to complaints of noise from the covered patio area.
6. The applicant has submitted plans for a shed roofed style metal building with a solid back that will be insulated with foam board to reduce sound.
7. The current configuration complies with the Utah Indoor Clean air Act as determined by the Salt Lake Valley Health Department.

3.3 **Staff Recommendation:** Staff recommends approval of File #13C10 with the following conditions:

1. Comply with the requirements of all reviewing agencies.
2. The building is constructed as per the set of plans approved by the Salt Lake Valley Health Department.
3. No future additions or other structures will be erected without prior City approval.
4. Pro-active self monitoring of noise in the patio area will e conducted nightly and regularly by the applicant or his employees.
5. A building permit must be obtained prior to the commencement of any construction for this proposed patio cover. Inspections as required by the Building Division will be conducted.
6. **[Changed by Motion]** To reduce the amount of time patrons spend in the patio area, no alcohol may be ~~taken~~ **served** outside.
7. The covered patio area will be the only designated area for smoking.
8. **[Changed by Motion]** The Conditional Use Permit is subject to review upon substantiated and unresolved complaint **of noise**.
9. **[Added by Motion] That the outside patio area be closed at 1:00 a.m.**

3.4 **APPLICANT ADDRESS**: **Murray Moffat** 19:16:38 **Mr. Moffat** asked that customers be allowed to transport their drinks outside while using the patio. He was concerned that leaving a drink unattended would not be good for a number of reasons - The waitress may inadvertently throw it out or other customers could conceivable steal the drink or put something into the drink that could possibly harm the customer. 19:17:42 He added that he is in the business to make money and wants very much to keep his customers happy or they will go elsewhere. He advised that he would be willing to monitor the noise levels nightly. He felt the structure will sufficiently deflect the sound and that as wide as the patio is, most noise will go left or right. That insulation will be included to help sound proof it. He added that he has conducted numerous sound tests on the other side of the wall and could not pick up any sounds on his meter. The Taylorsville City Chief of Police was supposed to meet him and conduct a test but received a call out at the last minute and could not be there. Sgt Judd subsequently came by and stayed for an hour. That at about 1240 a.m., Mr. Moffat and Sgt Judd had heard some laughing and talking, which was barely audible and Mr. Moffat had never heard the music while out there. **Mr. Moffat** advised that he wants to be a good neighbor and will do everything possible in order to achieve that. **Commissioner Fink** asked how the structure would be heated and what type of lighting was intended. **Mr. Moffat** said that radiant type ceiling heaters and light bars would be installed. He added that presently they are still using the stand up heaters, however, have moved the propane tank to 30' away from the patio, as was requested previously for safety. **Commissioner Fink** commented that staff is recommending that no drinking is allowed out there, however, if that were changed to be no service of drinks out there what would happen? **Mr. Moffat** said that no drinks are served out there now and no music is being played on the patio since the day the patio was opened. 19:25:16 **Commissioner Fink** said that the customers would be able to carry their drinks outside but not be served out there then. **Mr. Moffat** said that was his assumption and is the same as any other bar in the area.

3.5 **SPEAKING**:

1. **John King** 19:26:04 said that none of the calls have been "***anonymous"***. That he has made most of the calls himself. His complaint was not the music but the noise made by the patrons while on the patio, which emanates directly into his bedroom window. He gets up at 4:00 a.m. everyday for work; therefore, his weekends are precious to him for relaxation. He said that on one instance, right after he made the call, the noise got even louder. He has lived in his present home for 33 years. That he calls every time the noise level wakes him up and has called at least 15 times during the last six months. He felt the only way it would work at all is to completely enclose the area and put in ventilation fans.

2. **Candy Pollum** 19:32:45 advised that she lives just south of Club DJ's. That they don't hear it as much but when they do, it is very loud and does negatively impact their neighborhood. **Commissioner Fink** asked what time of night the noise occurred and **Mrs. Pollum** said it was between midnight and 1:00 a.m. and seemed to be coming from outside the Club.

3. **Kevin Carlson** 19:35:03 added that it isn't nightly when there are disturbances but enough to disturb his family when it does occur. He continued on to say that they are going to have a baby in May and didn't want this type of disturbance to keep occurring. He felt it was disrespectful to the residents that the Club does not monitor these types of outbursts better.

4. **Cindy Middleton** 19:36:33 suggested that the structure at a minimum should be insulated and if possible, completely enclosed.

5. **Murray Moffat** advised that they don't want to be disrespectful. That the Club is in the middle of a melting pot with Kearns, West Valley and Taylorsville, etc. That mostly good people come into the Club but sometimes there is a bad apple in the

bunch. That they do screen people to make sure there are no weapons being brought into the Club. He said that he will fix the problem with the noise but that the longer it is delayed, the worse it will become.

