

SOUTH JORDAN CITY
COMBINED CITY COUNCIL AND
PLANNING COMMISSION MEETING
OAK CONFERENCE ROOM

February 23, 2016

Present: Mayor David Alvord, Council Member Patrick Harris, Council Member Brad Marlor, Council Member Chris Rogers, Council Member Don Shelton, CM Gary Whatcott, City Attorney Ryan Loose, Development Services Director Brad Klavano, COS Paul Cunningham, Commissioner Russ Naylor, Commissioner Mark Woolley, Commissioner Sean D. Morrissey, Commissioner T. Earl Jolley, Commissioner Craig Hall, Commissioner Julie Holbrook, City Planner Greg Schindler, Staff Attorney Steven Schaefermeyer, City Recorder Anna West

Absent: Council Member Tamara Zander

Others: Jake Warner, Matt Jarman, Rachel Otto

**BUDGET STUDY SESSION
OAK CONFERENCE ROOM – 6:40 PM**

Mayor Alvord noted that Council Member Zander has asked to be excused.

Mayor Alvord started the meeting asking everyone present to introduce themselves.

A. Training (*Office of City Attorney*)

City Attorney Ryan Loose introduced Staff Attorney's Steven Schaefermeyer and Rachel Otto. He then passed around a handout (Attachment A) regarding the multiple hats worn by City Council and Planning Commissioners regarding Legislative, Administrative and Quasi-judicial issues.

Mr. Loose said City Council is the ones that make the rules. The statute says that you have to set forth the Land Use Ordinances, including what the Planning Commission does. You have to set forth the zones and you have to set forth Land Use in the General Plan. On each of those four things, the Planning Commission, get to recommend to the City Council on each one of the four items. He continued discussing items on page 2 of Attachment A, regarding Land Use Decision and Appeal Process.

Mr. Loose said in the Land Use Management Act they do not say who administers the rule; it just says you decide who administers it. Then we turn to City Code. In City Code our Land Use Authority, the body who administers the rule, is the Planning Commission on almost all items. That is where we allow a public hearing on administrative acts. If you look in state code it does not say you have to have a public hearing on administrative acts. He asked who thinks there is value in having a public hearing on administrative acts. Commissioner Craig Hall said he did. He said they may bring up some things on a site plan that may not show up without public comment such as an irrigation ditch.

Mr. Loose said there are a few things about administrative acts that can frustrate people. You, the Planning Commission, do not have discretion to do that. If you want to deny something on an administrative act you must have substantial evidence. Public clamor saying their home values will go down is not evidence; however, if they bring in an appraiser that shows you in an appraisal that the home value will go down then they have evidence and it can be considered. As long as the two bodies and staff don't step into each other's roles then everybody is happy.

Mayor Alvord asked if there is a standard of evidence. Mr. Loose said yes. Substantial evidence of detrimental effect means more than a little but it doesn't have to be clear and convincing which means 50% or more.

Mr. Loose talked about the past issue of The Gun Vault. Both sides presented great evidence. One of the residents did his own appraisal to show the home values would be affected by The Gun Vault. That had some evidentiary value but it's not the same as a licensed appraiser. I can't go to court with this guy's appraisal as good as it was; so then you look at the credibleness of the evidence.

Commissioner Hall said when you say there are some things that go to Planning where we have no discretion; why then does it go to us? Mr. Loose said state law says we have to appoint a Land Use Authority. You do have the ability to weigh the evidence and decide which evidence is more credible.

Mr. Loose talked about public hearings and whether they are valuable or not. He said some cities have them and some don't.

Commissioner Hall said how else would you find out about an irrigation ditch issue if you didn't have a public hearing for these issues to be brought up. Mr. Loose said that is why I think they are valuable. If you talked to Brent Bateman who was the property rights ombudsman, 3-5 years ago he was saying to people they might not be that valuable because they created more problems than they are worth. Now he says you learn a lot of stuff by having them.

Council Member Rogers said this also frustrates me on the Council level and that's why I am a fan of separating the quasi-judicial role from the Council. Is our Planning Commission informing our residents before they get up to speak letting them know about why the Administrative Quasi-judicial role is treated differently.

Mr. Loose said one of our ugly projects was the Walmart out here. I went to the Planning Chair and said you need to ask me to explain conditional uses. People hated the ruling on that because a conditional use is a conditional use. If you don't identify with evidence the detrimental effects, then identify the least restrictive mitigation to get rid of that detrimental effect to a standard. You can't deny it. That is our job as legal and we are happy to do it.

Commissioner Naylor said we have tried to inform the public when we have one of these issues come up why we can't do what they expect us to do so I hope they can go away with the understanding that we were playing by the rules and there is a limit to what our authority is.

