

**PLANNING COMMISSION AGENDA**  
**Thursday, February 9, 2012**  
**Morgan County Council Room**  
**6:30 PM**

**PUBLIC NOTICE** is hereby given that the Morgan County Planning Commission will meet at the above time and date at the Morgan County Courthouse, Council Chambers, 48 West Young St, Morgan, Utah. The agenda is as follows:

1. Call to order – prayer.
2. Approval of agenda.
3. Declaration of conflicts of interest.
4. Approval of minutes from January 26, 2012.
5. Public Hearing/Discussion/Decision: To amend portions of sections 8-2-1, 8-5C-3 and 8-6 of the Morgan County Code relative to child day care centers and their zoning permissions and standards.
6. Public Hearing/Discussion/Decision: To amend portions of sections 8-2, 8-3, 8-4, 8-6, 8-8, and 8-19 of the Morgan County Code pertaining to conditional uses and related noticing, public comment, and land use authority provisions.
7. Discussion/Decision: To amend portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions.
8. Staff Reports,
9. Adjourn.

PLANNING COMMISSION MINUTES  
Thursday, February 9, 2012  
Morgan County Council Room  
6:30 PM

**MEMBERS PRESENT**

Roland Haslam  
Al Lundgren  
Brandon Anderson  
Darrell Erickson

**STAFF PRESENT**

Charlie Ewert, Morgan County Planner  
Teresa Rhodes, Planning Commission Assistant

**MEMBERS ABSENT**

Trevor Kobe  
Chris Hales  
Adam Tone

**COUNTY COUNCIL PRESENT**

Tina Kelly  
Howard Hansen

\*\*\*MINUTES\*\*\*

**1. Call to order – prayer.**

Vice-Chairman Haslam called the meeting to order.  
The prayer was offered by Vice-Chairman Haslam.

**2. Approval of agenda.**

Member Erickson moved to approve the agenda. Second by Member Lundgren. The vote was unanimous.  
The motion carried.

**3. Declaration of conflicts of interest.**

There were no conflicts of interest declared.

**4. Approval of minutes from January 26, 2012.**

Member Lundgren noted that he was not present on at the Janaury 26, 2012 meeting and could therefore not vote on them. This would not allow for a full quorum to vote on the minutes.

**Member Lundgren moved to postpone the approval of minutes for January 26, 2012 until the February 23, 2012 meeting. Second by Member Anderson. The vote was unanimous. The motion carried.**

**5. Public Hearing/Discussion/Decision: To amend portions of sections 8-2-1, 8-5C-3 and 8-6 of the Morgan County Code relative to child day care centers and their zoning permissions and standards.**

**Member Lundgren moved to open the public hearing to amend portions of sections 8-2-1, 8-5C-3 and 8-6 of the Morgan County Code relative to child day care centers and their zoning permissions and standards. Second by Member Anderson. The vote was unanimous. The motion carried.**

Charlie Ewert presented the staff report dated (please see attached exhibit A).

- County does not have a strong change of use ordinance so when you have buildings designed for warehouse uses and want to retrofit that for child day care uses, that needs to have additional building permit review to insure that it complies with building code to have that amount of people and occupancy. Staff added that language into not only home occupations, but then when they looked at adding 8-6-39 on page 6 of the staff report, Child daycare centers, they wanted to specifically involve the building official in this process.
- Most of this ordinance comes from other ordinances from different jurisdictions in the area in order to find out how different areas address this. This seemed to be the most comprehensive approach while not providing an overburden on the County.
- Identify differences between permitted uses and conditional uses and how the review process is different for each.
- Site plan is essential even if it is an existing building to provide County staff sufficient information to know what is going on around the property.
- Going through specific ordinances, parking is an issue because of parents coming and going. Currently County ordinance requires that all parking be on the street as is and so staff is also proposing to continue that. Loading and unloading areas need to be on the property in approved parking area. This will all be part of the site plan review.
- Called State licensing Department – occasionally some are exempt from State licensing. However the majority of ones that are located in commercial zones are required to be State licensed. The State has all the health, safety, and welfare standards that they need to insure the safety of the business. Staff is proposing to let the State be the umbrella that the County works under. An applicant would need to provide licensing from the state and then the rest of the review would be traffic to and from and parking at the site and making sure the building is safe.

Member Anderson noted that he does work with the office of Child Care in his day job and they are pretty thorough in covering all of the issues.

Member Erickson asked if home occupation day care is different than child day care centers.

Mr. Ewert noted it is the difference in the zone.

Member Erickson asked about the restriction to the three types of fencing; he would like to see more options. Mr. Ewert noted that would be up to the planning commission.

Vice-chairman Haslam noted the following:

- Site and location. Mr. Ewert noted this text amendment would not be site specific but did show the planning commission the commercial buffer zone where the future applicant was considering. He noted there has not been an official application made yet for the site. Vice-Chairman noted this takes on a different point of view because of where it is located; over by the airport in the

commercial buffer, or by the Bank in the commercial highway. Mr. Ewert noted the airport overlay zone will also restrict use; noting that it was his understanding that no new development would be allowed in the flight path. The possible application would be in an existing developed area. There was discussion with regard to Commercial highway versus Commercial buffer.

- Fencing - agreed with Member Erickson on the fencing. Mr. Ewert noted it would be convenient to note what type of fencing Morgan County wanted to allow in certain areas. Preference is to keep fencing uniform.
- Parking – was it adequate? Mr. Ewert noted there has to be a place for loading, unloading, and parking.
- Safety factor – asked why we would want to put a daycare in a flight zone. Mr. Ewert noted the critical terminology in that section was “development”.

Vice-Chairman Haslam called for public comment.

Kara Berkland, future applicant –

- Would like to locate their daycare in this location because of affordability.
- Met with someone from the State. Realizes that the approval of this will require compliance with state standards which are very strict and county standards which are whatever the County wants them to be.
- Have talked to Parents and has found there is a need in the County. This area is affordable and close to the school and Lone Tree Fitness which is a huge factor for parents to be able to bring their children and have some place to have them stay while they are at Lone Tree Fitness.