6. **Mitch Visley (attorney)** 19:39:19 intimated that the testimony heard this evening was very interesting. That he thought the Clean Air Act would be intimidating to read but in fact, it turned out to be a very small document. The airport is the only exception to the content, however, he felt that bars and private clubs could be easily added as exceptions. He felt the problem with Club DJ's seems to be very limited, a night here and there. There are signs in the structure in question concerning keeping the noise level down and the neighbors do have the option of calling Club DJ's direct and ask that the noise level be monitored.

7. **Debbie King** 19:42:31 expressed that she feels like what they have to say falls on deaf ears. It is frustrating to her to be awakened in the middle of the night and that the responsibility for monitoring the problem lies with Club DJ's and the police department. She wondered why the smoking area could not be moved out to the front of the Club, away from the residential area. She said that they have called Club DJ's to complain, that her and her husband have planted trees in an effort to buffer the noise, which worked pretty well until they elected to add the temporary patio structure but now the whole situation is worse.

8. **Vickie Stevenson** 19:45:23 is am employee of Club DJ's. She advised that she understands the neighbor's position. She felt the difference in hours between the neighbors and their clientele was the biggest problem Customers come into the Club to have fun at the same time the neighbors are trying to settle down for the night. That it is a difficult situation to try to keep everybody happy. That the Club quits servicing liquor at 1:00 a.m. but cannot make the clients leave until 2:00 a.m.

Commissioner Jensen closed the public hearing at 7:48 p.m.

3.6 **APPLICANT READDRESS**: **Murray Moffat** 19:48:29 commented that this issue has been going on for a long time and asked that they be given the chance to alleviate the sound problem by erecting a suitable structure. If that doesn't work, he will try something else. He wants to have something nice for his customers which is also neighbor-friendly. **Commissioner Overson** asked him if the hours of operation were the same at the Club on Friday and Saturday. **Mr. Moffat** replied in the affirmative saying that it was in accordance with State regulations. **Commissioner Overson** asked if it were possible to close the patio when the Club stops serving liquor and **Mr. Moffat** agreed to do that. 19:51:41 In response to the neighbor's suggestion to move the structure to the west side, **Mr. Moffat** indicated that would be a big problem because Questar blue stakes said that all of the Club's utility lines are coming in on the west side. Also there is a big drain cap there that in the past has completely flooded the parking lot.

3.7 **DISCUSSION:** **Commissioner Overson** felt that not allowing the customers to take their drinks outside would cut down on the length of time they spend out there. **Commissioner Jensen** said that the main issue is that State law requires that patrons cannot smoke in the building. 19:59:32 **Commissioner Kehl** asked if the building had to be so open and suggested enclosing some of the north end. **Mr. McGrath** advised that he had met with the Health Department and their feeling was that they wanted to see less coverage of the walls. That enclosing it any further would probably be a problem for them. **Commissioner Fink** noted that previously one of the ladies that works in the Club mentioned that people should have to endure loud noises on weekends, which he did not believe to be true. People have the right to have uninterrupted sleep during the weekends as well as they do on week nights. He saw no difference. If something went on in his back yard on a week night, he would be just as upset as he would on a weekend. Therefore, he did not feel that was a good argument for allowable noise.

3.8 **MOTION: Commissioner Fink -** 20:05:21 **I will make a motion. I move for approval of File 13C10, Club DJ's location at 3849 West 5400 South, with the following conditions: Staff conditions 1 through 8 with a change to #6 to indicate that no alcohol can be served outside. I want to underline #8, which everyone here should know, is the conditional use permit is subject to review upon substantiated and unresolved complaint of noise. I want to add #9 that says that the patio will be closed at 1:00 a.m. Commissioner Kehl – I have a question on changing #8? Commissioner Fink - I added "unresolved complaint of noise".**
SECOND: Commissioner Kehl
Commissioner Jensen restated the motion by Commissioner Fink to approve File #13C10 for Club DJ's with eight staff conditions, with changes to #6 that no alcohol may be served outside. #8 that the conditional use permit is subject to review upon substantiated and unresolved complaint of noise and adding #9 that the outside patio area be closed at 1:00 a.m. 20:06:52

VOTE					
Commissioner	**Vote**	**Commissioner**	**Vote**	**Commissioner**	**Vote**
Faurschou	**AYE**	**Fink**	**AYE**	**Burgess**	**NAY**
Kehl	**AYE**	**Barbieri**	**AYE**	**Jensen**	**CHAIR**
Overson	**NAY**			**Fazzini**	**ALT**
Motion passes 4 to 2 20:08:59					

DISCUSSION:

- **Commissioner Overson** explained her NAY vote by saying that even through alcohol will not be served on the patio; she did not think it was appropriate for patrons to be able to take previously purchased alcohol out there**.** 20:09:25