B. Planning Philosophy (*Office of City Attorney and City Planners*)

Mr. Loose said on an administrative item Council needs to leave the Planning Commissioners alone to do their job. When it's administrative and you don't like it I appreciate that but frankly they don't need to know that you don't like it. All that does is influence them to want to find a reason to deny it where it doesn't matter what your opinion or my opinion or anybody else's opinion on the merits of the application, it matters on whether or not they as a body can make sure it conforms with the ordinance. If you really don't like it then come talk to us and let's change the rule so no one else can do it. We do that when we need to. Let's not bug the Planning Commission. Commissioners I am going to ask you to do something also. Please do not come to Council meetings and sit through Land Use meetings. You have your say and I am going to expand that to say our current code of ethics says these guys should not talk to you and unduly influence you. We will be drafting a change to that that says on administrative items, they should not talk to you or influence you. On Legislative items go ahead and call each other and talk through it. I would like the two bodies to know what each other is doing as far as legislative acts and be on the same page.

Mayor Alvord asked which body was in more need of this training. Mr. Loose said staff. The reason why I say staff is because we need to make sure we are clear with you. If you as a Council want to hear all quasi-judicial, I don't want to be pushing in a different direction. If you as a Planning Commission want to look more in depth at the final site plan or change some way in our process and you are working with the Council on it, we don't want to be pushing in a different direction. Our philosophy as staff is we are going in the same direction you as a Council determine we are going with Land Use and you as the Planning Commission implement their determination as we get to specific zoning.

Planning Commissioner Julie Holbrook said one of the things I am not clear on is not seeing the final site plan for items we approve. Mr. Loose said final site plan/final subdivision is given to staff. When in final it is purely a checklist; staff is the ones that make sure all conditions are met.

City Planner Greg Schindler said a lot of times with conditional use permits, a lot of the times the conditions that are put on CUPs are for mitigating issues. Sometimes we have to wait until the business opens in order to make sure they are meeting a condition such as opening and closing times. If they are not meeting a condition set there is also a provision in the code that City Council can revoke their CUP.

Commissioner Hall asked when do you get the Planning Commission chairs signature and does that chairman have the opportunity to make sure that checklist is completed.

Mr. Loose said you don't get the Planning Commission chairs signature and no, the chairman does not get the opportunity to make sure the checklist is completed. The City Planner signs for Planning, the Mayor signs for the City and Steve or I signs for the City Attorney's Office.

Commissioner Mark Woolley asked what the process is that our staff uses now to police when conditions are not being met, and what is the process we can use when we get that information?

Mr. Loose said policing is done by complaints and code compliance. If you or citizens let us know then we can send Code Compliance out to check it out. You can submit your comments to the City Manager or to the City Attorney's office.

C. Discussion: Performance Development / PUD's (*Councilman Chris Rogers*)

Council Member Rogers said this is something I have been interested in trying to resolve. The Mayor and I and Mr. Shelton were elected about two years ago and taking out most of the incumbents mostly on the issue of addressing the high density housing issues and it is still a very hot topic. Within the first three months of being in office we revoked the VMU Zone and made some major changes with our Land Use to address the high density housing. Part of this discussion of performance zoning and PUD's, stems from that discussion. I feel that whenever we are dealing with high density housing, residential or major residential changes, that decision should be made by the elected representatives. I understand and appreciate that the development community wants to have some flexibility as well as some understanding as to how to plan for the future and don't want to be foreclosed from doing any further development. I have been torn with what to do with performance development. The performance development was most notably in the C-F Zone. The Jordan Station phase II which was a performance development which meant it was a commercial free zone and if the developer met certain heightened performance criteria, building standards, a pool, nicer facilities, they could be allowed through the discretion and approval of city staff as well as the Planning Commission they would be allowed to build residential high density and under the current code there was no limitation. I was very uncomfortable with leaving that discretion to the staff and Planning Commission.

Commissioner Holbrook said the performance development on the Cliffs you are saying that we had discretion. Council Member Rogers said that was a conditional use and conditional uses tie your hands; it requires the substantial evidence standard.

City Attorney Loose said Council at one time decided that was the right way to go. Times change and philosophies change, clearly the demographics of the city has changed. It is good to review those.

Council Member Rogers said I think that shift has occurred and we have all felt it. I felt it in my election and think we will continue to feel it for a couple more elections. The appetite is to still head in this direction, but I also still want to give flexibility because we still have a lot of infill projects and we have problems figuring out whether certain zoning applies to certain things. I was concerned about having that discretion in commercial zones. The residents see a commercial zone and they think something commercial is going to be there. There is no transparency or anticipation that some high density residential would go in a commercial freeway zone. In talking with staff initially I proposed striking the performance development language from all the zones, along with that getting rid of the PUD zoning. I felt that the PUD zoning was incentivizing small lots, small roads for higher densities in town homes or apartments or even homes. I didn't see that the residents wanted that or wanted to incentivize that but we still want to give ourselves some flexibility. My proposal in talking with staff is to come up with an overlay and floating zone (see Attachment B). Basically this would eliminate the performance zoning from the commercial zones and all the other zones. An overlay zone overlays over the top of the base zone. There are two things in the floating zone; it requires a development agreement which requires Council approval and it would require a zone change which is a legislative act with 100% discretion of the Council. It also requires a recommendation from the Planning Commission. What is nice about this zone is that it would apply per project and subject to the development agreement so that if a developer comes in and gets a zone change for this floating zone, it would be tied to the land project. If they wanted to change the project they would have to come back to Council and Planning Commission to get it amended. The nice thing about the floating zone is it's a we can do anything we want zone. It allows us to weigh any requirement in any zone and it also allows us to add any limitation in the zone. Any zone can be changes to anything we want based on the floating zone. This allows developers to come to us and propose a project and one of the requirements of the developers is they

have to come up with a site plan development plan before we approved it so we know what they are going to do.