Debbie Sessions –

- Need to decide whether conditional or permitted. Member Anderson brought the comment up that this wouldn't be site specific, but when you talk about this site at the airport she noted that the Airport overlay zone was quite contentious when it was documented and recorded they listed uses that are airport compatible. Recommended the planning commission get the document and read what the concern were under the overlay.
  - Mr. Ewert noted that the green area, next to the flight overlay zone, is an area that is designated for compatible uses. If you go through the airport overlay zone there is not a list of what those uses are and they would be hard to define. Believed the County Council's desire was to see a long term complete revision of commercial use chapter. The only way that he sees that as being possible is to completely revise chapter 4 to provide site plan requirements for permitted uses.

**Member Anderson moved to close the public comment. Second by Member Lundgren. The vote was unanimous. The motion carried.**

**Member Lundgren moved to forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding child daycare centers and their related zoning permissions and standards, application 12.002, based on the five findings listed in the staff report dated February 1, 2012 and one additional finding as follows:**

- 1. That the amendments are necessary to allow for child daycare centers in commercial zones.**
- 2. That the amendments are necessary to define evaluative review and process requirements for child daycare centers.**
- 3. That the amendments coincide with and advance the requirements of State Code.**
- 4. That the amendments are necessary to require building review of new child daycare centers in**

order to protect the health safety and welfare of the public.

5. That the amendments are not detrimental to the County's health, safety, and welfare.
6. This use can be very compatible to commercial uses and will be a benefit to the citizens and employees and employers of Morgan County.

And the following two conditions:

1. That all child care uses in any commercial zone be changed to conditional use.
2. The fencing standards are able to be amended as part of the conditional use to another acceptable form of fencing subject to whatever agency is reviewing the conditional use requirements.

Second by Member Erickson

Chairman called for discussion

Member Lundgren noted we are developing County. Allowing a daycare in a commercial zone makes sense. Most of the daycares in the County now are in-home day care. A good day care center that is designed with adequate space can benefit many people. He does not see a down side as long as we make this a conditional use process so we can address unique characteristics and make sure the facility meets not only state requirements but County.

Member Anderson made the following comments:

1. Agreed with the comments that have been made.
2. He does feel like permitting those in a couple of areas.
3. He sees a concern with the airport overlay. However, he believes any parent that wants to use that daycare will be aware of the proximity of the airport and that is a parent decision.
4. The proximity to schools and other public places makes a lot of sense.

Chairman called for a vote.

**The vote was unanimous. The motion carried.**

6. **Public Hearing/Discussion/Decision: To amend portions of sections 8-2, 8-3, 8-4, 8-6, 8-8, and 8-19 of the Morgan County Code pertaining to conditional uses and related noticing, public comment, and land use authority provisions.**

Member Anderson noted the attorney comments and asked about those comments.

Mr. Ewert noted this has been fully noticed and those comments were made for the February 12<sup>th</sup> planning commission which was cancelled due to lack of quorum.

**Member Erickson moved to open a public hearing to amend portions of sections 8-2, 8-3, 8-4, 8-6, 8-8, and 8-19 of the Morgan County Code pertaining to conditional uses and related noticing, public comment, and land use authority provisions. Second by Member Anderson. The vote was unanimous. The motion carried.**

Mr. Ewert presented his staff report (Please see attached exhibit B) also is attached original staff report (Please see attached exhibit B-2)

Member Lundgren would like to suggest this commission meet with the County Council to discuss the role of the planning commission. Believes we have a lot of talent sitting on this planning commission. He would like to understand better why the Council believes they need such tight control over these issues. He would like to understand their perspective.

Member Anderson noted it is beneficial to the County and saves time and money with regard to the number of meetings that need to be held.

There was no public comment

**Member Erickson moved to go out of public comment. Second by Member Lundgren. The vote was unanimous. The motion carried.**

**Member Anderson moved to recommend that the proposed amendment to sections 8-2, 8-3, 8-4, 8-6, 8-8, and 8-19 of the Morgan County Code pertaining to conditional uses and related noticing, public comment, and land use authority provisions be sent back to staff to make the suggested changes given by the planning commission tonight along with the following:**

- 1. To create a land use authority table and a paragraph to define it.**
- 2. To schedule a meeting with the County Council for their input as well.**
- 3. To bring back to the next available meeting to be voted on, once the changes are made.**

Member Lundgren – clarification – did Member Anderson mean to include both items: a new table as well as a work meeting. Member Anderson stated he did.

**Second by Member Erickson. The vote was unanimous. The motion carried.**

**7. Discussion/Decision: To amend portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions.**

Mr. Ewert presented his staff report (Please see attached exhibit C)

Member Lundgren made the following comments:

- Is there a way to make the question of the length of the lane a conditional use item, therefore it does not become arbitrary but it can also be set within guidelines so that the lane gets built within reasonable constraints that may be required for whatever unique situations there are; terrain issues, etc.. Mr. Ewert noted staff has eliminated conditional use permitting as a process for subdivision. He noted several years ago a subdivision was a conditional use listed in the use table and that was eliminated because it is not a use. However, the process of conditional use permitting is the same or very similar as the process for subdivision permitting. If there is a harmful impact, in need of mitigation, then we can do that through subdivision conditions. There is discretion on behalf of the planning commission, staff, and County council to provide that if it is to mitigate harmful impact. If that is what he is understanding it may as well be written as a standard, alternative requirements, or exceptions can be built into this ordinance.