- **Commissioner Barbieri** asked to make some general comments:

  1. That the Commission does appreciate those who spoke for coming out to be heard. The Commission is very careful to take into consideration concerns of both businesses and neighborhoods. She hoped that those in attendance see that this dual predicament does not need to stop at the Commission hearing. She expressed hope that all people involved will approach this with the legislature because she was sure that this did not only affect Taylorsville's Planning Commission and this particular neighborhood. Others have come

under scrutiny for the Indoor Clean Air Act that was meant to do good but has created some unintended consequences. She hoped that all involved will continue to pass all concerns on to their legislative representatives. She expressed sympathy to both sides in this issue and hope that this situation is monitored closely on behalf of the neighbors.

2. In consideration of tonight's Club DJ hearing, and in talking about revitalization of parts of Taylorsville that have begun to deteriorate, she would like to focus on the 5400 South area which is very valuable property. However, she would not make the effort if Mr. Moffat is grandfathered in with this make-shift building on the back under the conditions that the Commission is allowing. She felt that on the other hand, owners have the right to run their business and make money. So as a Planning Commission, she wondered where it stands and what the proper procedure is so that the area can be revitalized.

- **Commissioner Kehl** volunteered to meet with Jim Dunnigan, the representative for this legislative district, to discuss this issue and what unintended consequences they have created with the Clean Air Act. He did not feel the airport should be the only exception and should also apply in a private situation such as this. To do so would allow an equitable resolution to this whole problem, for the neighbors and for the business owner. 20:13:12

DISCUSSION ITEM

3. Discussion of the Proposed Unified Development Code (Chapters 7 – 10). (Mark McGrath/Director of Community Development and Michael Meldrum/Principal Planner). 20:14:22

3.1 **Don Adams**, **Mark McGrath** and **Michael Meldrum** co-chaired the discussion of the proposed Unified Development Code. and opened it up for comments from the Commissioners. **Mr. Adams** gave the redlined versions with changes for Chapters 1 through 6 back to the Commissioners and opened the meeting for discussion.

1. **Chapter 7 - Uses in Residential Districts.**
2. **Chapter 8** - **Land Uses in the Commercial, Office, Industrial, Mixed Use, Transit Corridor, and Research and Development Districts**.
3. **Chapter 9** – **Institutional Care District**.

3.2 **DISCUSSION**: Commissioners and Staff completed review of redlined versions of changes for Chapters 1 through 6 and did initial review of Chapters 7 and 9. Page 2, Paragraph 4, Architectural Design and Materials – **Commissioner Kehl** felt that stucco did not have to be an accent material only and wanted that readdressed at the proper place in review. Page 3 – **Commissioner Overson** made some minor verbiage changes. Chapter 9, paragraph 11 b – questions were raised on duties of "Director" and on what constitutes "open construction". **Mr. Meldrum** gave the definition as being open visual corridors so that nothing it hidden from view. **Commissioner Kehl** then questioned the use of an opaque screen under that definition. **Mr. Meldrum** agreed that did not make sense. Decision was to remove "open construction" from the paragraph. **Commissioner Kehl** said that under Landscaping, paragraph a and b, which he felt sounded okay on paper but there are times when the 5' parking area between the road access and the adjoining property, makes a better product for all concerned. If the 5' of space is properly landscape, it serves the same purpose as 10' and possibly makes a better set up for the users. That refers to both b(1) and b(2). **Commissioner Kehl** recommended changing both of those to 5' instead of 10'. **Mr. Adams** did not agree with that and said that there is a exception included where it talks about if a driveway is used for common access by adjacent commercial parcels. So it has the shared access provision. **Commissioner Kehl** felt there needed to be more flexibility built into this ordinance in order to accommodate better development. He wanted to have it addressed under landscaping with a percentage and be at the Director's discretion or something else. He felt it was a restriction that did not need to be there. **Mr. Adams** still felt that a percentage would be taken advantage of. **Commissioner Kehl** said his idea was a percentage in lieu of a distance between. He had several questions on some of the setback requirements being too restrictive, especially on a small parcel.

There was considerable discussion of Development Standards, therefore, due to the late hour; it was decided to end discussion for this session on Page 4, of Chapter 9, to be taken up at that point in the next meeting.

CITY COUNCIL MEETING DISCUSSION: Discussion of the previous City Council meeting was held in the pre-meeting.

OTHER BUSINESS: None.

ADJOURNMENT: By motion of **Commissioner Barbieri** the meeting was adjourned at 11:06 P.M.

Respectfully submitted by:

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Jean Gallegos, Admin Assistant/Recorder for the
Planning Commission

Approved in meeting held on December 14, 2010.