

Approved Minutes
Spanish Fork City Council and Planning Commission
Land Use Training and Work Session
April 12, 2005

The meeting began at 5:30 p.m.

Elected Officials Present: Mayor Dale R. Barney, and Councilmembers Matthew D. Barber, Paul M. Christensen, Everett Kelepolo, and Chris C. Wadsworth. Councilmember Seth V. Sorensen was absent.

Planning Commission Members Present: Paul Bradford, Sherman Huff, David Lewis, Del Robbins, and Ted Scott. Chris C. Wadsworth is also a member of the Planning Commission.

Staff Members Present: S. Junior Baker, City Attorney; Christine Johnson, Assistant City Attorney; Emil Pierson, Planning Director; Connie Swain, Deputy Recorder.

Others Present: Carl Parker, James Peters, Bruce Carpenter, Ott Dameron, Daniel K. Thompson, Leo A. Thomsen, Matthew Evans, Tracy Padgett, David Stroud, Merrill Webb, Jay Henrie, and Jeff Acerson.

Land Use Training

Mr. Baker thanked local land use attorneys Jody Burnett and Bruce Baird for providing the training to be presented. Mr. Burnett represents several cities in connection with land use issues and Mr. Baird spends the majority of his time representing developers.

Mr. Burnett provided the following outline and reviewed the contents:

- I. LEGAL AUTHORITY FOR LOCAL PLANNING & ZONING ACTIVITIES
 - A. *While there are a number of statutes that deal with various aspects of local planning and zoning activities, cities derive their authority primarily through the Municipal Land Use Development and Management Act, previously found at Utah Code Ann. § 10-9-101, et seq (but see comprehensive amendments adopted in S.B. 60 effective May 2, 2005, and renumbered to 10-9a-101, et seq.)*
 - B. *The legislature has conferred broad authority on municipalities and counties to enact measures which are necessary for the general welfare of their inhabitants. See, State v Hutchinson, 624 P.2d 116 (Utah 1980); Utah Code Ann. § 10-8-84.*
 - C. Preemption. *Note certain areas of possible preemption by federal and state governments (e.g. Solid and Hazardous Waste Act, Utah Code Ann. § 19-6-101, et seq.)*

- II. ANNEXATION, REGIONAL PLANNING AND THE EXERCISE OF EXTRA-TERRITORIAL CONTROL BY MUNICIPALITIES
 - A. *The annexation process is addressed under Utah Code Ann. § 10-2-401, et seq.*

- B. *See recent legislative changes in the disconnection process under Utah Code Ann. § 10-2-501, et seq.*
- C. *Consider the possible use of interlocal agreements, Utah Code Ann. § 11-13-1, et seq.*

III. RECOGNIZING THE CRITICAL DISTINCTION BETWEEN LEGISLATIVE AND ADMINISTRATIVE ACTIONS AND THE DEGREE OF DISCRETION AND JUDICIAL DEFERENCE AFFORDED TO SUCH DECISIONS

- A. *Contrast Smith Investment v. Sandy City, 958 P.2d 245 (Utah App. 1998), with Brown v. Sandy City Bd. of Adjustment, 957 P.2d 207 (Utah Ct. App. 1998)*
- B. *Challenges to the denial of rezonings and identifying the appropriate standard of review*
Bradley v. Payson City, 70 P.3d 47 (Utah 2003).

IV. THE IMPORTANCE OF FOLLOWING MANDATORY PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF OUR OWN ORDINANCES
Springville Citizens v. City of Springville, 365 Utah Adv. Rep. 23 (Utah 1999)
Gardner v. Perry City, 385 Utah Adv. Rep. 47 (Utah App. 2000)

V. EXHAUSTION OF REMEDIES
Patterson v. American Fork, 2003 UT 7

VI. VESTED RIGHTS: CAN YOU CHANGE THE RULES IN THE MIDDLE OF THE GAME?

- A. *Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980)*
- B. *Scherbel v. Salt Lake City, 758 P.2d 897 (Utah 1988)*
- C. *Stucker v. Summit County, 870 P.2d 283 (Utah App. 1994)*

VII. CAPITAL FACILITIES PLANNING, DEVELOPMENT EXACTIONS, DEDICATION REQUIREMENTS AND IMPACT FEES

- A. *Constitutional limitations on planning and zoning activities*
 - 1. *Federal constitutional limitations for “takings” under the Fifth Amendment*
 - 2. *Limitations under Utah law. See Utah Constitution Article I, Section 22*
- B. *Impact fees; see Utah Code Ann. § 11-36-101, et seq.*

VIII. RESIDENTIAL FACILITIES FOR PEOPLE WITH DISABILITIES AND THE IMPACT OF FEDERAL FAIR HOUSING ACT

- A. *See Utah Code Ann. § 10-9-605*
- B. *Federal Fair Housing Act implications; see 42 U.S.C. § 3601, et seq. (see also, companion Utah Fair Housing Act)*
- C. *Residential facilities for the elderly under Utah Code Ann. § 10-9-501 and federal and state fair housing implications*

IX. RISK MANAGEMENT RECOMMENDATIONS

- A. *Avoiding conflicts of interest; see Municipal Officers and Employees Ethics Act,*

Utah Code Ann. § 10-3-1301, et seq.

