
Fwd: Arguments against the Bit and Spur commercial rezone proposal

Thomas Dansie <tdansie@springdale.utah.gov>

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To: Darci Carlson <dcarlson@springdale.utah.gov>, Aren Emerson <aemerson@springdale.utah.gov>

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From: **Ryan Lee** <[REDACTED]>

Date: Sun, Apr 17, 2022 at 11:06 AM

Subject: Arguments against the Bit and Spur commercial rezone proposal

To: Tom Kenaston <tkenaston@springdale.utah.gov>, Kyla Topham <ktopham@springdale.utah.gov>, Ric Rioux <rrioux@springdale.utah.gov>, Pat Campbell <pcampbell@springdale.utah.gov>, Noel Benson <nbenson@springdale.utah.gov>, Pam Inghram <pinghram@springdale.utah.gov>, <ahyatt@springdale.utah.gov>
Cc: Thomas Dansie <tdansie@springdale.utah.gov>

Planning Commissioners and Tom Dansie:

Attached are my public comments regarding the upcoming proposal for the commercial rezone attempt from the Bit & Spur.

Best,

Ryan Lee

 **Arguments against the Bit and Spur commercial rezone proposal.pdf**
85K

Arguments against the Bit and Spur commercial rezone proposal:

I am writing in to oppose the proposed commercial rezone of the Bit and Spur development from the Foothill Residential zone. Please let me state at the outset: the cynical out there may say that I am against affordable (or worker) housing. Not true. If that were true, then I would have opposed the applicants on their first go-round when they got approved for their initial 6 worker housing units. Also let me state up front: I know both of the applicants, and they are outstanding members of the community. I do not doubt their intentions, nor do I believe that they are intending to turn these units into transient lodging units.

However, I do believe that Springdale would be making a mistake in granting this rezone for many reasons. I list my arguments as follows:

- First of all: Springdale has an established precedent against zone changes. Springdale has long been known to deny rezone requests—especially to commercial (even if it is for a project with noble aspirations e.g. affordable/worker housing).
- By granting a commercial zone change you enter a very slippery slope where you set the legal precedent of having to accept future commercial zone changes (or face certain litigation when you deny these commercial rezone requests).
- If this zone change passes it will bring negative unforeseen consequences. Developers eagerly await its passage with the town cracking the door open for future Trojan Horse transient lodging units. Developers will seek to exploit this loophole to create commercial zones from residential under the guise of “affordable” or “worker” housing.
- Let me give an example of a regretful consequence of granting this proposed commercial rezone: a future developer proposes a commercial zone change from a residential zone to put in affordable housing. Then instead (and slowly over time) he starts doing transient lodging on this rezoned property. He easily rationalizes that he is doing the town good by offering affordable housing and that he is just “renting out a couple of the units” as transient lodging to subsidize the rest of them. At first it’s just two units of transient lodging— so what’s the big deal? But what started out as just renting a few units as transient lodging to “subsidize” the rest of the units soon becomes 4 transient lodging units. And then the 4 units become 6. And so forth. And then how is the town going to stop him? We all know there are many people in town that currently do illegal transient lodging— and the town is more or less powerless to stop them. And there are zero taxes collected that go towards the town infrastructure from illegal rentals. Worse yet: in the process you have now upset the residents who expected “quiet enjoyment” in their residential-only neighborhoods.
- I fear that there will be many unforeseen and regretful consequences for doing this zone change. For example: the cottage overlay zone. Think about the original intentions for that project and where it is now. For the record: I personally do not have anything to do with this project—and I am completely neutral on the cottage overlay zone i.e. I am not for it, or against it. However, I have heard many people in town complain about how (in their perception) it did not fulfill its original desired intentions. And there were noble intentions there—just like the proposed rezone project here—but how did it turn out in the end? How many families seeking affordable housing are currently living in those

cottages? This is what I mean by unintended uses and consequences. And now those cottages are built and done and there is nothing anyone can do about it. Let me repeat: I am not against the cottages—I am simply using it as an example of how something started out with good intentions and in many people’s opinion ended up something altogether different. And that is why there are many currently in favor of repealing the cottage overlay zone (which I understand is in process).

