

NOTICE OF MEETING
PLANNING COMMISSION
CITY OF ST. GEORGE
WASHINGTON COUNTY, UTAH

Public Notice

Notice is hereby given that the Planning Commission of the City of St. George, Washington County, Utah, will hold a **Planning Commission** meeting in the Administrative Conference Room, 175 East 200 North, St George, Utah, on **Tuesday, December 19, 2023**, commencing at **5:00 p.m.**

The agenda for the meeting is as follows:

Call to Order

Flag Salute

1. Planning Commission Training

- a. Development Processes
- b. Land Use 101
- c. Open Meetings & GRAMA training

Brenda Hatch – Planner II – CDBG and Housing

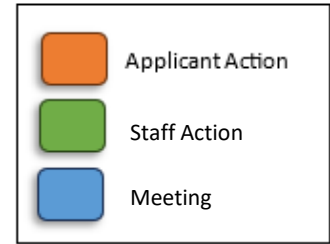
Reasonable Accommodation: The City of St. George will make efforts to provide reasonable accommodations to disabled members of the public in accessing City programs. Please contact the City Human Resources Office at (435) 627-4674 at least 24 hours in advance if you have special needs.

The background of the image is a silhouette of a construction site at sunset. A large crane is visible on the left, and several tall structures under construction are covered in scaffolding. The sky is a mix of orange and blue. The text "THE DEVELOPMENT PROCESS" is centered in a white, serif font. Below the text is a white, wavy horizontal line.

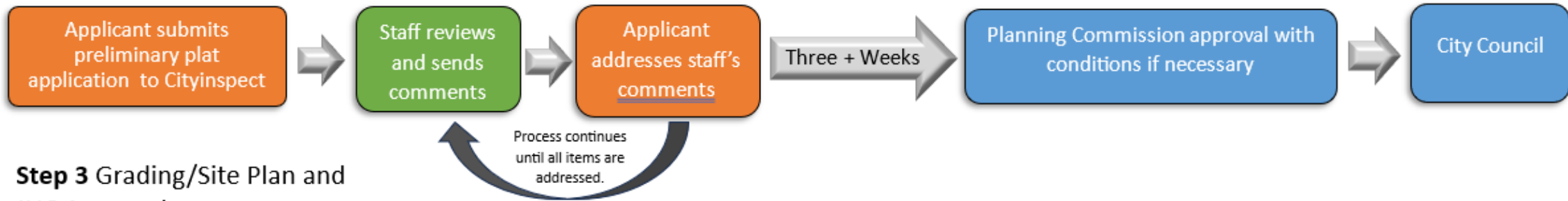
THE DEVELOPMENT PROCESS

NOW

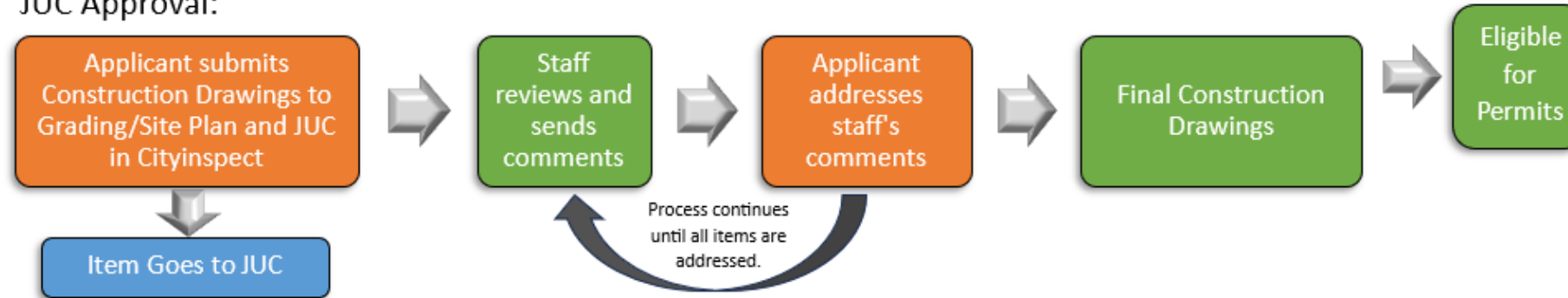
Step 1 Zoning Approval



Step 2 Preliminary Plat Approval:



Step 3 Grading/Site Plan and JUC Approval:

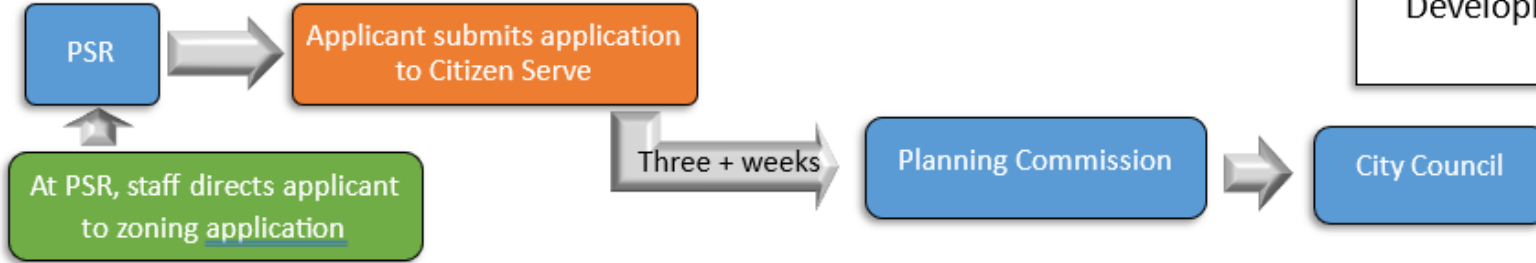


Step 4 Final Plat Approval



February 2024

Step 1 Planning Approval for Zone Changes and Conditional Use Permits:

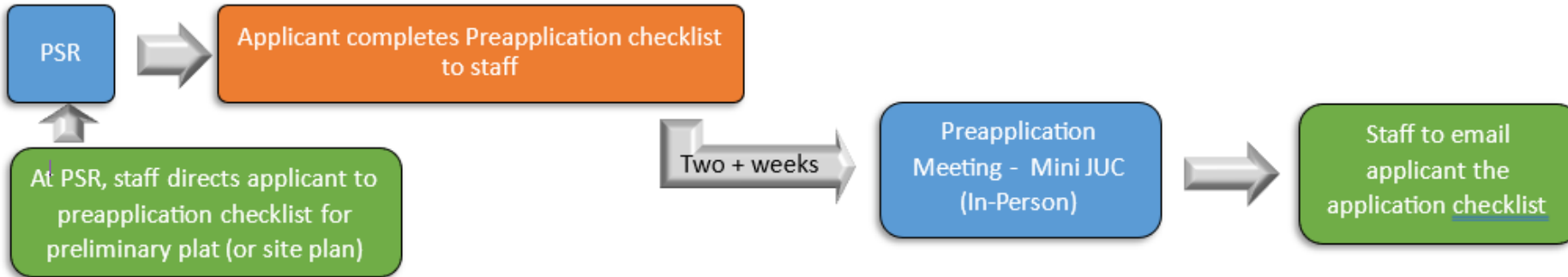


DEVELOPMENT PROCESS

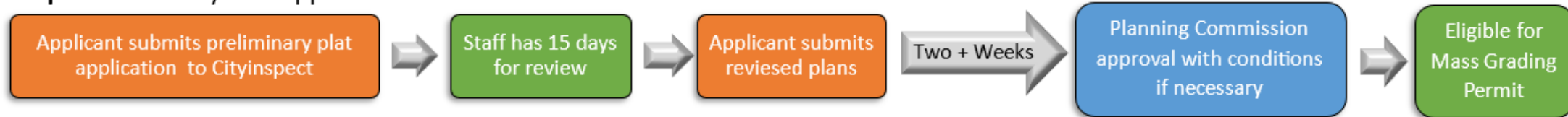
For Planning Items (Except Planned Developments), Preliminary Plats, Site Plans, And Final Plats

All **site plans** not needing to go through platting process: Complete Steps 1, 2, and 4

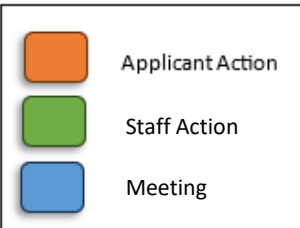
Step 2 Preapplication Process for Preliminary Plat or Site Plan (if platting is not needed):



Step 3 Preliminary Plat Approval:



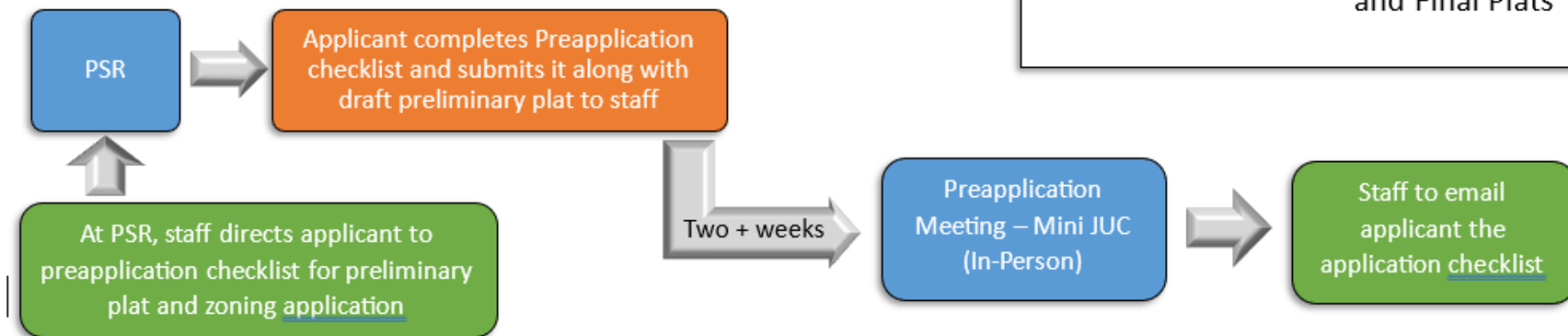
Step 4 Final Plat, Grading/Site Plan and JUC Approval:



DEVELOPMENT PROCESS FOR PLANNED DEVELOPMENTS

Zoning Approval, Preliminary Plats, Site Plans,
and Final Plats

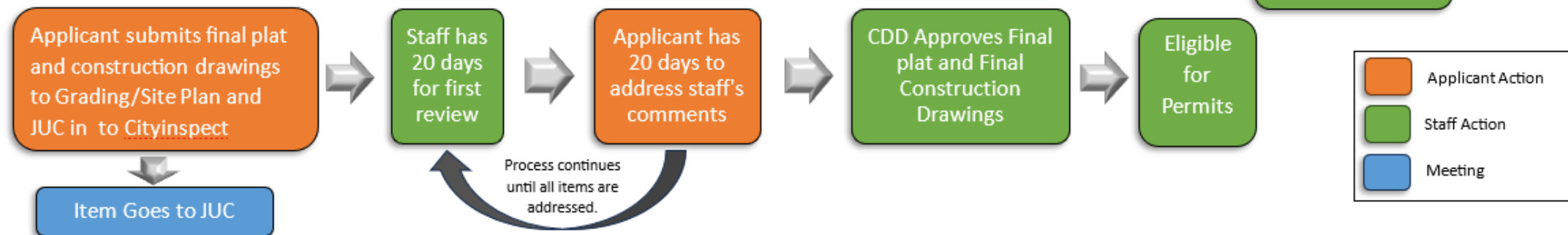
Step 1 Preapplication Process for Planned Development Amendments:



Step 2 Planned Development and Preliminary Plat Approval Process:



Step 3 Final Plat, Grading/Site Plan and JUC Approval:



February 2024

INTRODUCTION to the LAWS & RULES of LAND USE PLANNING

OR

Why getting criticized and abused by all your neighbors for little or no pay can be fun and fulfilling.



Property Rights



The term “Property Rights” is not one basic right. Rather, it has been described as a “bundle of sticks” which when combined, make up all the rights that may be associated with property.

Property Rights

- The 5th (and 14th) amendment(s) of the US Constitution prohibit governments from taking all those sticks away without due process and just compensation.

Property Rights

However, governments can make some regulations that may take away some of the sticks if there is a greater public purpose.

