

PLANNING COMMISSION MEETING

September 25, 2018 6:00 pm
Community Recreation Center
10640 N Clubhouse Drive, Cedar Hills, Utah

Present: John Dredge, Vice Chair, Presiding
Commissioners: Jared Anderson, Marie Kraft, Eric Schloer, LoriAnne Spear, Steven Thomas, Jeff Dodge (6:06 pm)
Absent/Excused: David Driggs
Chandler Goodwin, City Manager
Gretchen Gordon, Deputy City Recorder
Jenny Peay, Code Enforcement Officer
Mayor Jenney Rees
Council Members: Denise Andersen, Mike Geddes, Ben Bailey, Brian Miller (6:07 pm)
Joel Wright, City Attorney (6:34 pm)
Others: Brent Bateman, State Ombudsman, Lynn Walker (Pleasant Grove City Council), Ken Kraft, Christine Anderson (Planning Commission Member for AF City), Stacy Carroll (Planning Commission Member for American Fork City), Geoff Dupeaix (AF Planning Commission) 6:08pm, Tim Ball (Highland Planning Commission) 6:11 pm, Harold Dudley, (American Fork City Planning Commission) (6:34 pm)

1. Call to Order

The meeting was called to order at 6:01 pm.

2. Swearing in of New Planning Commission Members

Eric Schloer and Marie Kraft were sworn in as new members of the Cedar Hills Planning Commission.

3. Public Comment: Time has been set aside for the public to express their ideas, concerns, and comments (limited to 3 minutes per person with a total of 30 minutes for this item).

There were no public comments.

4. Land Use Presentation and Discussion with Utah State Property Ombudsman, Brent Bateman

Mr. Bateman explained that the conditional uses had to be related to standards in the ordinance to meet the City's goals. If an applicant could not meet City standards, then a conditional use could not be granted. When asked if this also applied to master plans, Mr. Bateman answered affirmatively. However, master plans were advisory in nature and the City was not obligated to follow them.

With regards to the granting of conditional use permits, Mr. Bateman explained that there were two types of decisions: legislative and administrative. Legislative decisions created law whereas administrative decisions applied the law. The role of creating laws in Cedar Hills belonged to the City Council, whereas the Planning Commission's role was to make recommendations to the City Council. The City Council was unable to act on legislation without a recommendation. The main role of the Planning Commission was to review the land use in the City. They are tasked with reviewing ordinances and plans to ensure developments met the land use requirements.

When asked how the City should balance the developer's rights with what the residents wanted, Mr. Bateman explained it was a constitutional law that the people had a right to own and use their property. He said the right to develop property came from the City's ordinances and land uses. It was the City's responsibility to ensure the health, safety, and welfare of its citizens. He explained that the City could not make ordinances so restrictive that residents were unable to use their property. However, the City did have the right to determine how and where things developed, all of which was dictated through its ordinances.

Mr. Bateman discussed the importance of ensuring that the code was specific to avoid the types of uses that were inappropriate for the City. He said the Planning Commission's responsibility was to decide policy and be aware of what the City wanted. Anytime the Planning Commission made an administrative decision the only questions they should ask was if the application complied with the code.

The Planning Commission could approve conditional uses, and Mr. Bateman suggested staff handle conditional uses because the Planning Commission's time was better spent planning. He said ultimately the Council would decide the conditional use based off the recommendation from the Planning Commission or staff. He then explained that poorly written ordinances led to controversial questions on conditional uses, which was ultimately a waste of the City's time and resources.

When asked why the Planning Commission accepted public comments since the law dictated what could be approved anyway, Mr. Bateman responded there was no requirement to hold a public hearing in the State code. Public comments and hearings were only required for legislative decisions in the Planning Commission. He explained that the Planning Commission could not make administrative decisions based on public clamor. Public comment was appropriate for political decisions and if there was evidence relevant to an administrative decision.

