



## SMITHFIELD CITY PLANNING COMMISSION MINUTES September 18, 2024

The Planning Commission of Smithfield City met in the City Council Chambers at 96 South Main, Smithfield, Utah, at 6:30 p.m. on Wednesday, September 18, 2024.

**Members Present:** Jamie Anderson, Katie Bell, Brooke Freidenberger, Bob Holbrook, Jim Marshall, Chris Olsen, Stuart Reis

**Alternate Members Present:** Sarah Price

**Members Excused:** Lazaro Soto

**City Staff:** Brian Boudrero, Kenzie Nelson

**Others in Attendance:** Jake Thompson, Jasilyn Heaps, Caralee Stokes

**6:30 p.m. meeting called to order by Chairman Anderson**

### **Consideration of consent agenda and approval of meeting minutes**

After consideration by the Commission, Chairman Anderson declared the minutes from the August 21, 2024 meeting to be approved with the modification that Sarah Price be listed as present and Bob Holbrook be listed as excused.

### **RESIDENT INPUT**

No public comment.

### **AGENDA ITEMS**

Introduction and **Public Hearing** for the purpose of discussing Ordinance 24-21, an Ordinance rezoning Cache County Parcel Numbers 08-222-0026, 08-222-0027, 08-222-0028, 08-222-0029, 08-222-0030, 08-222-0031, 08-222-0032, 08-222-0033, 08-222-0034, 08-222-0035, 08-222-0036, 08-222-0037, 08-222-0038, 08-222-0039, 08-222-0040, 08-222-0041, 08-222-0042, 08-222-0043, 08-222-0044, 08-222-0045, 08-222-0046, 08-222-0047, 08-222-0048, 08-222-0049, 08-222-0050, 08-222-0051, 08-222-0052, 08-222-0053, 08-222-0054, 08-222-0055, 08-222-0056, 08-222-0057, 08-222-0058, 08-222-0059, 08-222-0070, 08-222-0071, 08-222-0072, 08-222-0073, 08-222-0074, 08-222-0075, 08-222-0076, 08-222-0077, 08-222-0078, 08-222-0079, 08-222-0080, 08-222-0081, 08-222-0082, 08-222-0083, 08-222-0084, 08-222-0085, 08-222-0086, 08-222-0087, 08-222-0088, 08-222-0089, 08-222-0090, 08-222-0091, 08-222-0092, 08-222-0093, 08-222-0094, and 08-222-9001 from RM PUD (Multiple-Family Residential Planned Unit Development Overlay Zone) to RM (Multiple-Family Residential). The parcels are located at approximately 380 East 800 South.

Jake Thomson is requesting a rezone from RM (PUD) (residential) to RM (multi-family residential). The property is bordered on the south and east by Cache County and has both RM (multi-family) and RM (PUD) zones to the west. The rezone will remove the Planned Unit Development (PUD) Overlay from the zone. Mr. Boudrero said this is

requested because the lots are not selling as quickly as they had wanted, so the current owner wanted a portion of it sold to a new owner who works with rentals.

### **6:35 p.m. Public Hearing Opened**

Caralee Stokes wanted to hear more about the plans before providing public input. Mr. Boudrero said there are no current plans; this is a request to change the zone to remove the PUD Overlay, but it will remain a multi-family zone. Ms. Stokes is concerned that this development will overwhelm the existing home. This request seems too condensed, and she worries that the traffic congestion will be horrible if approved. She does not want to see more condensed rentals and apartments put in, especially if the desire is to create a community for young families. She disagrees with the request and wants it to remain as it is currently zoned.

### **6:39 p.m. Public Hearing Closed**

Discussion and possible vote on <u>Ordinance 24-21</u>
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The proponent, Jake Thompson, told Commissioner Freidenberger that this request was to remove the PUD Overlay. She asked about the plan; Mr. Thompson said he would like to decrease lot sizes as he believes they are too large to compete in the market. The goal is to build townhome-style structures (generally 1,700-1,900 SF), 2-3 bedrooms, two baths, and 2-car garages. The only change would be that the lots would be a bit smaller.

Mr. Boudrero confirmed for Commissioner Marshall that this request is to carve out part of the previously approved parcel and remove the PUD Overlay; the remainder will remain a PUD. Mr. Boudrero said this is the way legal counsel advised to proceed. There will still be planned open space integrated with requirements as previously approved, including road sizes. The only difference is that density bonuses will not be available.