- It should be stated clearly that this project is a rezone for a purpose that is not for its stated intent. The applicants are requesting a commercial rezone—but then saying “it’s not really for commercial activity.” But, yet, that’s what the rezone application states: the application *is indeed for a commercial rezone*. The risk here is this: if a developer in the future is trying to rezone residential to commercial and is denied (and he then sues the town to challenge it in court) are you really going to risk that a judge will understand all of this? Judges rule based off of the facts—not narrative or explanations. And the fact here is this: this is a commercial rezone—no matter what is said otherwise. And you risk a judge granting future developments for commercial rezones if you pass this one. As emphatically as I can say this: you are playing with fire here by granting a commercial rezone for a different stated purpose than the actual intended use.
- If the applicants want to do high-density affordable housing then let them apply for a worker housing zone overlay— not this back-door approach. This is not how Springdale operates. This whole thing is entirely out of character for the town. If this proposal were to pass it would set a bad precedent that it would be acceptable for future applicants to apply for something that isn’t really their intended use for a given project.
- Applications need to be carefully vetted and closely examined— not rushed and done in an incorrect manner with improper zoning for the stated use. This application was proposed 8 business days ago and now is being voted on. This whole thing seems extremely rushed to many people in town.
- There is talk about deed restrictions and other methods of enforcement. My answer to that is simple: currently it is illegal—not deed restricted mind you—but it is flat-out illegal to rent transient lodging from a residential area in town. Yet it happens all the time—everyone in town knows someone who is doing it. And it happens day after day.
- Regarding deed restrictions: I quote directly from the town staff report for this project: “The applicant presented these housing units as employee housing. However, the Commission should remember that there is currently no requirement the Town can enforce to ensure the six approved housing units remain employee housing.” (emphasis mine)
- And that is my point exactly: even if they deed restrict it, there is no viable enforcement mechanism that will prevent these units from later being used as transient lodging. Or sold as fractional shares. Or time-share condos. Or whatever. Especially if the Bit and Spur is ever sold and new owners come in. But more important is the precedent for future developments of this nature for other developers who will manipulate it.
- And finally: you can always get out of these type of legal entanglements like deed restrictions. That’s what lawyers do: people pay lawyers to find loopholes to escape

(Houdini-like) from things like this. I am not suggesting the applicants themselves will do this—I am just pointing out that the town doesn't really have a way to enforce it.

- Another key point in all of this: you are taking a zone (Foothill Residential)— a zone that is the most difficult to develop and that has the lowest density of allowed homes, and now making it into a high density zone. And a commercial zone no less at that! This was not what the residents expected when they bought their properties in the surrounding area. It's not fair. It's not right. And it's not a reasonable expectation for the residents of Springdale to have in any residential zone— not just Gifford Park— that their property next door could suddenly get rezoned and become a high density commercial zone.
- Within the Foothill Residential zone there is a **legal expectation of quiet enjoyment**— not a new high-density housing project going in next door out of the blue. By granting a rezone from Foothill Residential you are selling a false bill of goods. When the residents of Gifford Park bought their properties they expected that behind them they were living next to a Foothill Residential zone— not a new commercial zone. Or an affordable housing project. They reasonably expected to live in quiet enjoyment behind them— not to suddenly have a high-density housing development going in behind them from a previously zoned residential area.
- The Future Land Use Map (FLUM) designates the proposed rezone property as "Conservation Residential." The General Plan describes Conservation Residential areas as follows: "These are areas with natural resource value, but also containing existing or planned low-density residential uses. *These areas should continue to be developed as low-density, single family residential areas*" (emphasis mine). This proposed use for this property as a high-density housing complex certainly does not meet the intended use for this area in any manner whatsoever. In fact, *it is the opposite of its stated intent.*
- I am positive that most Springdale residents would oppose this proposed project if it were going in directly next to or behind their personal homes in a previously zoned residential area. They would almost certainly say: "This isn't what I signed up for when I bought and moved into this residential neighborhood."

Conclusion:

So the larger issue here isn't these 6 proposed worker units—but rather: how does this affect the entire town? That's the over-arching point I am making: the precedent that would be set here applies to the entire town and could radically change the makeup of this town if passed.

From my experience working in this town: most residents barely want *any* new commercial development—even in the established commercial zones. I think it is safe to say that Springdale residents would loathe residential zones getting converted to commercial zones. And where does it stop if you grant this one?

This is a terrible precedent to set: if this proposed rezone passes, it will flood the town with applicants seeking to rezone residential to commercial under the guise of providing affordable housing. And no one can be surprised when developers later convert these type of units into illegal transient lodging rentals or fractional ownership shares.