- Member Anderson asked how one piece would be tied to a conditional use permit. The burden would be upon the land use administrator to show that the length that is requested creates and unsafe or harmful environment.
- Mr. Ewert asked the planning commission to help him define harmful impact. What is the harmful impact we are trying to mitigate? Member Lundgren stated the harmful impact could be any number of things.
- Member Anderson - Once you have a private lane, keep in mind that at some point in time it becomes a harmful impact in the access and the length. We have to allow emergency vehicles to get down that lane. Harmful impact could be for safety reasons such as, how long is it going to be, how many corners, access, etc.
  - Mr. Ewert stated at what point is that? Because it is really difficult to argue with someone where that point is. If someone provides a wide enough approach for an ambulance and fire truck to get up there then what is the harmful impact. The number is arbitrary unless we define it as a County.
- Member Lundgren – the burden would be placed on the land use administrator to show that the length that is requested creates an un-safe or harmful environment.
- Member Erickson – the limitation would be in the four lots, then the length becomes insignificant because the length will be dictated by the placement of the lots.
- Member Anderson – It boils down to what makes smart planning sense? By not limiting that length at all what will this County look like as you zoom in on Google earth in 20 years.
- Member Lundgren - Noted he looks at it as what are the rights of the property owners in developing their own property? Constitutionally, one of our greatest freedoms in our own country is the right to own property. The question in his mind is how many restrictions we want to put on landowners that are arbitrary. He referred to a case he is representing right now in a similar situation.
- Member Anderson noted to say that we are limiting them and making it a burden on them is not necessarily true because they knew what they bought and they knew the restrictions and the zoning on the piece of property when they purchased it. They should know financially what it would take for them to subdivide their ground.

There was a lengthy discussion with regard to zoning, property rights, buyer beware, and number of lots. After discussion the Members asked if Mr. Ewert would draft a small lane ordinance proposal, of what has been discussed, and e-mail it so they can review it.

- Member Anderson noted to his understanding the whole purpose of this private lane ordinance and standards is to help landowners have a flexible way to subdivide their ground. Along with this, if the County took this and incorporated it into a flexible subdivision he believed that would make a lot of sense.

Mr. Ewert discussed easement and maintenance and noted that staff combined easement and maintenance together and added extra language to address parties with interest, grantors, grantees, etc. to ensure rights and who's in charge with regard to the lane.

- Clear access to public right-of-way/infrastructure.

Member Erickson –

- Page 1, Exhibit A – Fix at 8-2-1 Private Lane - change from private street to private access.

Mr. Ewert noted Chairman Kobe had submitted some questions;

1. What does staff feel are the planning implications – good, bad, yes, no, etc.
  - Mr. Ewert noted that Mr. Crowell had always noted this is not a staff issue or a planning issue. There are different tools to be used and to be had. It is really a policy issues. Policy issues have a couple of ripples in it; such as should we be a pro-growth County? He noted staff cannot make that decision of the County Council. Currently according to the 2010 general plan the majority of the County has been slated for no re-zones at all; that is something to take into consideration here.
2. Private lanes - Once you allow private lanes there are always the future confrontation of who maintains it. A developer comes in and makes smaller roads and says this is now private. 10 years later the owners come in and say the road is in complete disrepair and I'm a taxpayer. Cites have political willpower to see through this type of issue because of their size. Here in Morgan we have a smaller population which means we have a lot more citizens to political positions and the longevity usually cannot be maintained.
  - Member Kobe suggested that every subdivision with a private lane has a note or is required in the ordinance to have a note on it that says this development has a private lane and if they are ever to be maintained by the County then they first have to be brought up to public standards before the County will accept responsibility at any point in the future. Mr. Ewert noted it is not a requirement and is not something that we are necessarily going to bind future political bodies to do, because they will do whatever they want to do in the future, but it is a reminder for longevity of something we are doing now and there is a reason.

Member Anderson noted, that alone, along with the maintenance agreement that you are bound into a maintenance agreement by purchasing this property, would be great.

Mr. Ewert noted the question about whether this is a good or bad planning idea is not on the table because you will have planners that will debate back and forth just like planning commission because it is not a planning issue it is a policy issue.

Member Haslam – With regard to changing public right-of-way to public ownership. His opinion is that if a developer comes in and wants to put a private street in, then it should never become public. If the County is going to allow that then we just need to make them build it to County standards and turn it into a County road. The County has people who are already coming in and petitioning to get their private road to be taken over by the County. The problem is, those roads have not been built to County standards. He further noted that chances are, not everyone can afford to bring their road up to County standards, and they need to know that going in.

Summer Ridge subdivision was discussed.

**Member Lundgren moved to refer the proposed amended portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions back to staff to make the changes to the language concerning the following:**

- **1000 feet or four lots as discussed.**
- **Fix – at 8-2-1 Private Lane - change from private street to private access.**

**And for staff to e-mail that language out once it is completed so the planning commission can further comment back to staff and then have staff present the final draft at the next available meeting.**

Member Erickson asked if the changes were just clerical. Mr. Ewert stated it was his understanding that it was and just to make it clear the Definition of private lane right now says a private lane is a type of street. When you go to what a private street is it says that private streets are required to meet County standards and construction standards for public roads. A private lane is a type of private access.

Vice- Chairman Haslam wanted to make sure that is part of the motion for staff as noted by staff.

**Second by Member Erickson. The vote was unanimous. The motion carried.**

**7. Staff Reports.**

Mr. Ewert noted there are some vacancies coming up on the planning commission; Member Anderson and Member Hales. Notice has been put in paper. There is one application for Member Hales area. We will send the applications that we receive to the March 6<sup>th</sup> appointment if there is not enough they will continue to notice.

- **Election of chair and vice chair in march**
- **Update on Snow Basin –**
- **50 percent rough draft.**
- **Best interest of Morgan County**
- **There next step is an application for a re-zone. As part of that is to set the standards as part of that re-zone. Provide development agreement and other documents.**

**8. Adjourn.**

**Member Anderson moved to adjourn. Second by Member Erickson.**

**Approved:** \_\_\_\_\_  
**Chairman**

**Date:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
**Teresa A. Rhodes, Clerk**  
**Planning and Development Services**

**Date:** \_\_\_\_\_

**Exhibit A – Agenda item # 5** - Public Hearing/Discussion/Decision: To amend portions of sections 8-2-1, 8-5C-3 and 8-6 of the Morgan County Code relative to child day care centers and their zoning permissions and standards

## **STAFF REPORT**

February 1, 2012

**To:** Morgan County Planning Commission  
Business Date: February 9, 2012

**From:** Charles Ewert, MPA, Planner

**Re:** **Text Amendment Regarding Child Daycare Centers and Their Zoning Permissions and Standards**

Application No.: 12.002  
Applicant: Kera and Lars Birkeland  
Request: To amend Morgan County Code Sections 8-2, 8-5C-3, and 8-6 to allow child daycare centers in the commercial buffer zone, and provide for adequate administrative permissions and processes.