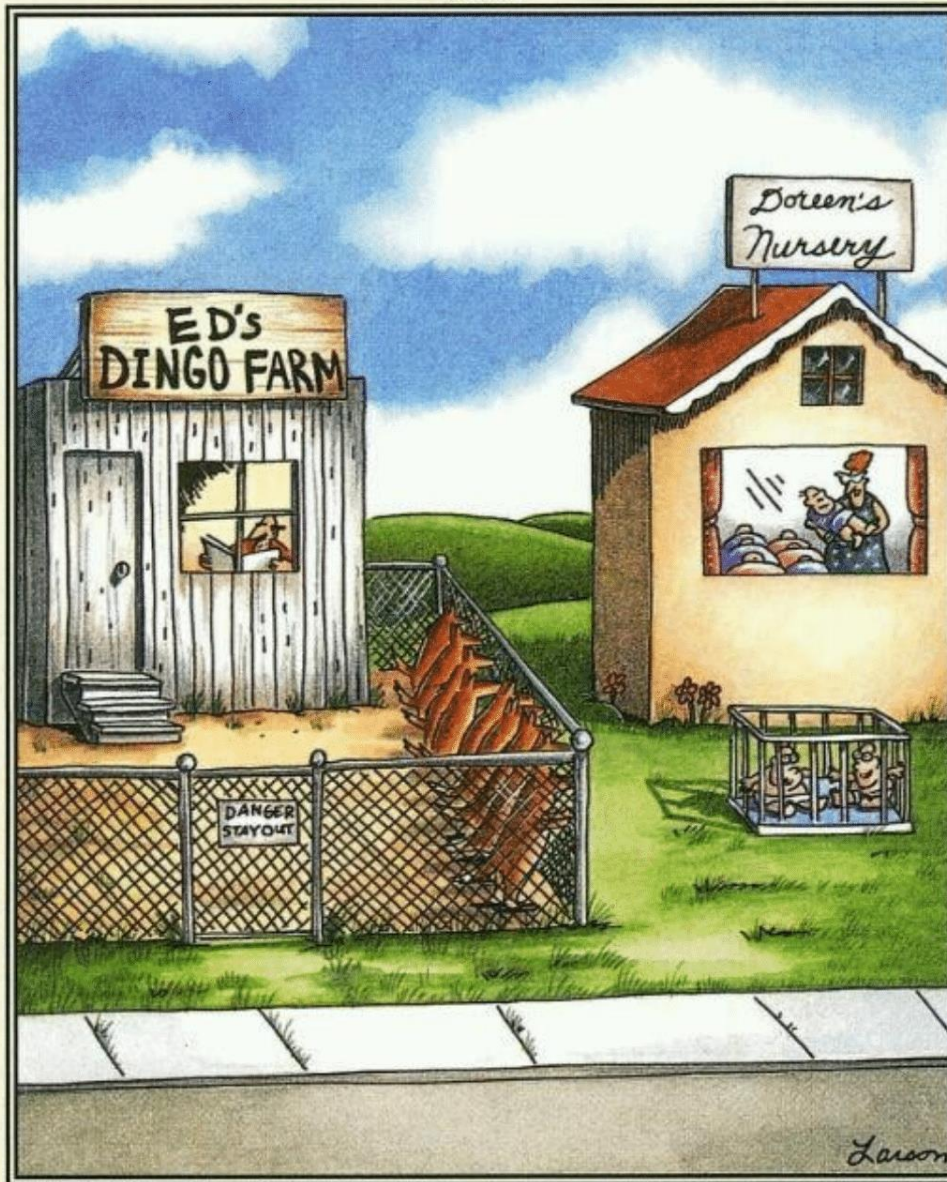


Property Rights

Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.

Village of Euclid, Ohio v. Amber Realty Co., 272 U.S. 365, 387, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016 (1926)

1/9/90



Trouble brewing

Where should urban development go?

- a. Not in my back yard
- b. In Texas with the Urban Cowboys
- c. Should I know what “urban” means?
- d. In areas that can support growth

Traditional Zoning

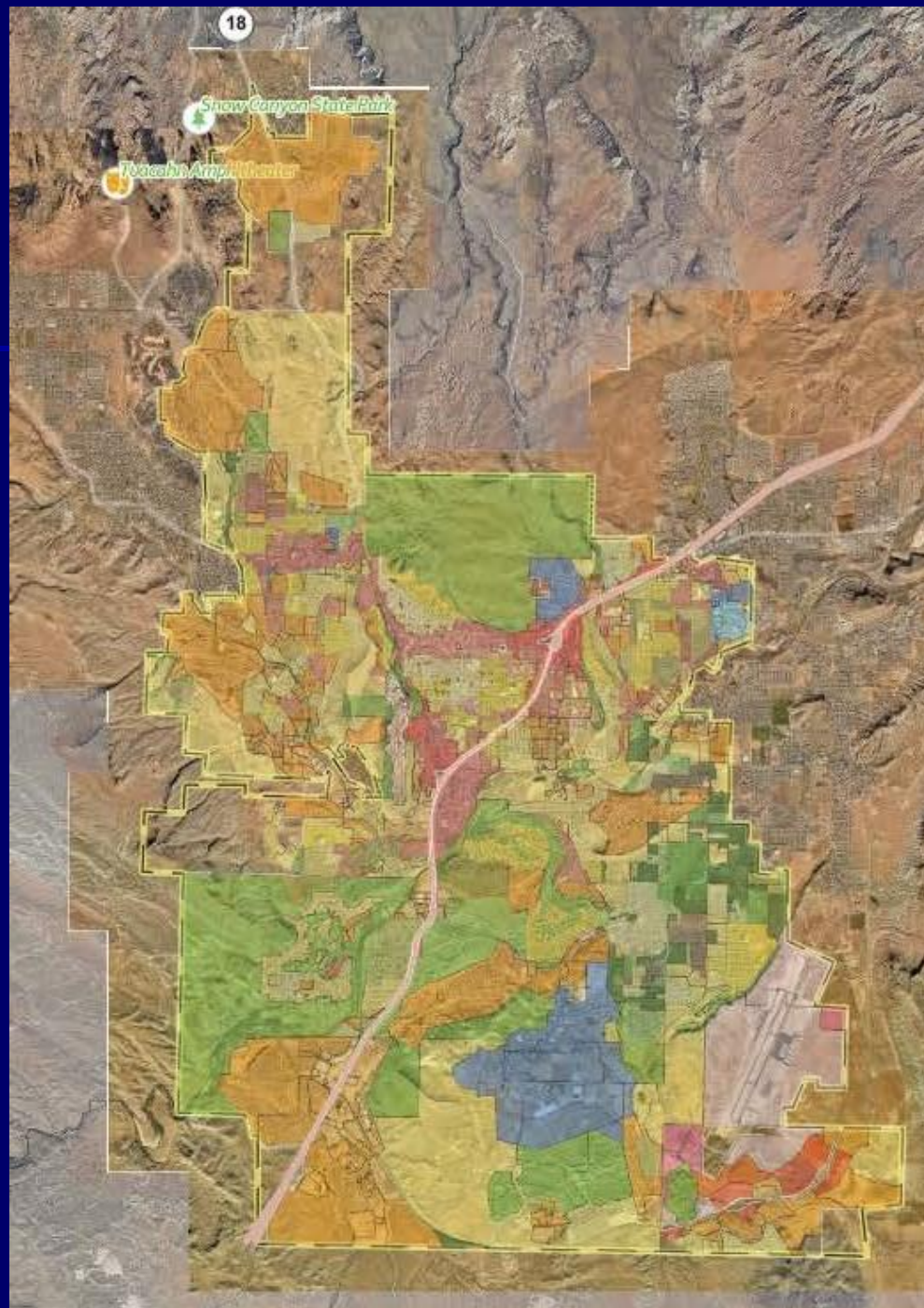
STGCC §10-4-1: CITYWIDE ZONING

All property within the city is subject to the city's zoning districts. If such zoning is invalidated for any reason, no building permit, subdivision, or approval for any development activity may be applied for until the city establishes valid zoning for the property.