Commissioner Olsen asked if this portion will have a smaller open space since it is being divided. Mr. Boudrero said it will remain similar to what was previously approved.

Commissioner Freidenberger asked about the HOA. Mr. Boudrero said there has been some discussion about the HOAs working together. Mr. Thompson said they would be sharing the park and amenities.

Mr. Boudrero noted that the Heritage development has private alleys/roads, and this parcel will have 66' right-of-way roads.

Commissioner Freidenberger asked if this PUD required units to be owner-occupied; Mr. Boudrero said all PUDs have that clause, and removing the overlay would change that requirement.

Commissioner Bell asked Mr. Thompson if he thought rentals would be in more demand. Mr. Thompson said he does; he and his family lived in a townhome for over 15 years until they could move into a home. These will be yearly leases with no short-term rentals. Often, people stay 5-10 years, especially in a challenging housing market. The dynamic is geared toward people who cannot afford a home. Commissioner Olsen said the average rental time is approximately two years.

Commissioner Bell noted that she has spent the last few months helping her daughter sell and buy/rent in Smithfield, and she believes these types of units would be very beneficial and create an option for young families to find housing.

Mr. Thompson said the average rental price for these units is \$1,500-1,650/monthly. Commissioner Olsen said his daughter is moving into a home this week and will be paying less for a mortgage than she could find for rent. His personal feeling is that ownership is better than renting whenever possible. Mr. Thompson agreed but noted that is not always an option for everyone.

Commissioner Olsen is curious how the commission feels about the percentage of rentals in Smithfield based on population and how it affects the community. In 2022, Smithfield had 20% rentals. With a comparable population, Alpine City (Utah County) has 14% rentals, and Highland City (Utah County), double Smithfield's population, has 9% rentals. Mr. Boudrero said this is considered each year when the report to the state is submitted. In 2022, Smithfield had the amount required; however, no rentals have been added since then (that he is aware of). Ms. Price asked what the state-required percentage is; Mr. Boudrero said it is based on a specific number of units. Each year, the City must submit a total of what is available.

Commissioner Freidenberger asked about the connections to the development. Commissioner Marshall said there is one road at 250 East, and the Cache Metropolitan Planning Organization (CMPO) has planned for four more east of that. He is generally in favor of this request; his concern, however, is that this will create an enclave that needs to be connected to the rest of town and provide the ability to walk to nearby amenities. Mr. Boudrero pointed out that this has already been created, approved, and recorded, and this request is not creating anything new. Commissioner Marshall questioned how the rest of the street grid will connect as it is built out. Mr. Boudrero said the parcels to the east will be required to have access as/when they develop. The same circulation that was previously approved will exist. There is an easement on 250 East to allow for future expansion.

**MOTION:** Motion by Commissioner Bell to **recommend approval** to the City Council for Ordinance 24-21, an ordinance rezoning Cache County Parcel Numbers 08-222-0026, 08-222-0027, 08-222-0028, 08-222-0029, 08-222-0030, 08-222-0031, 08-222-0032, 08-222-0033, 08-222-0034, 08-222-0035, 08-222-0036, 08-222-0037, 08-222-0038, 08-222-0039, 08-222-0040, 08-222-0041, 08-222-0042, 08-222-0043, 08-222-0044, 08-222-0045, 08-222-0046, 08-222-0047, 08-222-0048, 08-222-0049, 08-222-0050, 08-222-0051, 08-222-0052, 08-222-0053, 08-222-0054, 08-222-0055, 08-222-0056, 08-222-0057, 08-222-0058, 08-222-0059, 08-222-0070, 08-222-0071, 08-222-0072, 08-222-0073, 08-222-0074, 08-222-0075, 08-222-0076, 08-222-0077, 08-222-0078, 08-222-0079, 08-222-0080, 08-222-0081, 08-222-0082, 08-222-0083, 08-222-0084, 08-222-0085, 08-222-0086, 08-222-0087, 08-222-0088, 08-222-0089, 08-222-0090, 08-222-0091, 08-222-0092, 08-222-0093, 08-222-0094, and 08-222-9001 from RM PUD (Multiple-Family Residential Planned Unit Development Overlay Zone) to RM (Multiple-Family Residential). The parcels are located at approximately 380 East 800 South. Commissioner Holbrook seconded the motion. **Motion approved (5-2).**