The comment was made that allowing public comments was a courtesy for the public to address the developer. There were instances that the developer was asked to add or remove items from their project that would otherwise inconvenience the residents. Mr. Bateman explained most developers were willing to have discussions with the residents. He said they wanted to ensure the marketability of the product being sold, and being a good neighbor was important for achieving success.

Mr. Bateman explained that if an exception was granted to a developer, it was not legally enforceable for a future development. It was noted that developers used the threat of litigation

by citing precedence set by exceptions for other developments. Mr. Bateman commented that developers would lose a lawsuit based on precedent.

Mr. Bateman explained that exceptions could not violate the ordinance. When asked if the public had to be involved in interpreting the ordinance, Mr. Bateman answered in the negative. He further explained that if the City broke the law by not abiding by the ordinance, the City was not obligated by precedent. When asked if developers could circumvent the code by citing certain exceptions to zoning, Mr. Bateman responded in the negative. He explained that while these scenarios did occur, it should not be the common practice; exceptions should be hard to obtain. The vesting process was completed when developers submitted applications that complied with the code.

A remark was made that politicians used past precedence for making present decisions, which was the wrong way to govern. Mr. Bateman agreed. He explained that legally, past precedence did not matter but were persuasive. He suggested the City stay consistent with the previous Councils and Commissions.

Mr. Bateman explained that the purpose of the ombudsman's position was to resolve disputes. The ombudsman listened to disputes and made decisions to avoid lawsuits, which they had the legal authority to do.

The question was raised as to why the Council and the Commission were involved in the decision-making process, if the developers were required to adhere strictly to the code. Mr. Bateman responded that the Commission and the Council provided the discretion to decide if developers and residents met the code. The most effective use of cities' time was to improve language within their ordinances. When asked if the ombudsman's office distributed material concerning land use laws, Mr. Bateman responded in the affirmative, noting that this information could be found on their website.

When asked if there was a difference between a developer and resident asking for a conditional use, Mr. Bateman responded in the negative. He noted that developers were easier to work with because they had experience with the City's code and were motivated to make a profit. It was stated that a developer was not always motivated to improve the area; rather, they were motivated by profit. Mr. Bateman explained that the developers were bound by code which should prevent them from taking advantage of the City.

Mr. Bateman explained that typically, the Planning Commission would not review variances apart from appeals. A variance was a request for an exception from a zoning requirement. There were five requirements from the State code for a variance to be approved. There was some flexibility with setbacks, but the Planning Commission could not approve variances based on non-objective criteria. He reiterated that the City only could limit what people could do with their land based on ordinances.

It was noted that the City had allowed land uses but a HOA might not approve certain uses. When asked if this was legal, Mr. Bateman responded in the affirmative. He explained the City

had no authority to enforce a HOA's rules. The HOA could enforce rules because residents signed an agreement to comply with these rules.

Regarding parking spaces, Mr. Bateman explained that if the number of parking spaces were a part of the code then they could not negotiate the amount. If the City were to negotiate and consider a number contrary to its own ordinance, this would be breaking the law. There was subsequent deliberation on the matter.

When asked how rezones were to be handled, Mr. Bateman responded that a rezone was a legislative decision. It needed to be reasonably debated that approving a rezone request was in the public's best interest. Mr. Bateman explained in the State of Utah citizens could make referendums, which had the power to rezone areas. This was dangerous for cities with poorly zoned areas. There was further discussion on the matter.

5. Approval of Minutes from the August 28, 2018, Planning Commission Meeting

MOTION: C. Spear—To approve the minutes from the August 28, 2018 Planning Commission Meeting. Seconded by C. Thomas.

Yes - C. Anderson
C. Dodge
C. Spear
C. Thomas Motion passes

6. Adjourn

MOTION—C. Thomas moved the adjourn at 7:55 pm. C. Spear seconded the motion. The motion passed unanimously.

Approved:
October 23, 2018

/s/ Colleen A. Mulvey, MMC
City Recorder