- Agricultural Zones
- Gravel & Grazing Zone
- Residential Zones
- Commercial Zones
- Manufacturing Zones
- Planned Development Zones
- Airport Vicinity Zones
- Open Space Zones
- Overlay Zones

Snow Canyon State Park

Yucca Valley Amphitheater



Other Options

1. Performance Zoning
2. Form Based Zoning
3. The Houston model

WHO DO YOU REPRESENT?

"The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.'"

Ronald Reagan 40th president of US (1911 - 2004)



So what is my job as a planning commissioner?

- a. Sit back, relax and hope for food.
- b. "Just say no" to every application.
- c. Do whatever the guy next to me is doing.
- d. Apply the development code to the applications.

Planning Commissions

1. Created and controlled by ordinance.
(City Code §2-1-1 et. seq.)
2. Powers and Duties defined by City Code
and Utah Code (§10-9a-302)
3. Apply the development code and law &
recommend policy decisions.

Administrative v Legislative Decisions

Administrative: The application seeks to develop under existing regulations.

Legislative: The application seeks to change existing regulations.

Administrative v. Legislative Decisions

Primary Question:

Is the action creating policy or a land use law, or is it applying the law as it exists?

Creating = legislative

Applying = administrative

See Harmon City v. Draper, 2000 Ut App 31 ¶17, 18

Administrative Review

An applicant is **ENTITLED TO APPROVAL** if:

1. They have submitted a completed application; and
2. They have paid all fees; and
3. The application conforms to the City's requirements and codes (and state law).

EXCEPTIONS:

1. There is a **compelling, countervailing public interest** (public health safety, and welfare issues) which require denial; or
2. The City has initiated proceedings to **amend its ordinances** that would prohibit approval of the application as submitted.

Saying “No”

If the decision is “NO” based on one of the exceptions:

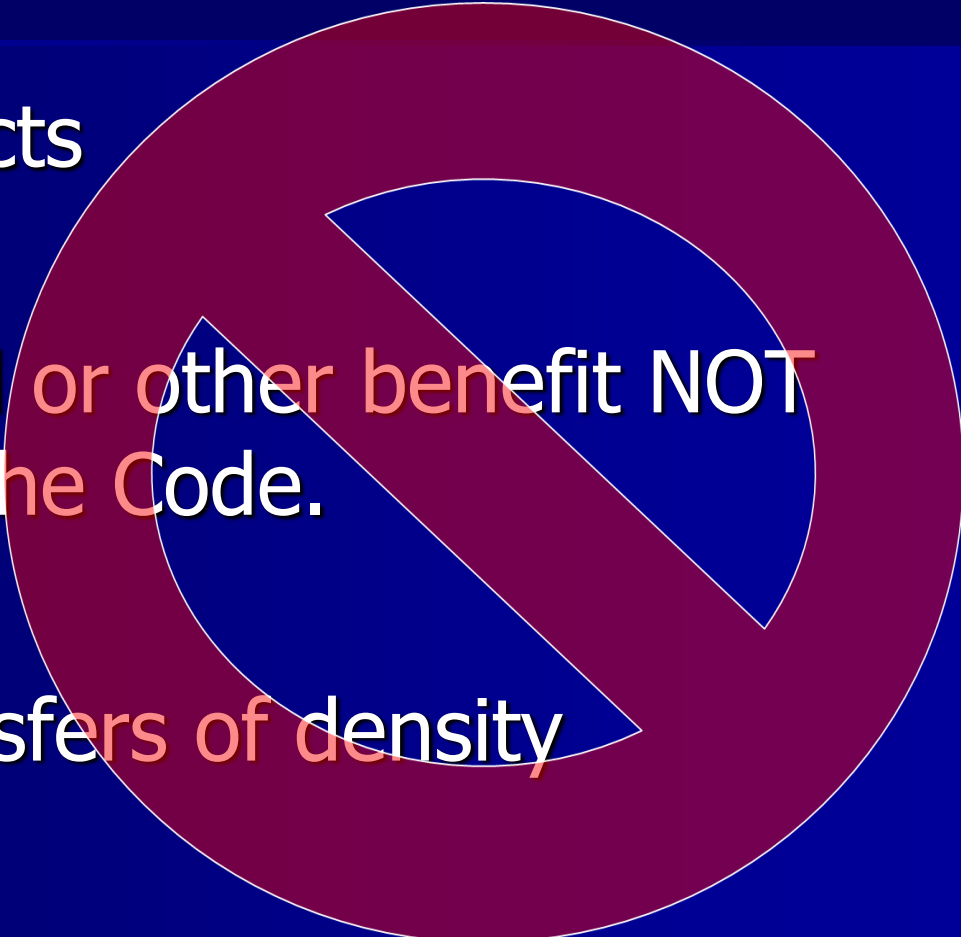
**MAKE FINDINGS OF FACT &
CONCLUSIONS OF LAW ON THE
RECORD!**