Vote:

Yes: Anderson, Bell, Holbrook, Marshall, Reis  
Nay: Freidenberger, Olsen

OTHER

The following rules from Utah Land Use Regulation were reviewed, specifically rules 2,5, 7, 12 and 13:

**15 Basic Rules of Utah Land Use** (Page numbers are from Ground Rules: Your Handbook to Utah Land Use Regulation)

1. **Changes.** *Every year new rules are handed down from the appellate courts and enacted into law on Capitol Hill. In order to operate legally, one must keep up to date with regular changes and refinements in the law. pp. 6.*

2. **Legislative Acts.** *Unless it conflicts with state or federal statute, City Councils may amend the ordinances, change the zoning map, enact a general plan, and annex land with little fear of legal challenges. Legislative acts (defined in statute as Land Use Regulations) by elected officials will be upheld by the courts unless they violate state or federal land use statutes or case law. pp. 27-42*

Mr. Boudrero explained that the City Council (elected officials) votes on legislative decisions; the Planning Commission reviews and forwards recommendations to the Council.

3. **Referendum.** *Those legislative decisions are, however, subject to voter referendum and initiative. pp. 213-230.*

4. **Binding.** *Once the ordinances, map, general plan, and city boundaries are in place, they must be respected. Even the City must follow its own rules as it administers the land use regulation process. The function of those who administer the ordinances is not to determine policy but to follow the rules and ordinances adopted by the legislative body. pp. 209-211.*

5. **Administrative Acts.** *The entity that acts upon a land use application is called the land use authority for that item. The several land use authorities in any given city may include the staff, the planning commission, a board of adjustment, a hearing officer, or other appointed officials such as a landmark commission, depending on what the issue is and which entity was appointed to act and land use authority for that issue. pp. 23-25*

6. **Vested Rights.** *If an application complies with the ordinances and rules in place when it is filed, the land use authority must approve it. An amendment to the rules that is under formal consideration at the time of the application (a pending ordinance) may be applied if the amendment would prohibit approval of the application at the time it was submitted. There are exceptions for compelling public interests such as recently discovered geological issues with the land involved. pp. 75-78.*

7. **Conditions.** *Requirements can only be imposed on approval of an application when those requirements are provided for in the ordinance and meet the applicable requirements for exactions. pp. 75-78.*

Mr. Boudrero advised conditions do not need to be added if they are not going to “fix or change” anything.

**8. Exactions.** *While there is often a lot of chatter about constitutional property rights, in practice there is usually only one issue where they come into play. When public improvements, impact fees, or other requirements are imposed as a condition of approval for an application, the exaction must further a legitimate public interest which the entity has the authority to pursue and the burden on the applicant must be roughly equivalent to the burden the applicant imposes on the community. pp. 107-118.*

**9. Interpretation.** *The wording of an ordinance is to be interpreted based on its plain language to put into effect the legislative intent. Where there are ambiguities and confusing language, they are to be resolved in favor of the use of property. pp. 180-181.*

**10. Evidence.** *The land use authority may act based on substantial evidence, even if that is not the preponderance of the evidence or clear and convincing evidence. If there is substantial evidence on both sides of an issue, the fact-based parts of a land use decision will be upheld whichever way it decides. pp. 33-39.*

**11. Record.** *When a land use authority acts, its decision can only be upheld on appeal if the basis for that decision is found in the record of the decision. Findings of fact and conclusions of law are essential in administrative decision-making. An administrative decision will be upheld if 1) the legal aspects of the decision follow the ordinances, rules, statutes and law and 2) the fact-based aspects of the decision are supported by substantial evidence in the record. Substantial evidence is information that is relevant and credible. The opinions of experts such as engineers, attorneys, planners, real estate professionals, appraisers and other professionals can be evidence. pp. 33-39; 179.*

**12. Clamor.** *There is no requirement in state law that public hearings be held on administrative matters. Cities may provide for them if desired but it is their choice. Public clamor is appropriate when legislative issues are considered but is not sufficient evidence upon which to base an administrative decision. For those, it should not be taken into account. Opinions by those without particular expertise are not substantial evidence and cannot justify disregarding the opinion of a qualified professional. pp. 84-86.*

Commissioner Freidenberger asked about ways to educate the public to help prevent confusion or frustration if they think their concerns are not being heard. She wondered if an excerpt could be added to the agenda explaining the difference between administrative and legislative decisions. Mr. Boudrero said this information is in the staff report for each item. The public is always allowed to comment when a law is being determined, and once it has been decided and codified, it must be followed.

