

Minutes

UTAH LAND USE & EMINENT DOMAIN ADVISORY BOARD

Office of the Property Rights Ombudsman

160 East 300 South, 4th Floor, Department of Commerce

Conference Room 474 & via Zoom

(An audio recording of the minutes is available on the public meetings website.)

September 25, 2024, 2:00 p.m.

ADVISORY BOARD:

Ari Bruening, Chair

Brent Bateman, Vice Chair

Nathan Bracken

Wade Budge

Curtis Bullock

Clint Drake

Mike Kendall

Absent and

Excused:

Office of the Property Rights Ombudsman:

Jacob Hart, Deputy Director, Department of Commerce

Jordan Cullimore, Director & Lead Attorney

Marcie Jones, Attorney

Richard Plehn, Attorney

Rob Terry, Statewide Land Use Training Director

Cyndy Nelson, Board Secretary

VISITORS:

Envision Utah

- Ryan Beck

Jones & DeMille Engineering

- Josh Anderson
- Mike Hansen
- Kendall Welch

The meeting was called to order at 2:02 p.m.

APPROVAL OF MINUTES:

MOTION: Curtis Bullock made a motion to approve the minutes of the Board meeting held August 7, 2024. Nathan Bracken seconded the motion. None opposed. Motion carries unanimously.

LAND USE TRAINING FUNDS APPLICATIONS:

a. **Office of the Property Rights Ombudsman**

Mr. Rob Terry advised that the Ombudsman's Office is asking for a reimbursement of \$13,402.57 to account for expenses related to 10 presentations provided during April, May and June of 2024.

MOTION: Ari Bruening made a motion to approve the Office of the Property Rights Ombudsman's request for \$13,402.57, Mike Kendall seconded the motion. None opposed. Motion carries unanimously.

b. Envision Utah

Mr. Terry stated Envision Utah is requesting funds in the amount of \$184,500.00 for costs associated with conducting a land use growth pattern impact analysis that could be used by local agencies to reference when they are considering various land use patterns for their community. The anticipated timeline for their project would be from August 2024 through October 2025. and they are requesting, as part of this application allowance, \$50,000.00 upfront funding. Please note their application was submitted July 18, 2024, to be heard at the August 7, 2024 Board meeting. Due to time constraints, their application was postponed to this meeting for review.

Envision Utah will be working with Zions Public Finance, the Kem C. Gardner Policy Institute, Kimley-Horn and Socio to deliver a comprehensive package that will look at what the fiscal impacts are of different types of growth and development, including associated aesthetic impacts, through socioeconomic data, engineering costs and social equity impacts. Local agencies will be able to utilize this information in their discussions about general plan amendments, updates and implementation as well as proposed projects for their communities.

The analysis would directly respond to feedback received regarding the *Guiding Our Growth* activities. State officials and others, including Envision Utah, traveled throughout the State, conducting surveys, and interacting with local agency representatives regarding their land use priorities as their communities continue to grow. This activity involved all 29 counties and public input from over 28,000 residents over a two-year period. The results identified some key items that Utahns viewed as most critical for growth within their individual communities. The number one item was the fiscal impacts of various development patterns. Mr. Ryan Beck is available online to answer any questions regarding Envision Utah's application.

Mr. Bateman inquired about the deliverables as well as expenses regarding video equipment.

Mr. Beck stated the information gained from this project could be presented at land use conferences and seminars as well as county, city and town meetings. In terms of center style development, this information would help planning commissions, city counties and other entities make informed decisions. As for the expenses regarding audio/visual equipment, Envision Utah wants to provide quality online resources and the \$500.00 cost is a rental fee.

Mr. Terry advised he had several conversations with the application team prior to the submission of their application, ensuring that the deliverables were something that would be open for public use and public consumption. The information is intended to be housed on Envision Utah's website with open public copies of those items available to be hosted on similar websites including the Land Use Academy of Utah ("LUAU") website. Along those lines, the State is currently implementing a learning management system into LUAU to host individualized course content and to be able to take these types of reports and studies to create e-learning web-based training courses and/or utilized in presentations at conferences, seminars and so forth.

Note: Ari Bruening has a conflict, and therefore recused himself from voting.