(There must be substantial evidence in the record to support the decision)

Administrative Review

1. A city is bound by the terms and standards of their adopted development code and shall comply with mandatory provisions of that code.
2. A city may not impose a requirement on an applicant that is not expressed in state law, city code, or adopted infrastructure regulations.
3. Each city shall process and render a decision on each land use application with **reasonable diligence**.

What is Off the Table?

1. School Impacts
 2. Any standard or other benefit NOT required by the Code.
 3. TDRs or transfers of density
- 

Legislative Decisions

Planning Commission is a recommending body

Policy questions:

- Should the general plan change?

- Should the zoning change?

- Should special rules apply? (D.A.s)

Appeal

Standard of Review

1. When appealing a **LEGISLATIVE DECISION**, the courts will uphold the decision or regulation if it is:
 - a. Not discriminatory (arbitrary)
 - b. reasonably debatable; and/or
 - c. not illegal.
2. When appealing an **ADMINISTRATIVE DECISION**, the courts will uphold the decision if:
 - a. there is substantial evidence in the record; and
 - b. the decision is not arbitrary, capricious, or illegal.

Due Process

Applicant's Rights:

1. To be notified of a pending action
2. To be heard prior to the decision

Public's Rights:

1. Administrative decisions: None
2. Legislative decisions: Public Hearings

Discussion & Decisions

All discussion of and decisions on pending applications must be done in an
OPEN & PUBLIC MEETING



Due Process Pit Falls

- a. Personal investigations
- b. Ex parte communications
- c. Conflicts of interest
- d. Discussing items not on the agenda

What Should You Know?

- Know the General Plan & Code
- Know the Land Use Act
(Utah Code § 10-9a-101 et. seq.)
- Findings & Conclusions are your friends
- Remember that you represent the government and must give DUE PROCESS in all things.

How to cover your Assets

Violations of due process are constitutional violations!

Always act within the scope of your duties. Applying the code and following the advice of legal counsel, (even if they are wrong) will protect you from lawsuits and protect you under the doctrine of qualified immunity.

Acting outside the scope of your authority may create personal liability for your actions

REMEMBER

In the area of planning and zoning It is not a matter of if litigation will be filed but when. The keys to avoiding lawsuits include these pithy reminders.

- Procedure is as important as substance.
- Substance is as important as process.
- Just because you can, doesn't mean you should.
- Just because you got away with it, doesn't make it right.
- Not getting caught is not the same as creating binding precedent.
- Public clamor doesn't necessarily equate to the public will.
- The public will doesn't necessarily equate to the public good.
- You are the government that the Bill of Rights was written to protect the people from.

Open Meetings, GRAMA & Other Stuff

Training for the St. George Planning
Commission and other Committees

January 24, 2024

Jami R. Brackin

Deputy City Attorney

What We Will Cover

1. Open Meetings
2. GRAMA
3. Ethics



OPEN & PUBLIC MEETINGS



Purpose

52-4-102. Declaration of public policy.

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.
- (2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
 - (a) take their actions openly; and**
 - (b) conduct their deliberations openly.**

When Is It Applicable

52-4-201. Meetings open to the public -- Exceptions.

- (1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.
- (2)
 - (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

...



NOTICE

24 hours prior to the meeting by posting:

1. On the Utah Public Notice website
2. Providing Notice to newspaper or correspondent.
3. City Hall (Principal offices)



NOTICE

Notice must include:

1. Date, Time, Place and Agenda (with reasonable specificity to notify the public as to the topics)

What about agenda materials?



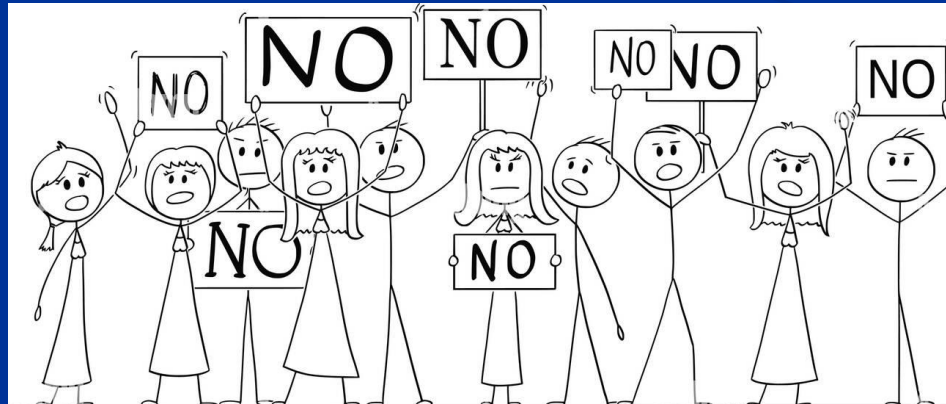
Public Meeting v. Public Hearing

Public Meetings

- Quorum of the public body
- 24-hour notice
- Public input MAY be taken but not required if comments are NOT re items on the agenda

Public Hearing

- Held during Public Meeting
- Must have 10-14 days' notice
- Comments re particular agenda item



What about....