**13. Due Process.** *Those who serve as a land use authority must afford due process to the applicant and others with protected property interests. This includes the right to be notified of any meetings where the application is to be discussed, the right to be heard, the right to respond to evidence presented against their interests, and the right to an*

*unbiased decision-maker. Land use authority members should not be involved in ex-parte communications with the applicant, those who oppose the application or others. They and their close relations should not have any financial interest in the outcome of an application review. pp. 233, 243.*

Mr. Boudrero said the City has to follow due process in notifying the public of what is happening. Smithfield City exceeds the number of places that this is required to be posted. Discussions outside of public meetings should not occur. This is different for City Council Members – who are elected officials. Planning Commission members are not elected; they are appointed. Commission members should never take sides. Decisions should not be influenced by public clamor.

Commissioner Olsen said even though the City may exceed the number of places required to post meeting information, it is his experience with talking to people, that they are not well-informed. Mr. Boudrero said meeting information is posted in many locations, including on the City's website, the app, the Utah State Public Meeting notice website (which anyone can register for), the City's mass communication system (CivicReady, which can also be signed up for), and citizens can call and get information at any time. Commissioner Olsen said people would most likely not check each month to see if anything might affect property they own. Mr. Boudrero encouraged contacting the City Manager with recommendations for improvement, but legally, the City is meeting all requirements.

**14. Appeal.** *An appeal must be provided for from every administrative decision to the local appeal authority. Legislative issues are appealed only to the court or submitted to referendum. The deadlines for pursuing an appeal, legal action, or referendum are strict and cannot be avoided. pp. 173-192.*

**15. Standing.** *The applicant and municipality have standing to file an appeal. Neighbors and other third parties who wish to appeal must show that they have been uniquely harmed or specially prejudiced. pp. 191 footnote 1.*

Chairman Anderson pointed out that a Land Use Authority must approve an application if it complies with all rules and requirements; often, this is lost on people.

Commissioner Marshall said he wants to hear from citizens about their concerns, especially on legislative decisions and conditional use permits, where the commission's actions are limited to imposing conditions that might lessen impacts. He is not interested in public clamor that is not actionable, but he would like to tease out what impacts will be had on a neighborhood and then be allowed to consider conditions. He never indicates to citizens how he intends to vote on anything.

Commissioner Freidenberger said that opinions and comments can be heard, but a commissioner should not seek those out.

Commissioner Marshall is trying to understand the boundaries of ex-parte communication and asked if he could listen to concerns if someone approached him. Mr. Boudrero and Chairman Anderson said it would be best to encourage the individual to attend the public meeting. Commissioner Marshall is concerned that citizens only have a few minutes during a public hearing to address the commission, and that can be

frustrating. Mr. Boudrero said letters and emails can be sent to the City and will be distributed to the entire commission. Commissioner Marshall asked if the prohibition on ex-parte communication applies during the general planning process. Mr. Boudrero said the General Plan process is entirely different, and he will get the answer confirmed for Commissioner Marshall. Commissioner Marshall said apathy among citizens is a concern, and he would like to see more residents involved in the General Plan process and to have a better quality of communication.

Commissioner Olsen said Mr. Boudrero mentioned earlier that it is easy for people to see what is happening; however, he disagrees. He is a “tech guy,” and it took him a lot of time to figure out where to find information. Even though the process is legally followed, he questioned whether the City is following the intent of the Code. Adjacent landowners used to be mailed information, which is no longer required. As a person representing citizens, he wants to know what they think. Mr. Boudrero clarified that a commissioner is not an elected official but an individual appointed to serve. Commissioner Olsen disagrees with this; he thinks that because commissioners are appointed by elected officials, they represent the citizens. Mr. Boudrero said citizens are being represented when the commission follows the process and decisions made by the City Council. Commissioner Olsen believes that following the process includes following the original intent of why the Code was created. He does not think that intent is being followed because everyone he has spoken with is unaware of it. Mr. Boudrero said the fact of the matter is that information can be sent out, and there could still be a low percentage of people attend a public meeting. Commissioner Olsen disagrees. Commissioner Freidenberger said this seems to be a lot of speculation and questioned whether this is a productive conversation. Commissioner Olsen said he is talking about what is in his heart and is trying to represent the citizens of Smithfield.