### **SUMMARY & BACKGROUND**

The applicants have previously scoped the possibility of being granted a business license in the commercial buffer (CB) zone to operate a child daycare center. Upon discovering that the zone does not allow for child daycare centers, and that a business license cannot be issued because of the use's non-compliance with the zone allowances (Morgan County Code 8-5C-3), they submitted this application to change the code.

Child daycare centers are heavily regulated by the state Department of Health. Their licensing requirements include outdoor play time, adequate kitchen facilities, staff training, etc. Because of the State's already robust oversight, County standards can be relatively minimized, provided there is a requirement for a potential child daycare operator to prove state licensure.

There is not currently mention of child daycare facilities in the commercial zone's use table. There is reference to them for home occupations in residential zones. Since the use is similar regardless of the zone or location, if the County will permit them in any zone, there should be unifying standards required for all. The recommendations in this text amendment will provide for childcare centers in certain commercial zones, and unify the application and provisions of the use by incorporate state licensing requirements, site design requirements, and building compliance requirements into one comprehensive child daycare facilities ordinance. Staff recommends approval of the amendment.

### **ANALYSIS**

**General Plan.** The proposed change is loosely supported by the 2010 General Plan's first identified vision, which is:

Morgan County attracts families with its quality of life, rural atmosphere, secure environment, and natural beauty. Residents have a wide range of employment, housing, and lifestyle choices. The County benefits from a balanced economy, livable wages, economic prosperity, and first-rate community services.

Providing for a wider diversity of employment options, economic prosperity options, and lifestyle choices by providing for childcare centers can help the County by way of both employment options and services.

**Land Use Ordinance Provisions.** While this text amendment addresses one use in the commercial zones and provides standards for it, the County Council has given staff direction to address all uses in MCC 8-5C-3 to provide for more a more streamlined approach to issuing commercial use permits. That comprehensive approach will be forth coming over the next several months.

Below is the newly proposed text as requested by the applicant, with other provisions as recommended by staff that will provide for the health, safety, and welfare of those Morgan County residents affected by the change. Staff explanation is entered in *italics*.

## **8-2-1: DEFINITIONS OF WORDS AND TERMS:**

...

CHIEF EXECUTIVE OFFICER: The County council, or if the County has adopted an alternative form of government, the official who exercises the executive powers.

CHILD ~~NURSERY (DAYCARE CENTER)~~: An establishment for the care and/or the instruction of five (5) or more children, for compensation, other than for members of the family residing on the premises, but not including a public school.

CHURCH: A building, together with its accessory buildings and uses, maintained and controlled by a duly recognized religious organization where persons regularly assemble for worship and religious instruction.

...

## **8-5C-3: USE REGULATIONS:**

...

*The proposed changes should be evaluated against the purposes of the zone for which they are proposed. The applicant has requested that the use be allowed as a permitted use in the commercial buffer zone (CB zone). Pursuant to MCC 8-5C-1, the purpose of that zone is:*

*“Commercial Buffer District CB: To provide areas for appropriate transitions of commercial uses.”*

*It would stand to reason that if a child daycare center is already allowed as a home occupation in residential zones that it is an ideal use for a commercial buffer between residential and commercial issues. Allowing it as a permitted use however, requires additional evaluative review criteria to ensure the protection of the public’s health, safety, and welfare, while also providing landowners with a clearly defined due process.*

*If the permission change is allowed for the CB zone, then staff also recommends extending that allowance to the Neighborhood Commercial (C-N) zone. The purpose of the C-N zone is:*

*“Neighborhood Commercial District C-N: To provide areas in appropriate locations where convenience buying outlets may be established to serve surrounding residential neighborhoods. The regulations of this district are designed to promote a combination of retail and service facilities which in character and scale are necessary to meet day to day needs of area residents.”*

Staff is further recommending that other zones are considered for allowance of the use as well, but considering this type of use as they relate to other allowed uses in those zones, it is being recommended to be considered as conditional use in the following two zones:

*“Commercial Shopping District C-S: To provide areas in appropriate locations where a combination of businesses, commercial, entertainment and related activities may be established, maintained and protected. The regulations of this district are designed to promote and encourage the development of comparison shopping centers.”*

*“Highway Commercial District C-H: To provide areas in appropriate locations adjacent to highways or major streets where activities dependent upon or catering to thoroughfare traffic and the traveling public may be established, maintained and protected. The regulations of this district are designed to encourage harmony between traffic needs and centers for retail commercial, entertainment, automotive facilities, and other appropriate highway related activities.”*

		CB	C-N	C-S	C-H	C-G	M-D	M-G
Services:								
	Administration general office space (new construction or exterior modification)	C	C	C	C	C	C	-
	Advertising services	-	C	-	-	-	-	-
	Animal clinics and hospitals	-	-	C	C	C	-	-
	Apparel repair, alteration and cleaning, pick up services, shoe repair services	-	P	P	C	P	P	P
	Automatic car wash, truck wash	C	C	C	P	P	P	P
	Automobile repair and services	C	C	C	C	C	C	P
	Banking and bank related functions	P	-	P	P	P	P	-
	Beauty and barber shops, general	-	P	P	C	P	-	-
	Carpeting and other floor coverings	-	-	C	C	C	P	-
	<u>Child Daycare Centers, subject to regulations as set forth in 8-6-39</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>-</u>	<u>-</u>	<u>-</u>
	Comprehensive healthcare facilities (centers)	-	-	C	C	P	-	-
	Dental laboratory services	P	-	C	C	P	P	P

**8-6-15: HOME OCCUPATIONS:**

...

D. Qualifications:

...

3. a. The home occupation shall not generate or exceed eight (8) children, associated with group child activities (e.g., dance schools, preschool, music classes, childcare centers, etc.) at any one time. A maximum of eight (8) students/children is-are permitted per day. This number shall include the licensee's own children if they are under six (6) years of age and are under the care of the licensee at the time the home occupation is conducted. This restriction shall not apply to those nonincome producing childcare activities (such as baby sitting cooperatives, baby sitting exchanges and informal instructional activities for preschool aged children) conducted within private residences.

