

Mapleton City Planning Commission Staff Report

Meeting Date: June 23, 2011

Item: 4

Applicant: Pepperdign Homes

Prepared by: Matt Brady

Public Hearing Item: Yes

REQUEST

Pepperdign Homes requests to amend Mapleton City Code 18.84.440: RESERVED in order to rename the section as SOLAR PANELS, and enact solar panel regulations applicable to all zones in Mapleton City.

FINDINGS OF FACT:

1. The applicant is requesting approval of an ordinance regulating the permitting of solar energy devices in residential zones (see Attachment #1). The new ordinance is proposed to be placed in a reserved section of Mapleton City Code (18.84.440: RESERVED) in the supplementary regulations chapter. When this item was first public noticed (see request above), it was proposed to name the section "SOLAR PANELS". The attached draft has changed to propose that the section be named "RESIDENTIAL SOLAR ENERGY DEVICES".
2. Mapleton City Code 16.02.040: ADOPTION AND ADMINISTRATION OF ZONING REGULATIONS is part of the enabling ordinance that is the basis for the Mapleton City zoning ordinances, and spells out the planning and zoning powers of the City Council. This section discusses the desirability of planning for solar energy sources: "*The city council, after receiving the recommendation of the planning commission, may enact and enforce zoning regulations within the city and may divide the city into zones of such number, shape and area as may be deemed best suited to carry out the purposes of the zoning regulations. Such regulations shall be for the purpose of promoting health, safety, morals, and the general welfare of the community and in so doing may regulate and restrict the height, number of stories and size of buildings and other structures, the height and location of trees and other vegetation, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes within the area. Such regulations shall be made in accordance with a comprehensive zoning plan designed to lessen congestion in the streets, to secure safety from fire, panic and other danger, to promote health and the general welfare, to encourage energy efficient patterns of development, the use of energy conservation, solar, and renewable energy sources, and to assure access to sunlight for solar energy devices, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate adequate provision for transportation, water, sewage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the zone and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. (1986 Code)*"
3. Utah Code 10-9a-610: Restrictions for solar and other energy devices states that cities may opt to deny subdivisions if they include private restrictions on solar collectors or similar devices: "*The land use authority may refuse to approve or renew any plat, subdivision plan, or dedication of any street or other ground, if deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels covered by the plat or subdivision prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines,*

or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the plat or subdivision.” However, Utah Code does not have any other sections that state to what degree cities may allow or restrict solar energy devices.

4. Utah Code Title 57, Chapter 13: Solar Easements (see Attachment # 2) contains provisions for the creation of solar easements between property owners, and the private civil enforcement of solar easements.

STAFF ANALYSIS:

1. It is the opinion of staff that based on Mapleton City Code 16.02.040 (see Findings of Fact #2 above) that Mapleton City should generally encourage the use of solar energy devices, with appropriate zoning standards designed to mitigate any negative effects that solar energy devices may impose on surrounding properties.
2. Staff has discussed the draft ordinance with the applicant and their solar contractor (Intermountain Wind and Solar), and it is the opinion of Staff that the draft ordinance should allow reasonable solar energy devices to help offset energy costs on individual properties and conserve natural resources. It is also the opinion of Staff that the proposed ordinance mitigates most negative effects of solar energy devices.
3. Staff recommends that the Planning Commission discuss paragraph 3 of the proposed ordinance to decide whether solar energy devices should be permitted on street-facing roof faces. The ordinance as currently drafted would allow solar energy devices on any roof face, including street-facing roof faces.

STAFF RECCOMENDATION:

Staff recommends approval of the proposed ordinance.

ALTERNATIVE ACTIONS:

1. The Planning Commission may deny the proposed ordinance amendment. Reasons for denial should be stated in the motion.
2. Continue to a Future Meeting Date: This action could be based upon findings that additional information is required prior to rendering a decision or to further consider information.

ATTACHMENTS:

1. Proposed Ordinance
2. Utah Code Title 57, Chapter 13: Solar Easements

ATTACHMENT # 1 – PROPOSED ORDINANCE

18.84.440: ~~RESERVED~~ RESIDENTIAL SOLAR ENERGY DEVICES

- (1) The purpose of this section is to:
 - (a) regulate the permitting of residential solar energy devices for personal, non-utility-scale use; and
 - (b) encourage renewable energy practices while mitigating negative effects.

- (2) Scope: This section shall regulate all solar energy devices (defined as devices designed to capture, convert, store, or use solar energy) within the boundaries of Mapleton City, including, but not limited to:
 - (a) photovoltaic solar panels; and
 - (b) solar water heating devices.