Electronic Meetings

Allowed by Ordinance

Special Meetings

Allowed with Notice

Emergency Meetings

Allowed with Notice to the body

Closed Meeting

Allowed for appropriate reasons



City of St. George
Legal Dept.

CLOSED MEETINGS

Public Meeting may be CLOSED to discuss:

- Character & competence or health of an individual
- Collective Bargaining
- Litigation
- Real Property and water transactions
- Investigations of criminal conduct

Must have quorum present and a 2/3 majority vote to close.

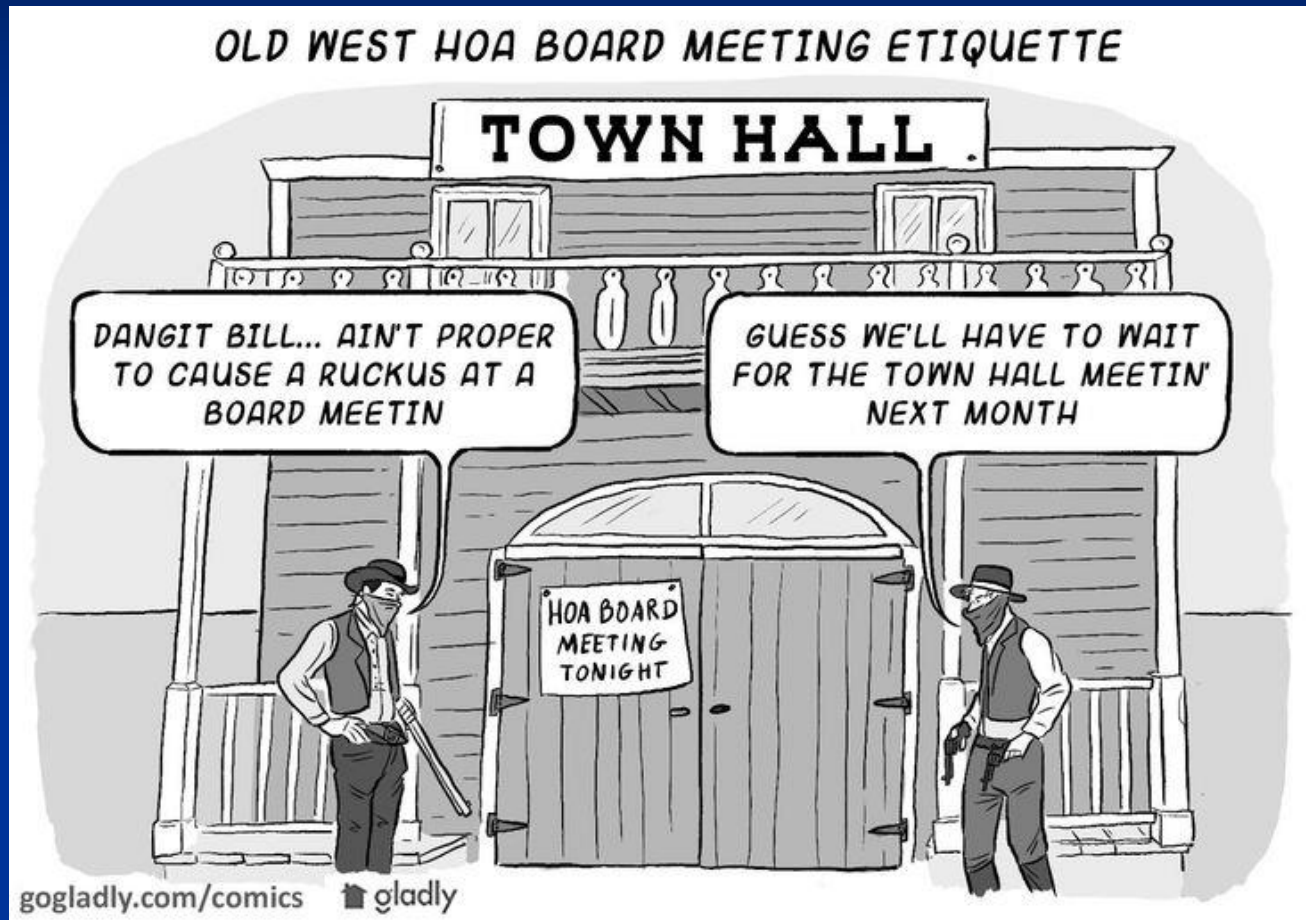
CLOSED MEETINGS (cont)

May not be used to:

- Interview applicant for elected positions or to fill vacant position;
- Approve any ordinance, resolution, rule, contract, or appointment; or
- Vote on any issue (other than to reopen)



Conduct & Decorum



Conduct & Decorum

Member of the body

May be expelled upon
2/3 majority vote

Member of the public

May be expelled upon
2/3 majority vote; OR
Police may arrest for
disorderly conduct.