~~b. All childcare facilities shall be permitted to provide outdoor playtime as required by federal, state, County or local laws governing such business activity.~~ b. All child daycare center home occupations shall comply with the requirements and standards of section 8-6-39 of this title, and all applicable building codes relevant to the use.

...

G. Category III Classification; Conditional Use Permit Required: Certain types of occupations which have substantial impacts upon the residential character of the area when carried on in residential districts must be reviewed to determine if the use is appropriate and to impose requirements and conditions necessary for the protection of adjacent properties and the public health, safety and welfare.

1. The following uses are appropriate in a dwelling only if they are determined to be compatible with the neighborhood and with the public health, safety and general welfare, and if conditions specific to that activity are developed after full conditional use review by the planning commission and compliance with subsection C of this section, applicable development code provisions, and the additional regulations set forth hereafter.

a. Any child daycare center home occupation that is expected to generate or exceed eight (8) children at any one time:

(1) A maximum of sixteen (16) children is permitted at any one time.

(2) A maximum of eighteen (18) students/children is permitted per day.

(3) This number shall include the licensee's and any employees' children if they are under six (6) years of age and are under the care of the licensee at the time the home occupation is conducted.

(4) All child daycare center home occupations shall comply with the requirements and standards of section 8-6-39 of this title, and all applicable building codes relevant to the use.

(54) This restriction shall not apply to those nonincome producing childcare activities (such as baby sitting cooperatives, baby sitting exchanges and informal instructional activities for preschool aged children) conducted within private residences.

...

*The following proposed addition to the code is intended to provide evaluative review criteria for permitted child daycare centers, and clarify review criteria for their conditional use permits. In reviewing it, the Planning Commission should be aware that not all existing buildings have been built for specific uses. Some buildings require additional safety requirements when there is a change in use. For example, a warehouse may be built for a specific use in mind, but upon converting to another use such as a child daycare center, there may be building and site conversion requirements necessary to meet land use and building codes. Change of use codes will be addressed in further detail with the upcoming commercial code re-write, but until then some of the provisions herein are necessary to ensure building and site compliance necessary for the protection of the public.*

### **8-6-39: CHILD DAYCARE CENTERS:**

A. Intent and Purpose: The purpose of this section, and any rules, regulations, standards and specifications hereafter adopted pursuant hereto or in conjunction herewith are:

1. To protect the health, safety, and general welfare of the public, neighborhoods, and patrons by providing procedures and standards for the review of child daycare centers.
2. To provide a process of approval for child daycare centers that give the County general oversight and assurance of the adherence of all local, state, and federal laws at the initiation of such use.

B. Permitted Uses: When a child daycare center is proposed in a zone where it is listed as a permitted use, the following standards shall apply:

1. Application Requirements: A land use permit application shall be submitted to the Planning and Development Services Department for review. The application shall be submitted with the following requirements:
  - a. A site plan showing the proposed/existing building, lot boundaries, parking, loading and unloading areas, outdoor play areas, and access to a public street or dedicated private street.
  - b. The application shall identify other uses of the lot, including uses of all main buildings, accessory buildings, and yard area.
  - c. The application shall be accompanied with a letter from the local fire official indicating that the building complies with all relevant local, state, and federal fire codes.
2. Parking: Proposed or existing parking shall be delineated on the site plan sufficient to satisfy the requirements of chapter 11 of this title. All proposed parking shall be installed prior to the commencement of business.
3. Loading And Unloading: Loading and unloading of children from vehicles shall only be permitted on the property in an approved parking area.
4. Outdoor Play Areas: Outdoor play areas of a daycare center shall be enclosed with a fence which shall be built and maintained with a minimum height of four feet (4'). A six foot (6') high solid fence shall be built and maintained along play areas that are adjacent to property in a

residential zoning district. Solid fencing types include only black vinyl coated chainlink with slats, solid concrete panel or masonry wall, or tan colored vinyl fencing. Where open fencing is allowed, it shall consist of black vinyl coated chainlink or wrought iron. Fencing types shall be proposed with the site plan.

*According to the Utah Department of Health, outdoor play time is required by all licensed child daycare facilities. The fencing regulations proposed here are the same as are required elsewhere in existing County code.*

5. All proposed signage shall comply with the process and regulations of Chapter 10 of this title.
6. State License Required: An establishment to be used for child daycare activities shall be licensed or registered by the Department of Health of the State, and shall provide documentation of such with the application. Such establishment shall meet all minimum standards promulgated by the Department of Health.
7. Process: The Zoning Administrator shall review the land use permit for compliance with the standards listed in this section and elsewhere in this title. The application shall be routed to the Building Official who shall ensure that the building housing the childcare center complies with relevant local, state, and federal building codes. Upon finding that it meets all applicable requirements the Zoning Administrator shall approve the land use permit, or approve it with conditions relevant to the mitigation of harmful impact of the use. Applications that do not demonstrate compliance with applicable requirements, or uses which harmful impact cannot be mitigated, shall be denied by the Zoning Administrator. All final decisions shall be issued to the applicant in writing. For child daycare centers proposed in new commercial development, the new development shall first be reviewed and approved in compliance with processes and standards of chapter 4 of this title, and other applicable regulations.

C. Conditional Uses: When a child daycare center is proposed in a zone where it is listed as a conditional use, the following standards shall apply:

1. Application Requirements: A conditional use permit application shall be submitted to the Planning and Development Services Department for review in compliance with chapter 8 of this title. A site plan shall be submitted with the application showing the proposed/existing building, lot boundaries, parking, loading and unloading areas, outdoor play areas, and access to a public street or dedicated private street. The application shall also identify other uses of the lot, including uses of all main buildings, accessory buildings, and yard area.
2. Standards: All standards required of a permitted use permit as listed in this subsection shall be applied to conditional use permits for child daycare centers, as well as those requirements listed in section 8-6-15, and chapter 8 of this title, as applicable.
3. Process: The permitting process for a conditional use permit for a child daycare center shall comply with the conditional use permitting process of chapter 8 of this title. The conditional use permit shall first be reviewed by the Zoning Administrator and Building Official for compliance with applicable regulations, who shall forward a staff recommendation for the conditional use permit to the Planning Commission. For child daycare centers proposed in new commercial development, the new development shall first be reviewed and approved in compliance with processes and standards of chapter 4 of this title, and other applicable regulations.