- (3) Roof-mounted solar energy devices are allowed in residential zones, provided that they are incidental to the main dwelling unit, subject to the following conditions:
 - (a) solar energy devices must be mounted flush to the roof, or mounted with a maximum separation of three feet (3') vertically above the roof surface in order to facilitate cooling or more efficient angles for capturing solar energy; and
 - (b) in no case shall roof-mounted solar energy devices extend above the peak of the roof of a building.

- (4) Free standing solar energy devices are allowed in any residential zone, provided that they are incidental to the main dwelling unit, subject to the following conditions:
 - (a) free standing solar energy devices must be located to the rear of the main building;
 - (b) a minimum setback of three feet (3') from any rear or side property line shall be required;
 - (c) if located closer than ten feet (10') from a rear of side property line, free standing solar energy devices shall have a maximum height of twelve feet (12') above natural grade, measured from the base of the structure to the peak of the poles or panels, whichever is taller;
 - (d) if located ten feet (10') or more from a rear of side property line, free standing solar energy devices shall have a maximum height of fifteen feet (15') above natural grade, measured from the base of the structure to the peak of the poles or panels, whichever is taller;
 - (e) free standing solar energy devices shall not be located in, nor overhang any public utility easements (PUEs) unless the owner submits to Mapleton City approvals from each franchised public utility company approving the encroachment;
 - (f) for lots 0.5 acres (21,780 square feet) or less in size, a free standing solar energy device shall have a maximum area of three hundred square feet (300 s.f.);
 - (g) for lots greater than 0.5 acres (21,780 square feet) in size, a free standing solar energy device shall have a maximum area of six hundred square feet (600 s.f.);
 - (h) for lots 2 acres (87,120 square feet) or greater in size, a free standing solar energy device shall have a maximum area of twelve hundred square feet (1,200 s.f.); and
 - (i) free standing solar energy devices shall be limited to one (1) contiguous array (defined as one or more solar energy devices attached to each other) per lot.

- (5) All solar energy devices shall have a dark-colored surface/finish on the majority of the device and supporting poles, excluding incidental frame parts, to reduce glare.

- (6) The installation of solar energy devices shall require a building permit in all cases, and shall be subject to building code requirements adopted by Mapleton City.
- (7) Recognizing the property rights of other property owners to construct buildings as allowed by Mapleton City zoning ordinances, and the rights of property owners to plant trees or vegetation on their properties, Mapleton City shall have no obligation to ensure access to sunlight for owners of any solar energy devices. Any property owner desiring to maintain access to sunlight for their property through adjacent properties shall obtain solar easement(s) as provided in Utah Code Title 57, Chapter 13, Solar Easements, as amended. Solar easements shall be privately enforced through civil action by private property owners.
- (8) Conflicting Provisions: Notwithstanding the provisions of this section:
 - (a) individual residential zones may contain more strict provisions regulating solar energy devices; and
 - (b) in the case of any conflict between the provisions of this section the individual residential zone's provisions shall prevail.

Utah Code -- Title 57 -- Chapter 13 -- Solar Easements

57-13-1. Definitions.

As used in this act:

(1) "Solar easement" means a right, whether or not stated in the form of restriction, easement, covenant, or conditions in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace for the purpose of ensuring adequate exposure of a solar energy system as defined herein.

(2) "Solar energy system" means a system of apparatus and equipment capable of collecting and converting incident solar radiation into heat, or mechanical or electrical energy, and transferring these forms of energy by a separate apparatus to storage or to point of use, including, but not limited to, water heating, space heating or cooling, electric energy generation or mechanical energy generation.

(3) "Passive solar system" means a system which uses structural elements of the building, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(4) "Solar skyspace" means the space between a solar energy collector and the sun which must remain unobstructed such that on any given clear day of the year, not more than 10% of the collectable insolation shall be blocked.

57-13-2. Creation of solar easement -- Writing required -- Contents -- Enforcement.

(1) Any property owner may grant a solar easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded and indexed in the office of the recorder of the county in which the easement is granted. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar easement may terminate upon the conditions stated herein.

(2) Any deed, will, or other instrument that creates a solar easement shall include, but the contents need not be limited to:

(a) a description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement;

(b) a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the solar easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(c) any terms or conditions under which the solar easement is granted or may be terminated;

(d) any provisions for compensation of the owner of the real property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the real property subject to the solar easement, or compensation of the owner of the real property subject to the solar easement for maintaining the solar easement; and

(e) any other provisions necessary or desirable to execute the instrument.

(3) A solar easement may be enforced by injunction or proceedings in injunction or other civil action.