- B. *Broader procedural due process considerations*
 - 1. *The opportunity to present and rebut evidence*
 - 2. *A fair and impartial tribunal (avoiding ex parte contacts)*
 - 3. *A record supported by adequate findings*
- C. *Other risk management recommendations*
 - 1. *The importance of complying with the procedural requirements of your own ordinances and making decisions based on valid, properly enacted, comprehensive general plans and zoning ordinances*
 - 2. *Preparing, adopting and complying with policies and procedures (or bylaws) for conducting meetings and making decisions*
- D. *Record keeping*
 - 1. *Make sure you and your staff anticipate possible legal challenges by authenticating, dating and maintaining copies of all documents which are relevant and material to applications for permits or approvals*
 - 2. *Recognize the critical importance of good minutes so as to maintain an adequate record in the event of later judicial review*
 - 3. *Make sure that the record includes written reasons and findings in support of your decisions which include:*
 - a. *Written reasons*
 - b. *Supported by the evidence or materials presented*
 - c. *Which track the statute, ordinance or relevant criteria*
- E. *Recognize the importance of involving attorneys and staff early in the process*
- F. *Continuing concerns regarding the Utah Open and Public Meetings Law, Utah Code Ann. § 52-4-1, et seq.*
- G. *Access to public records and the implications of the Government Records Access and Management Act, Utah Code Ann. § 63-2-101, et seq.*

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Mr. Baird said at one time he was the Assistant City Attorney for Salt Lake City. He now represents the development's side of legal claims. He gave the following broad overview:

- Sometimes there is a bias and oftentimes the opposition is catered to
- New land use development act gives the cities a chance to do what is right
- Boards of Adjustment are no longer required and decisions can be made at other levels
- Trust your staff
- Development and citizen groups are concerned with fairness, predictability, and sooner or later making a decision
- Many times codes are created in a vacuum and not tested
- New land use statute changes rules on noticing
- Conditional use permits also have been changed and should be studied
- Current city codes may conflict with the new statute and will need to be changed quickly
- One item not addressed in the statute is the relationship between impact fees and conditional use permits

Mr. Burnett gave the example of an issue involving Walmart. When Walmart proposed a retail development they offered amenities in excess of those required. The public appeared at the meeting in mass and said they were against a Walmart being built. Mr. Burnett said public

clamor can create problems. The Centerville General Plan indicated a big box development in the precise location proposed by Walmart.

A question and answer period followed.

Mr. Baird said capacity moratoriums are being imposed. There are no statute guidelines dealing with capacity moratoriums.

Mr. Pierson asked if a city can impose a capacity moratorium if they do not want to increase capacity with additional growth.

Mr. Baird and Mr. Burnett said there is no clear answers but there will be troubles related to the issue in the future.

Councilmember Wadsworth asked if a member of City Council should serve on the Planning Commission.

Mr. Baird and Mr. Burnett were both opposed to a City Councilmember serving on a Planning Commission, because the City Council is the appeal authority over the Planning Commission, therefore resulting in a conflict of interest. Also, if a City Councilmember who is serving on the Planning Commission makes comments as how the City Council would handle issues it could impact on the decision made by Planning Commission.

Councilmember Barber asked for more specific information on vesting a development and impact fees.

Mr. Burnett said a lot depends on when impact fees are collected. He also said if he were a building permit applicant paying impact fees and found that he was required to donate property for a park he should expect to receive a credit.

Mr. Baird said the new code will make it difficult to have pre-application plans for the purpose of review by community councils.

Mr. Pierson said neighborhood group meetings can take place before or after an application is filed.

Mr. Burnett and Mr. Baird agreed.

Mr. Baird said if he were required to submit a concept plan first to a community council and if it complied with the requirements then at that point he said his development plan would be vested.

Mr. Burnett said the question is what the plan would be vested for at that point. The developer would still be required to meet all engineering and construction requirements.