**Procedures for adopting amendments to Title 8 of the Morgan County Code.** Title 8- Land Use Regulations (formerly Title 16- Land Use Management Code) sets out the required procedures for adopting and amending the land use requirements of the County Code:

### **8-3-2-C. Amendments And Rezoning:**

1. The governing body may amend:
  - a. The number, shape, boundaries or area of any zoning district;
  - b. Any regulation of or within the zoning district; or
  - c. Any other provision of the zoning ordinance.
2. The governing body may not make any amendment authorized by this subsection unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval or recommendations.
3. The governing body shall comply with the procedure specified in subsection B of this section, in preparing and adopting an amendment to the zoning ordinance or zoning map.

**8-3-2-B. Preparation And Adoption Of Zoning Regulations:**

1. The planning commission shall prepare and recommend to the governing body a proposed zoning ordinance, including both the full text of the zoning ordinance and maps that represents the planning commission's recommendations for zoning all or any part of the area within the County.
2. The governing body shall hold a public hearing on the proposed zoning ordinance recommended to it by the planning commission in compliance with Utah Code Annotated section 17-27a-205.
3. After public hearing the governing body may:
  - a. Adopt the zoning ordinance

**STAFF RECOMMENDATION**

Staff recommends that the Planning Commission forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding child daycare centers and their related zoning permissions and standards, application 12.002, based on the following findings:

1. That the amendments are necessary to allow for child daycare centers in commercial zones.
2. That the amendments are necessary to define evaluative review and process requirements for child daycare centers.
3. That the amendments coincide with and advance the requirements of State Code.
4. That the amendments are necessary to require building review of new child daycare centers in order to protect the health safety and welfare of the public.
5. That the amendments are not detrimental to the County's health, safety, and welfare.

**MODEL MOTION**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding child daycare centers and their related zoning permissions and standards, application 12.002, based on the findings presented in the Staff report dated February 1, 2012:”

1. List any additional findings and conditions...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation for the proposed land use regulations text amendments regarding child daycare centers and their related zoning permissions and standards, application 12.002, based on the following findings:”

1. List any additional findings...

**Exhibit B – Agenda item #6 – Public Hearing/Discussion/Decision:** To amend portions of sections 8-2, 8-3, 8-4, 8-6, 8-8, and 8-19 of the Morgan County Code pertaining to conditional uses and related noticing, public comment, and land use authority provisions.

## Memo

**TO:** Planning Commission  
**FROM:** Charles Ewert, MPA  
Planner  
**DATE:** January 9, 2012  
**SUBJECT:** Morgan County Text Amendment; File #11.075

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In the December 15, 2011 Planning Commission Meeting, the Planning Commission reviewed a County initiated text amendment to revise noticing and public comment requirements for conditional use permits. The changes, better reflecting state code, provide for “public comment” for conditional use permits rather than “public hearings.” The term “hearing” has certain implications in code that administrative decisions such as conditional use permits do not have. The revision should help reduce noticing time frames for conditional use permits.

In the same meeting the Planning Commission directed staff to provide additional text amendments to make the Planning Commission the land use authority for conditional use permits. The attached Exhibit A provides those changes. During the revision process it became apparent to staff that the framework of the County’s land use ordinances was intended to designate the Planning Commission as the authority for conditional use permits. It is not immediately clear when or how it became under the purview of the County Council.

Regardless of the intention of the framework, there are types of land uses that may be better suited under the purview of the County Council (such as mobile home subdivisions, mobile home parks, and RV parks) since these land use types are more akin to subdivisions, which are currently under Council purview. There is also a provision for exceptions from CUP requirements that may be better suited under Council purview. The provided amendments address these issues, while designating the Planning Commission as the land use authority for the majority of conditional use permit items.

Because these amendments affect more ordinances than what was included in the original hearing notice, the County Attorney is advising the Planning Commission to limit deliberation on this item to discussion only until it can be appropriately noticed for a new hearing at a subsequent Planning Commission meeting.

**STAFF REPORT**

7 December 2011

**To:** Morgan County Planning Commission  
Business Date: 3 November 2011

**From:** Grant Crowell, AICP  
Planning and Development Services Director

**Re:** **County Initiated Text Amendment Regarding Conditional Use Permit Noticing Requirements**

Application No.: 11.075  
Applicant: Morgan County  
Request: To amend portions of Morgan County Code (MCC) Sections 8-3, 8-4, and 8-8 pertaining to conditional uses and related noticing provisions.

**SUMMARY & BACKGROUND**

With the adoption of the subdivision ordinance in 2010, Morgan County consolidated noticing provisions from various land use application types in a new sub-section of County Code (MCC 8-3-13). Additionally, the recent accessory dwelling unit text amendment addressed some of the procedural requirements for conditional use permits. Finally, the Utah State Code provides guidance as to what types of land use and zoning applications require public hearings and which do not. Recent conditional use permit applications caused staff to re-study the adopted provisions of the Morgan County Code as they pertain to conditional uses and noticing requirements.

Speaking with the County Council, Staff recommended that some remaining clean-up work needed to be done to clarify the noticing provisions for conditional uses and to differentiate them from statutory requirements for public hearings. This amendment proposal is a result of that discussion. The summation of the proposal is that the current practice of allowing public comment for conditional use permits at the Planning Commission is not being changed, despite their being no requirements in the Utah State Code for such process. The practice of additional public process is allowed to remain up to the local jurisdiction. This amendment clarifies that public comment for a conditional use permit is not considered a public hearing, which is required for zoning and general plan amendments and adoption. In practice, the meetings appear the same. Hearings require additional noticing pursuant to the state code, such as newspaper noticing and hearing notices on the Utah Public Notice Website. Public comment items such as conditional use permits as previously adopted in the 2010 noticing amendments require notice on an agenda, a sign posted on the site, and a mail out to property owners within 1000 feet.

Utah State Code sets forth requirements for noticing and conditional use permits in 17-27a-201 - Required Notice; 17-27a-206 – Third Party Notice; and 17-27a-506 – Conditional Use Permits. In summary, these sections say that when notice is provided it shall comply with the state code, that the County can require additional noticing, and there are no noticing requirements for conditional use permits. This proposal complies with the Utah State Code.