MINUTES

CS232576



MINUTES

Must Include:

- Date, time, place, & members present & absent;
- The substance of all matters discussed;
- Names of citizens providing comment at public hearing AND the substance of their comments;
- Any matter the body wants to be entered into the record; and
- Record of all votes taken.
- Materials submitted at meeting

RECORDING

May be used for minutes;

Must be kept in full and unedited

Work meetings recorded

Closed meetings recorded UNLESS discussing character & competence of an individual.



CASE LAW

REMEMBER!

It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

- (a) take their actions openly; and
- (b) conduct their deliberations openly.



Wallingford v. Moab City,

2020 UT App 12

“...municipalities may not contract around public hearing requirements found in statute or ordinance.”

“The grants of power to municipalities make clear that cities may not take action that is “repugnant to law,” id. § 10-8-84(1), or that is “expressly prohibited by law,” id. § 10-9a-102(2).”



Wallingford v. Moab (cont)

One type of requirement that appears in statutes and ordinances, as applicable in certain contexts, is **the requirement that municipalities conduct some of their business in public**, so that the citizens of the municipality may know how the public's business is being conducted. See, e.g., Hutchinson, 624 P.2d at 1121 (stating that “[t]he ultimate limitation upon potential abuses by local governments is the people themselves,” whose “vigilance and sound judgment” restricts and directs “all democratic governments”).



Walker v. Tooele County

(Ruling & Order) 3rd District Court, Case No. 18301487

“The Court concludes that, as a matter of law, the Tooele County Commission’s approval and execution of the Southside Agreement was illegal contract zoning.”

“Tooele County (including members of the [County] Commission) and Southside engaged in **private discussions** that produced the Southside Agreement.” – they had been doing so for 2 years.

“due process demands a new trial when the appearance of unfairness is so plain that we are left with the abiding impression that a reasonable person would find the hearing unfair.”



Summit County v. Hideout

(Order on Amended Motion to Show Cause)

4th District Court, Case no. 200500072

“...Summit County demonstrated a likelihood of success on the merits that **Hideout violated the Open and Public Meetings Act** (“OPMA”), Utah Code Ann. §§ 52-4-101, et seq., by conducting its deliberations about the July Pre-Annexation Agreement, modifications of the July Pre-Annexation Agreement, and the decision to adopt the July Pre-Annexation Agreement outside of the public meeting where the July Pre-Annexation Agreement was adopted.”



Summit County v. Hideout (cont)

“The type of harm that the provisions of that act are intended to guard against are the passage of resolutions or other decisions made by a municipal body without notice to those affected by those decisions. See Utah Code Ann. § 52-4-102 (“It is the intent of the Legislature that the state, its agencies, and its political subdivisions (a) take their actions openly; and (b) conduct their deliberations openly.”)”



GRAMA

63G-2-102. Legislative intent.

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
 - (a) the public's right of access to information concerning the conduct of the public's business; and
 - (b) the right of privacy in relation to personal data gathered by governmental entities.



GRAMA

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.



GRAMA

What do I need to provide if requested?

Emails: USE CITY EMAIL ADDRESS FOR ALL CITY BUSINESS

Phone logs: Cell phone logs should be retained for 3 months

Text Messages: All text messages should be retained for 3 months if related to City business.



GRAMA

(Whispers, Calls & Texts)

During the Meeting

Avoid the whispers – open deliberation required

No texting!

No emails!

Outside of the Meeting

No Ex parte communications

No deliberations by calls or texts

Questions should be directed to staff



ALL THOSE IN FAVOR
OF WHAT WE DISCUSSED
IN OUR E-MAIL THREAD
AND AT LARRY'S SON'S
BIRTHDAY PARTY SAY 'AYE'

LANDREN THE LANDMARK
3-16

'Aye'

'Aye'

'Aye'

I

... HAVE
NO IDEA
WHAT'S
GOING ON

WINK
NUDGE

I THOUGHT
THIS MEETING
WAS OPEN?



ETHICS

Municipal Officers' & Employees Act

- | | |
|--|---------------------|
| • Use of office for personal benefit | Prohibited |
| • Compensation for transaction with City | Disclosure required |
| • Interest in business entity | Disclosure required |
| • Investment creating conflict | Disclosure required |

ETHICS

Utah Public Officers' & Employees Act

- Improperly disclosing information Prohibited
- Accepting Gifts Disclosure required + prohibited
- Offering donation for approval Prohibited
- Conflict of Interest Disclosure required



CONFLICT OF INTEREST

Personal investments or pecuniary interest that create conflict between personal interests and public duties

Allowed with proper disclosure

Disclosure of Private or protected information

Prohibited



QUESTIONS?



City of St. George
Legal Dept.