MOTION: Brent Bateman made a motion to approve Envision Utah's request for \$184,500.00, a portion of that amount, \$50,000.00, in upfront funding. Clint Drake seconded the motion. None opposed. Motion carries unanimously.

c. Jones & DeMille Engineering

Mr. Terry stated Jones & DeMille Engineering ("JDE") is requesting funds in the amount of \$55,468.00 for costs associated with the anticipated maintenance and improvements of up to 12 existing online training modules, currently hosted on the CiviclinQ platform. Both JDE and Rural Community Consultants ("RCC") staff have been working with the Office to formally identify and prioritize those additional training modules. 56 modules are currently available for use. The total estimated costs for the anticipated maintenance and improvement is \$26,880.00. The remainder of the requested funding, \$28,588.00, will be used to cover operational and marketing costs associated with maintaining the CiviclinQ platform learning management system and updating any of the content to address legislative changes. Currently there are 260 registered users across 87 different jurisdictions throughout the state. Marketing is aimed at further increasing and improving those numbers as well as letting people know about what resources are available and how to access those resources.

JDE, RCC and the Office have been discussing adjusting the CiviclinQ platform to moving some of the content on that platform to the LUAU website, over the next six months to a year, as the learning management system that is now under contract with the State is implemented onto the LUAU website. That would permit us to have some full e-learning content hosted onto that website. So, we are working in partnership to transition content slowly and strategically over that site which would allow JDE to have more focus and concentration on engineering, technical type of services on their side while still ensuring that we are maintaining, continually improving and updating all of the great content that has been created thus far. JDE and RCC have created some phenomenal resources.

Mr. Drake inquired if the training modules were free to everyone, not just an existing customer. And what information is required by a user to access the modules.

Mr. Terry explained that the training is free to anybody. The Land Use Training Fund does cover registration fees and costs, and any potential changes in the future would be the same for those modules that have been funded by the Land Use Training Fund. Over time, anything funded through the Land Use Training Fund would be free to the end user.

Ms. Welch advised that access to the content through CiviclinQ platform requires the user's first name, last name, email address and jurisdiction. This information is used to provide statistics to the Board and to send out an occasional email regarding any updates to the modules.

Mr. Bateman stated JDE is a private company and therefore into making a profit. He asked how JDE benefits from this program.

Ms. Welch advised that she prefers to share the knowledge, expertise and experience she has that is desperately needed by some of the rural jurisdictions in Utah. Josh Anderson can answer the larger portion of that question.

Mr. Anderson advised JDE's, mission, their ultimate objective, is to serve as the premier community improvement leaders in rural America. They see a lot of communities lacking the resources needed to make informed land use decisions. Prior to the land use training fund

grants, they had created CiviclinQ as a solution to communities to have access to those resources. In partnership with the Ombudsman's Office, as previously discussed, they are working to transition content to the State's website. Both the State and private industry have certain resources and expertise, and through partnership, can provide solutions to communities who do not have these resources

Mr. Bruening confirmed a portion of the funds would be going towards updating 12 modules.

Ms. Welch advised that JDE identified 12 modules, via metrics and other data, to update and expand upon the training already in place to include videos, additional flow charts and graphics, to enhance the user's learning experience and provide a higher quality training module.

Mr. Bateman inquired if the Board had granted JDE grants before.

Mr. Terry advised that JDE has received multiple grants and has been the most active and consistent applicant throughout the history of land use training fund program. That is also shown in the quality of the training and training materials they provide. Their application will provide them with the funding and support to ensure that the items currently being created continue to be maintained in that high quality and for them to remain a very active partner in the entire training process.

Mr. Kendall requested clarification regarding marketing efforts and the e-mail campaign.

Ms. Welch stated JDE sends out a monthly e-mail marketing campaign to obtain new users and to provide notification of updates. They have noticed a drop in new user sign-ups. without a monthly notification, and other marketing avenues, to let people know that the training and associated resources are free and how to access those resources.

MOTION: Nathan Bracken made a motion to approve Jones & DeMille Engineering's request for \$55,468.00. Wade Budge seconded the motion. None opposed. Motion carries unanimously.

LUED Subcommittee Report:

The Board discussed the changes to the Ombudsman's statute in response to the Land Use Task Force's request to address possible legislative changes within the Ombudsman's statute regarding advisory opinions.

Mr. Cullimore reviewed the suggested changes to the Ombudsman's statute regarding advisory opinions.

- Line item 2, Mr. Bracken inquired if there should be a (1)(c) that specifies that someone can ask for an expedited review pursuant to whatever process the Board comes up with rather than imply that option is available.
- Line Item 10 clarifies that the Office can decline an advisory opinion when a request is not ripe for review, when it is not eligible or when the issues raised are beyond the scope of Office's jurisdiction.
 - Mr. Drake would like to give direction to the Ombudsman's Office to be able to determine what the circumstances are in which a request can be declined so that the Office is not finding itself being accused of being arbitrary in their declinations.