**TEXT AMENDMENTS (also see Exhibit 'A')**

In order to facilitate the proposed and necessary changes, we determined it appropriate to distinguish public comment which has been conducted for the public's benefit from the public hearing requirement that is required by the State Code. At a meeting, it really cannot be distinguished and may be seen as a distinction without a difference. In practice,

this will assist the County Staff in the administration of noticing. Staff has referred to noticing for conditional use permits as public comment.

Additional text proposals clarify that all conditional uses require public comment, which is no longer written as a confusing, discretionary item. Public comment is at the Planning Commission level, and not the County Council, which is the current practice. Also, any revocation procedures are not considered public comment, as that process would be considered quasi-judicial. Finally, the State Code and the County Code (in another section) already consider conditional use permits to run with the land, so Staff finished the cleanup of that concept in this proposal.

## **Morgan County Code (MCC) Chapter 8-3 (Table of Contents)**

### **8-3-12: PUBLIC HEARINGS, PUBLIC COMMENT, AND PUBLIC MEETINGS:**

#### **8-3-12: PUBLIC HEARINGS, PUBLIC COMMENT, AND PUBLIC MEETINGS:**

Any public hearing, public comment item, or meeting required under this title shall be scheduled and held subject to the requirements of this section.

A. Scheduling A Public Hearing, Public Comment Item, ~~Or~~ Public Meeting: An application requiring a public hearing, public comment, ~~or~~ public meeting shall be scheduled within a reasonable time in light of:

1. The complexity of the application submitted;
2. The number of other applications received which require a public hearing or public comment;
3. Available staff resources; and
4. Applicable public notice requirements.

B. Public Hearing ~~and Public Comment And Meeting~~ Procedures: The following procedures shall apply to a public hearing or public comment items:

1. Any person may appear at a public hearing or an agendized public comment item or meeting and submit evidence, either individually or as the agent of a person or an organization. Each person who appears at a public hearing or agendized public comment item meeting shall state his or her name and, if appearing on behalf of a person or an organization, state the name of the person or organization being represented.
2. The land use authority, body or official conducting a public hearing or agendized public comment item or meeting may exclude testimony or evidence that it finds to be unduly repetitious or otherwise irrelevant.
3. The land use authority, body or official conducting a public hearing or agendized public comment item meeting may, upon the body's or official's own motion, postpone the hearing or meeting public comment item. An applicant may request and be granted one postponement. Thereafter, any postponement shall be granted at the discretion of the body or official conducting the public hearing or meeting agendized public comment item.

C. Withdrawal Of Application: An applicant may withdraw an application at any time prior to action on the application by the land use authority, decision making body or official. Application fees shall not be refundable if prior to withdrawal:

1. A staff review of the application has been undertaken; or
2. Notice for a public hearing, [public comment item](#), or meeting on the application has been mailed, posted or published.

D. Record Of Public Hearing Or [Public](#) Meeting: Except where required otherwise by statute, the land use authority, body or official conducting the public hearing or meeting shall record the proceedings thereof by any appropriate means. A copy of the public hearing or [public](#) meeting record may be acquired upon request and payment of a fee to cover the cost of duplication of the record. The minutes, tape recordings, all applications, exhibits, papers and reports submitted in any proceeding before the decision making body or official, and the decision of the decision making body or official shall constitute the record thereof. The record shall be made available for public examination, pursuant to applicable provisions of the Utah government records access and management act, Utah Code Annotated title 63G, chapter 2, as amended.

E. General Requirements For Findings And Decisions: Action shall be taken in compliance with any time limits established in this title. Except for the County council, whose decision shall be made by motion or ordinance, all [final](#) decisions shall be in writing and shall include at least the following elements:

1. A summary of evidence presented to the decision making body or official;
2. A statement of applicable development standards;
3. A statement of findings of fact or other factors considered, including the basis upon which such facts were determined and specific references to applicable standards set forth in this title or other titles of this code; and
4. A statement of approval, approval with conditions, or disapproval, as the case may be.

F. Notification: Notice of a decision by the land use authority, decision making body or official shall be provided to an applicant within a reasonable time. (Ord. 10-16, 12-14-2010)

### **8-3-13 NOTICING:**

Required notice of public meetings, [public comment items](#), and [public](#) hearings for land use applications and ordinances shall include and comply with the following provisions:

A. Mailing List And Labels: The applicant for a [site specific](#) land use application [which requires a public hearing or public comment](#) shall provide the planning and development services department with an approved list of all owners of real property located within one thousand feet (1,000') of the boundary of the subject property parcel, as shown on the official records of the County assessor. The applicant shall pay to the County a fee in

the amount of the actual costs incurred by the County in providing the notice, and shall bear sole responsibility to ensure the accuracy of the property owner list.

B. Applicant Notification: For all land use applications, the County shall be required to give notice to the applicant of the date, time and place of each public hearing and public meeting to consider the application, and of any final action on a pending application. The County shall also provide to each applicant a copy of each staff report regarding the applicant or the pending application at least three (3) business days before the public hearing or public meeting and notify the applicant of any final action on a pending application.

C. Notice To Third Parties: For site specific land use applications [which require a public hearing or public comment](#), the County shall mail notice to the record owner of each parcel within a one thousand foot (1,000') radius of the subject property, and the applicant shall post a sign on the property according to the following regulations:

I. Notice Of Land Use Applications: The following [additional-site specific](#) land use applications shall [be considered public comment items and](#) be noticed at least ten (10) calendar days before the first public meeting, pursuant to this title:

1. Conditional use permits or amendments; and
2. Site plans or site plan amendments.

#### **8-4-4: SUPPLEMENTAL REQUIREMENTS:**

I. Expiration: Unless there is substantial action under a land use permit within a maximum period of one year from the date of its issuance, said permit shall expire and shall have no further force or effect. Application for a building permit, business license, subdivision, and communication with the County regarding requirements for proceeding toward other permits applications are considered types of substantial action. [Every conditional use permit shall run with the land, unless specific conditions regarding time limitation are placed on the permit which are necessary to mitigate potential detrimental effects](#)

Unless otherwise prohibited, upon written request and for good cause shown, any land use authority having authority to grant approval of an application may, without any notice or hearing, grant extensions of any time limits imposed by this title on such application, its approval, or the applicant, provided a written request for such extension has been received by the zoning administrator prior to the date of expiration, or provided the County has initiated an extension prior to the date of expiration. The total period of time granted by any such extension or extensions shall not exceed one-half ( $1/2$ ) the length of the original time period.