Commissioner Hall asked when does the development agreement come in? City Attorney Loose said prior to the zone; documents for the development agreement and for zone change would be in the Council Packer. The development agreement would have to be approved just prior to the ordinance rezoning the property. They would be separate voting items.

City Manager Whatcott said I see this being used the majority of the time on small infill projects.

City Attorney Loose said I give all the credit to our staff. Jake, Greg, Brad and Gary have worked really hard over the past two years to bring you a completely different land use code. Our zones are now better than they were. This is to maintain the flexibility we are getting rid of.

Commissioner Woolley said if we want some of these infills to be developed extremely well this is the tool to get us there but we need to help the development community to know the standard.

Council Member Rogers said once we finalize some of the language we will send it to the Planning Commission to get approval.

D. Discussion: Open Space Zone / Professional Office Zone (*Planner, Jake Warner*)

Planner Jake Warner said we felt we should go more restrictive with this zone knowing that there was a tool that would allow flexibility to those more intensive projects that we may want to consider in the future. He distributed a handout titled 'Zone Text Amendment: Office and Open Space Zones (Revisions)' (Attachment C). He said the Planning Commission has seen the Office and Open Space and has made recommendation to the City Council back in November. City Council first saw the Office and Open Space Zone on January 5th and again on February 2nd. I am going to go through the revisions that we have made to address all comments that have been made to date and more specifically the redlines that Council Member Rogers has provided. We held a meeting like this two years ago and that was in response to the repeal of two zones. In June 2014 I was tasked with bring back some recommendations. At that time we realized that the fix was broader and deeper than what three zones represented. As was mentioned we did a complete restructure of the zoning ordinance and that is why you are seeing the Office and Open Space Zone. He reviewed the underlines, cross outs, and redlines made to specific parts of the Office and Open Space Zone as shown in Attachment C. He said the underline is something that is new to our ordinance. The strikethrough is something that was in there but is now deleted and the red is additional text representing the changes we have made most recently.

Planner Warner said there was some discussion about what type of properties the Open Space Zone should apply to. Generally they will apply to City owned properties so we put that in the text. If the Council decides to rezone a privately owned property it is covered by the regulations of the ordinance. Any property not owned by the City would require a development agreement in the open space. There is some preemption by the state that could override this for schools.

Commissioner Hall said I would suggest you change the word at the bottom of slide two from agencies to entities.

Planner Warner continued on to the page regarding size of buildings in the Open Space Zone. He said staff felt more comfortable going more restrictive because of the potential for the floating zone we have discussed. He said 35' is a common height restriction for buildings and originally we had 35' but this has been changed to 25' across the board. He noted that there is a restriction of 1 building per 5 acres and buildings that exceed 500 sq. ft. are restricted to one per acre. No building is to exceed 3,000 sq. ft.

Council Member Rogers said we have Open Space Natural and Open Space Parks. I like the idea of creating a separate sub-district just for amphitheaters and theaters. Natural is the least intensive use, then parks, then theatre.

Planner Warner said we removed the performance development from the Office Zone. It is currently under the notice of pending ordinance so it is on hold right now.

Planner Warner said we talked about the Stadium/Theatre/Auditorium Use. One of our impact control measures is the residential protection area. We have already increased the distance for notification of a Stadium/Theatre/Auditorium Use from a residential zone to 500 feet; we will be introducing exceptions. They may be reduced to 100 feet if it is fully enclosed and if the floor area is less than 1,000 sq. ft.

Planner Warner addressed the Miscellaneous Single-Family Attached Use stating that a Single-Family Attached Uses may only be approved with a development agreement approved by City Council.

Planner Warner said another miscellaneous item is the Mobil Food Vendor Ordinance that would fall under business licensing.

Planner Warner concluded his presentation. He said it is my understanding that we as staff don't see that these changes are significant to go back through the entire process so it is our intent to bring this back to City Council and not go back through the Planning Commission unless you see reason to do so.

Mayor Alvord thanked everyone for attending. This has been a great meeting and maybe we should plan meeting like this twice a year.

It was determined by all that meeting quarterly would be good.

Council Member Harris motioned to adjourn. Council Member Shelton seconded the motion. Vote was unanimous in favor.

ADJOURNMENT

The February 23, 2016 Combined City Council and Planning Commissioner Special Meeting adjourned at 8:10 p.m.

This is a true and correct copy of the February 23, 2016 Combined Council and Planning Meeting minutes, which were approved on March 15, 2016.


South Jordan City Recorder