- Line items 22 (subsection 7) and 29 clarifies who can prepare an advisory opinion, either an attorney from the Ombudsman's office or an outside attorney can be appointed to complete the opinion. There is really nothing new in this section other than to clarify the process. An outside attorney from the Board's approved list of attorneys qualified to provide advisory opinions.
- Line item 24 (7)(b) Mr. Bracken feels there are too many words in this sentence "an outside attorney on the resource list, a list of qualified persons for appointment..."
 - Simplify the sentence. Suggested changes: 1) "an outside attorney on the resource list who is qualified for appointment" or 2) "an outside attorney on the resource list under Section 13-43-202(10).
 - Mr. Budge inquired if an attorney is on the list, are they deemed qualified and whether there were any on the current resource list that may not be qualified.
 - Mr. Bruening suggested the language needs to be cleaned up.
- Line items 30 and 31 further clarify the appointment of an outside attorney to prepare the advisory opinion will be selected from the Board's approved list of attorneys qualified to provide advisory opinions.
- Line item 39 (subsection 9) is the actual process of appointing an outside attorney.
- Line item 46 (subsection 10) states the Land Use and Eminent Domain Advisory Board may establish policies and procedures that allow, among other things, the process for appointing an outside attorney to prepare an advisory opinion upon a request for an expedited review and the cost associated if the party is seeking an expedited review, either in whole or in part.
 - (a) Board approved processes and procedures can be established internally in the event an expedited review is requested either in whole or in part.
 - Mr. Hart questioned if there would be an extra fee to expedite the process of charging actual costs to the third party. He stated it may be necessary to have fee authority.
 - The Board discussed this would not be a fee since the money would be paid to the neutral third party and not to the State nor the Department of Commerce.
 - Mr. Drake is concerned about the language "in whole or in part". There is no discretion nor direction of what gives us the direction to make it in whole or in part.
 - (b) The process of delegating the appointment of an outside attorney due to time or other constraints that may delay the completion of the advisory opinion. This provides the Office with the opportunity to reach out and potentially hire outside attorneys to complete advisory opinions.
 - Mr. Bateman questioned the language "...due to time or other constraints on the Office of the Property Rights Ombudsman...". He states this needs to be a little more concrete, such as indicating a specific time constraint such as 8 weeks. He states the reason for the legislative changes is to make sure that advisory opinions happen quickly. If it is in the judgement of the Ombudsman's Office, it may still mean the advisory opinion will not be issued for six months. For instances, if the

opinion gets beyond 2 months, the Ombudsman “can”, not has to but, can decide to appoint a neutral third party.

- Mr. Budge suggested some type of trigger threshold.
- Mr. Bateman stated adding a threshold may reduce the number of questions as to when a party’s opinion will be completed. Advise the requestor that the Office is going to consider appointing a neutral third party in order to complete the advisory opinion in a certain amount of time. The Office does not have to, just that they are going to consider it.
- (c) using land use training fund dollars to contribute to the cost of appointing an outside attorney for an advisory opinion. The funds would be applied broadly as an applicable educational value.
 - Ms. Jones inquired if the statute should clarify the Office is authorized to use the land use training funds or whether it should part of the process that the Board determines.
 - Mr. Hart believes this is covered in line 70 but would want it to be some kind of statutory authorization.
 - Mr. Bracken stated that the intent of Line items 48 and 49 was on how the expedited process is going to work. It’s going to take more time and needs to be a larger Board discussion and not just a subcommittee. At the subcommittee level, the discussion was if we could get broader authority. He stated that this is covered where it says “... a process for appointing an outside attorney to prepare an advisory opinion upon a request for an expedited review, at the cost of the party seeking expedited review ...”
 - Mr. Plehn stated the language was intended to capture the idea that the person seeking the expedited review may be either paying the entire fee of the outside attorney or might be paying a larger portion of the fee and the remaining fee be paid out of the land use training funds.
 - Mr. Drake, regarding the broadly applicable educational value, might be enough to state but there still may be an issue if it is “in whole or in part” as mentioned in 10(a) as in who is deciding that. It sounds like it’s going to be our Board, and it sounds like it’ll be going through some guidelines that we provide for ourselves.
- Line item 60 states “The neutral third party shall comply with the provisions...” and in (a) where it states they can request information specifically “...or other means as appropriate;”
 - Mr. Bracken suggested the language be changed to state “...or other means the neutral third party deems appropriate” which clarifies that the neutral third party deems what is appropriate rather than the person asking for the opinion.
 - Mr. Plehn agreed stating the Office keeps that in mind during the process and doesn’t want to dictate the process of providing an advisory for the neutral third party but rather the process that works best for them.
- Line 62 outlines the process for gathering information for an advisory opinion. The Office has been trying to be more proactive in reaching out to the parties involved via zoom

meetings, conferences and interviews as opposed to waiting for parties to send in submissions at their convenience. That is still necessary in some cases. So, the Office will investigate and issue an opinion as soon as practicable.