Mr. Baird agreed he still would have to comply with the requirements. Mr. Baird also suggested that cities with homes in old zoning areas be addressed in connection with building height

allowance before problems occur which have occurred in other cities. There are 3-story renovated homes being built which tower over the existing single-story homes.

The training meeting ended at 7:30 p.m.

Councilmember Barber left before the conclusion of the training session

Spanish Fork City Council Work Session

7:40 p.m. - Work Session began

Elected Officials Present: Mayor Dale R. Barney, and Councilmembers, Paul M. Christensen, Everett Kelepolo, Matthew D. Barber and Chris C. Wadsworth. Councilmembers Seth V. Sorensen was absent.

Planning Commission Members Present: Paul Bradford, Sherman Huff, David Lewis, Del Robbins, and Ted Scott.

Staff Members Present: S. Junior Baker, City Attorney; Christine Johnson, Assistant City Attorney; Emil Pierson, Planning Director; Connie Swain, Deputy Recorder.

Citizens Present: None

Land Use

Mr. Baker said the new law will require changes to be made to our city code. He reviewed the home land security chart referred to by Mr. Baird. We only have a few changes needed but they need to be made quickly. He said he met with Mr. Pierson and they both recommend repealing Titles 16 and 17 and combine them into a title to be known as Title 15. He reviewed a possible outline for Title 15. He asked the City Council for a decision by next week.

Councilmember Barber returned

Councilmember Kelepolo agreed with simplifying the process.

Mayor Barney said we need to make sure we make the correct changes.

Mr. Baker said the staff needs direction by next week to allow time for public hearing notices.

Mr. Pierson said combining the sign ordinance with business licenses will help simplify the process for residents and business owners.

All members of the City Council were in favor of drafting a simplified Title.

Mr. Baker said public hearings are now required for only the Planning Commission regarding land use issues. He asked for direction concerning public hearing requirements for both the

Planning Commission and City Council or just the Planning Commission.

Councilmember Kelepolo asked concerning the Ogden City process which was discussed by Mr. Baird as being ideal and simplified.

Mr. Baker reviewed the Ogden City process. Our process isn't much more complicated than Ogden City's process. They also have a "strong mayor" form of government.

Mayor Barney said a lot of input and information is needed in order to make a decision.

Councilmember Kelepolo said he feels the public hearing should also come before the City Council and not just the Planning Commission.

All of the City Council agreed.

Mr. Baker reviewed the public hearing section relating to preliminary plat approvals. He recommended continuing with our current process related to preliminary plat approvals.

Councilmember Kelepolo said citizens have complained about the process and they have requested that citizens be allowed to continue giving comments throughout the hearing. He is concerned that citizens perceive that we do not care what they have to say.

Mr. Baker said the law states that all interested parties are to have adequate time to respond.

Mayor Barney said certain citizens want to dictate to the City Council their opinions.

Mr. Baker said it is not a public debate but is to give the parties adequate time to respond. He cautioned that during a public hearing related to a controversial issue a member of the Planning Commission asked a citizen if the proposed outcome would satisfy his concerns. These types of actions will result in problems.

Councilmember Barber said Mr. Baird mentioned fairness. Our process sometimes does not allow fairness. He is not sure how to address it without causing bantering or debates.

Mr. Baker said in legislation there is a strict time limit and each person is given one chance to talk. There are no exceptions.

Councilmember Kelepolo said during the election process the citizens elect individuals they feel will best represent their concerns.

8:20 p.m. - Councilmember Barber left the meeting.

Mr. Baker said most public comments are based on emotions and not facts. Mr. Baker also discussed the permitted uses discussed by Mr. Baird. Mr. Baker reviewed the proposed public hearing noticing requirements related to land use changes.

Councilmember Wadsworth suggested a 500-foot noticing area.

Mr. Baker said changes can be made but suggested changes are needed by next week. Another big change in the statute is related to appeals to the land use authorities. He reviewed the land use authorities for the Development Review Committee, Planning Commission and City Council. Mr. Baker suggested the City Council become the appellate board. This will create a dilemma with a City Council member serving on the Planning Commission. He recommended changing the ordinance and eliminating a member of City Council serving on the Planning Commission. We could go to a five member Planning Commission or continue with 6 members with 3 year terms and an option to serve for 2 terms. Direction is needed from the City Council by next week. Mr. Baker said he discussed these issues with Councilmember Sorensen this afternoon.

Mr. Pierson said a major concern is that the citizens feel their voice is not being heard. His goal is to meet with citizens and be aware of City Council's opinions.

The meeting adjourned at 8:40 p.m.

Connie Swain, Deputy Recorder

Approved: May 3, 2005