#### **8-8-3: CONDITIONAL USE PERMIT REQUIREMENTS:**

C. Revocation Of Permit:

1. In the event any person holding a conditional use permit pursuant to this section violates the terms of the permit, or conducts or carries on said site development in such a manner as to materially adversely affect

the health, welfare or safety of persons residing or working in the neighborhood of the property of the said permittee, a temporary suspension may be made effective immediately upon notification by the zoning administrator.

2. No conditional use permit shall be permanently revoked or suspended until a ~~hearing-public meeting~~ is held by the County council, after receiving a recommendation from the planning commission ~~at a public meeting~~. The permittee shall be notified in writing of such ~~hearing-meetings~~ and said notification shall state:

a. The grounds for complaint or reasons for the revocation or suspension, in clear and concise language.

b. The time and place such ~~hearing-meetings is/are~~ to be held. Such notice shall be served by registered mail or personal service on the permittee at least five (5) days prior to the date set for the ~~hearingmeeting~~. At any such ~~hearingmeeting~~, the permittee shall be given an opportunity to be heard, and ~~he~~ may call witnesses and present evidence. Upon conclusion of such ~~hearingmeeting~~, the County council shall determine whether or not the permit shall be suspended or revoked.

c. The planning commission shall hold a preliminary meeting to consider its recommendations to the governing body for revocation or suspension of permits which have been temporarily suspended ~~at the next regularly scheduled meeting of the planning commission-as practicable~~.

F. Approval Conditions: A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

1. Exceptions: The County council, after receiving a recommendation from the planning commission, may authorize exceptions to any of the requirements and regulations set forth in this chapter. Application for any exception shall be made by a verified petition (such as a notarized document) of the applicant stating fully the grounds of the application and the facts relied upon by the petitioner. Such petition shall be filed with the conditional use permit application. In order for the land referred to in the petition to come within the provisions of this section, it is required that the County council find all of the following facts with respect thereto:

a. That the land is of such shape or size, or is affected by such physical conditions, or is subject to such title limitations of record that it is impossible or impractical for the developer to comply with all of the regulations of this title.

b. That the exception is necessary for the preservation and enjoyment of a substantial property right by the petitioner.

c. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity of the subject property.

d. That granting the exception will not be detrimental to the environment.

2. Referral For Recommendations: Each proposed exception shall be ~~referred to the officers or agencies involved, and such officers or departments shall transmit to the planning commission their~~

~~recommendations, which recommendations shall be reviewed prior to the granting of any exceptions, processed in the same manner as is required by this title for conditional use permit applications.~~

3. Approval By County Council: ~~The County council, shall hold a public hearing on the proposed exception, after which it may approve the conditional use permit application with the exceptions and conditions it deems necessary, or it may disapprove the exception request.~~ Any such approval or disapproval of requested exceptions shall be accompanied by written findings of fact and conclusions therefrom. (Ord. 10-17, 12-14-2010)

G. ~~Public Hearings~~Conditional Use Permits are Public Comment Items: All conditional use permits are considered public comment items. The first public meeting regarding a conditional use permit shall be noticed as a public comment item pursuant to this title. ~~A public hearing may be held when deemed by the planning commission or governing body to be in the public interest. However, in the following instances, the holding of a public hearing shall be mandatory:~~

~~1. The planning commission determines that existing streets and thoroughfares are not suitable and adequate to carry anticipated traffic, and increased densities resulting from the proposed use may generate traffic in such amounts as to overload the street network outside the district.~~

~~2. The planning commission determines that increases in miscellaneous traffic, light, odor or environmental pollution generated by the proposed use may significantly change the intended characteristics of the district as outlined in this title.~~

~~3. The planning commission determines that the architectural design of the proposed use varies significantly from the architectural characteristics of the district (as outlined in this title) in which such use is proposed. (2010 Code)~~

**Procedures for adopting amendments to Title 8 of the Morgan County Code.** Title 8- Land Use Regulations - sets out the required procedures for adopting and amending the land use requirements of the County Code:

**8-3-2-C. Amendments And Rezoning:**

1. The governing body may amend:
  - a. The number, shape, boundaries or area of any zoning district;
  - b. Any regulation of or within the zoning district; or
  - c. Any other provision of the zoning ordinance.
2. The governing body may not make any amendment authorized by this subsection unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval or recommendations.
3. The governing body shall comply with the procedure specified in subsection B of this section, in preparing and adopting an amendment to the zoning ordinance or zoning map.

**8-3-2-B. Preparation And Adoption Of Zoning Regulations:**

1. The planning commission shall prepare and recommend to the governing body a proposed zoning ordinance, including both the full text of the zoning ordinance and maps that represents the planning commission's recommendations for zoning all or any part of the area within the County.
2. The governing body shall hold a public hearing on the proposed zoning ordinance recommended to it by the planning commission in compliance with Utah Code Annotated section 17-27a-205.
3. After public hearing the governing body may:

- a. Adopt the zoning ordinance

### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission forward a positive recommendation to the County Council for the text amendments regarding conditional use permit noticing and requirements, application 11.075, based on the following findings:

6. That the amendments are necessary to clarify the standards for conditional uses.
7. That the amendments are necessary to clarify the relationship of conditional use noticing and requirements with other provisions of the Morgan County Code.
8. That the amendments are compliant with Utah State Code.
9. That the amendments do not conflict with the County General Plan.
10. That the amendments are not detrimental to the County's health, safety, and welfare.

### **MODEL MOTION**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the County Council for the text amendments regarding conditional use permit noticing and requirements, application 11.075, based on the following findings

1. List any additional findings ...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the County Council for the text amendments regarding conditional use permit noticing and requirements, application 11.075, based on the following findings ...”

1. List all findings...