- The Office advised they are trying the use of different tracks as in some advisory opinions may take more time to complete than others. And ask the Board, while discussing this issue, to let them know that the Office is trying to come up with new and efficient ways to process requests.
- Line 65 removes the 15-business day deadline to write an advisory opinion which this Office has never been able to accomplish.
 - Craig Call's recent article that he wrote about the 15 years of the advisory opinion processes explains the timeline for why certain opinions take a long time. That part of that length in time is due to the Ombudsman engaging in a dispute resolution process as the advisory opinion is active.
 - Being beholden to a strict deadline is not helpful for the ultimate objective.
- Line 77 clarifies that any party can submit a request for reconsideration for the purpose of presenting new or additional facts should they disagree with the opinion within a 30-day deadline.
 - The Office will review the request and submit a written response either to decline the request and let the opinion stand, or to amend the opinion.
 - Mr. Kendall inquired what is meant by "accept the request". If that is the process, then 14(b)(ii) would be superfluous. Either the request is declined or you're going to seek additional information, if you amend an advisory opinion, or if you're going to follow up saying that after the additional information has been considered, you're declining.
 - Mr. Cullimore agreed and advised the language can be cleaned up.
 - Ms. Jones advised that the Office is always going to accept the request regardless and they'll investigate before determining an action to take.
 - Mr. Drake concurred with Mr. Kendall that 14(b)(ii) could be removed but it is important to advise in writing why the request was denied or if changes needed to be made. In the event this proceeds to District Court, there is a record that the party's concerns were addressed. He feels some clerical changes are needed if the Board is comfortable with that direction, and then can be brought before the Land Use Task Force to articulate these points.
 - Mr. Drake questioned that the 30-day deadline to submit a request for reconsideration may have negative impacts on a developer/builder to see if there is a request for reconsideration. One of the things that the developers have pushed here is the timing of receiving an advisory opinion. That would add an additional 30 days to the process.
- Other discussion
 - Mr. Hart commented there seemed to be a lot of the word "necessary" and stated that sounds like a word that somebody could litigate over where "necessary" v. "judgment". The question being is it in your discretion that you literally must find that it's necessary.

- Mr. Bracken advised that “necessary” appears throughout the statute, so the language is being consistent with that terminology.
- Mr. Hart agreed that we probably don’t want to change that then if it’s already used throughout the statute.
- Mr. Bracken asked Mr. Bateman if we had a sponsor for these changes to the statute. Is this something we can get President Adams to support?
 - Mr. Bateman advised if the Board approves the use of the land use training funds to assist in expenses from a neutral third party, he is confident that it will get past President Adams and any other party.
 - Mr. Budge stated it would probably go on the land use task force bill, the consensus bill.
- Mr. Hart inquired, dependent upon how often the Board meets, is that a sufficient amount of time to approve use of the land use training funds for an expedited request for an advisory opinion.
 - Ms. Jones advised they are working on what the statue will enable us to do but we’ll need to work on the internal processes that maybe the Board can give the Office preauthorization to utilize the land use training funds based on what the Board determines as an overall amount available through the funds, or a cap on the amount of funds that can be used for each request.
 - Mr. Bateman states that is all theoretical and if someone actually requests an expedited review, are they willing to pay for the entire fee to the neutral third party or if they are wanting training funds in which case they should complete a land use training request form.
 - Mr. Bracken agrees but just wants the requesting party to have the right to ask for it as long as it is subject to the rules approved by the Board. He advised the Board can meet more frequently than just quarterly if needed.
- Mr. Bracken stated the Board should probably take some action today to provide the Land Use Task Force with an update. To maybe approve this today with the changes discussed and authorize Jordan to take it to the Land Use Task Force for their review.
 - Mr. Bateman agrees the wording does not have to be 100% correct because the Land Use Task Force might have suggested changes as well as the Legislative Council. He agrees we are ready to move forward to submit this to the Land Use Task Force.
 - Mr. Drake agrees. We need to press forward and submit this for review.

MOTION: Mr. Budge made a motion to clean up the language subject to the items discussed in this Board meeting and transmit to the Land Use Taks Force for further discussion. Mr. Bracken seconded the motion. None opposed. Motion carries unanimously

ADDITIONAL MATTERS:

Mr. Drake commented that the City recently had an interaction with the Office through mediation and had a really positive experience and he states the Office does a great service.

Mr. Bateman indicated he had reviewed some recent opinions and thought the Office did a great job; the opinions were top quality.

ADJOURN:

Ari Bruening made a motion to adjourn the meeting. Meeting adjourned at 3:18 p.m.



Date: 11/25/2024

Ari Bruening, Chair