Mr. Boudrero said it is essential to follow the Code. If a commission member goes out and talks with residents and provides the wrong information, that could open the door to legal problems – which has happened in the past, and the City has been sued. Commissioner Bell agreed and said it might not be intentionally wrong, but the information could be misunderstood or misconstrued.

Commissioner Olsen said most of the legislative changes have to do with a small area, and he thinks it is very important that people have the opportunity to know in advance if there is going to be a public hearing – which is not happening. Most residents would like to know but are not getting the information, and the City is doing an inadequate job of meeting the spirit of Code. Mr. Boudrero again reminded commissioners to contact the City Manager with recommendations and to remember that the law is not “the spirit.”

Chairman Anderson asked how many people are receiving emails about agendas. Mr. Boudrero does not have an exact number but advised that the information is included in every newsletter. Commissioner Olsen said Mr. Lewis told him that it was ~15%. Chairman Anderson said that is similar to voter turnout. Unfortunately, you can “lead a horse to water, but you cannot make him drink.”

Commissioner Freidenberger thinks Commissioner Olsen’s heart is in the right place and encouraged him to recommend improvements to help get the word out to citizens.

While working with Cache County, Sarah noted that she has seen letters sent to property owners and has talked to people who indicated that they disregarded the notice, so even going above and beyond does not always work.

Commissioner Holbrook noted that public clamor is not substantial evidence. An administrative decision cannot be based primarily on citizen comments at a public hearing, petitions, or social media campaigns. To constitute substantial evidence, opinions in the record should be from those with particular expertise on the subject matter they address. For example, a real estate appraiser could comment on whether a given decision might affect property values; however, the average citizen's opinion on property values would not constitute substantial evidence.

Commissioner Freidenberger said opinions matter, but actions speak louder.

**MEETING ADJOURNED** at 7:36 p.m.

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Jamie Anderson, Chairman





**SMITHFIELD CITY  
CORPORATION  
96 South Main  
Smithfield, UT 84335**

**AGENDA**

Public notice is given that the Smithfield Planning Commission will meet in a regularly scheduled meeting at 96 South Main, Smithfield, Utah, on Wednesday, Sept. 18, 2024.

The meeting will begin at 6:30 PM.

Welcome/Pledge of Allegiance and/or thought/prayer

1. Approval of Planning Commission Meeting Minutes from August 21, 2024.
2. Resident Input
3. Introduction and **Public Hearing** for the purpose of discussing Ordinance 24-21, an Ordinance rezoning Cache County Parcel Numbers 08-222-0026, 08-222-0027, 08-222-0028, 08-222-0029, 08-222-0030, 08-222-0031, 08-222-0032, 08-222-0033, 08-222-0034, 08-222-0035, 08-222-0036, 08-222-0037, 08-222-0038, 08-222-0039, 08-222-0040, 08-222-0041, 08-222-0042, 08-222-0043, 08-222-0044, 08-222-0045, 08-222-0046, 08-222-0047, 08-222-0048, 08-222-0049, 08-222-0050, 08-222-0051, 08-222-0052, 08-222-0053, 08-222-0054, 08-222-0055, 08-222-0056, 08-222-0057, 08-222-0058, 08-222-0059, 08-222-0070, 08-222-0071, 08-222-0072, 08-222-0073, 08-222-0074, 08-222-0075, 08-222-0076, 08-222-0077, 08-222-0078, 08-222-0079, 08-222-0080, 08-222-0081, 08-222-0082, 08-222-0083, 08-222-0084, 08-222-0085, 08-222-0086, 08-222-0087, 08-222-0088, 08-222-0089, 08-222-0090, 08-222-0091, 08-222-0092, 08-222-0093, 08-222-0094 and 08-222-9001 from RM PUD (Multiple-Family Residential Planned Unit Development Overlay Zone) to RM (Multiple-Family Residential). The parcels are located at approximately 380 East 800 South.
4. Discussion and possible vote on Ordinance 24-21.

Adjournment

**\*\*\*Items on the agenda may be considered earlier than shown on the agenda\*\*\***

In accordance with the Americans with Disabilities Act, individuals needing special accommodation for this meeting should contact the City Recorder at (435) 792-7997 at least three (3) days before the date of the meeting.