

CLEARFIELD CITY COUNCIL AND PLANNING COMMISSION
JOINT MEETING MINUTES
6:00 P.M. WORK SESSION
March 23, 2021

City Building
55 South State Street
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Brie Brass	Assistant City Attorney
	Scott Manookin	Police Lieutenant
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Nancy Dean	City Recorder

PLANNING COMMISSION MEMBERS: Chris Uccardi – Chair, Kathryn Murray, David Bloomfield, Karen Blackwood

VISITORS: Wilf Sommerkorn

Mayor Shepherd called the meeting to order at 6:03 p.m.

DISCUSSION ON PLANNING COMMISSION AND CITY COUNCIL ROLES, RESPONSIBILITIES, AND VISION

Spencer Brimley, Community Development Director, welcomed Wilf Sommerkorn, Member of the Land Use Academy of Utah (LUAU). He noted Mr. Sommerkorn would be facilitating the training for the Council and Planning Commission to address the different roles of each body and how those roles worked together, with support from staff, to best create a balance intended to support the overall vision of the City.

Mr. Sommerkorn reviewed the land use process: General Plan (vision for city or town), ordinances (govern and regulation rules), application (process to gain permissions), permits (development begins). He explained land use was governed by State Code with the Land Use

Development and Management Act (LUDMA). He noted land use decisions were generally either administrative or legislative and each process had rules to follow. Mr. Sommerkorn pointed out there was also a quasi-judicial process for appeals. He reviewed the following examples of administrative and legislative actions:

Legislative actions

- Adoption or amendment of General Plan
- Adoption or amendment of land uses ordinances
- Zonings or rezoning of properties
- Annexations

Administrative actions

- Issuance of building permits
- Site plan reviews
- Conditional use permits
- Subdivision plats
- Land use application approvals

Mr. Sommerkorn highlighted the following key players and roles of those involved in the land use process:

Council

- Set the tone
- Deciders on policy/legislative items
- Adopt General Plan and ordinances
- Appoints the other players
- Only body that could do all this!
- Actions could be “referended”

Planning Commission

- Required by LUDMA
- Policy/legislative – advisory only
- Prepare, recommend:
 - General Plan
 - Land use regulations
 - Amendments/rezones
 - Public hearing required
 - Council cannot act without
 - Required land use training (2021)

Commissioner Blackwood confirmed the Council did not have to take the recommendation of the Planning Commission, but it was required to receive it. Mr. Sommerkorn replied yes. He suggested the Council could provide an explanation if the direction taken was contrary to the recommendation. Councilmember Roper commented the Council valued the Planning Commission’s input even if another direction was chosen.

Mr. Sommerkorn continued his review of the following players and roles in the land use process:

Land Use Authority

- Council designates
- Could be more than one:
 - Planning Commission (most common)
 - Staff (could be for some actions)
 - Council (not recommended)
- Make land use “decisions”
- Administrative actions
- Decisions based on evidence
- Public hearing not required
- Decisions subject to appeal

Mr. Sommerkorn stated the most common land use authority was the Planning Commission. He explained the Land Use Authority was the entity that made the decisions in the administrative process. He noted most cities had staff as the land use authority for some of the administrative actions. He mentioned it would not be a good idea to have the City Council as the land use authority because it was the body that adopted the regulations so it could be problematic if they also ensured those regulations were being followed.

Councilmember Bush commented if the request did not meet the ordinance requirements the land use authority was justified in denial and could explain the reasons supported by Code.

Brad McIlrath, Senior Planner, asked who the final land use authority was when it came to the interpretation of Code. Mr. Sommerkorn responded decisions were based on evidence. He explained it would be good to discourage using subjective language in ordinances which created difficulty and cause for interpretation. He noted the first step in interpretation was the land use authority because they would review and decide if the evidence provided met the requirements of the ordinance.

JJ Allen, City Manager, asked how the courts looked on the process of interpretation and if there was a bias. Mr. Sommerkorn answered there was a plain language provision recently added to State Code. He noted it stated if a reasonable person could look at a provision and reasonably come to different conclusions or see the interpretation could go either way then the courts decided a tie would go to the landowner.

Mr. Sommerkorn explained many communities were moving away from having an Appeal Board or Board of Adjustments to a hearing officer. He continued his review of the following players and roles in the land use process:

Appeal Authority

- Council designates
- Could be more than one:
 - Hearing officer

- Board
- Council or Planning Commission (not recommended)
- Hear appeals of land use “decisions”
- Hear variance requests
- Quasi-judicial process
- Decisions could be appealed to the courts

Staff

- Not mentioned in LUDMA

Mr. Sommerkorn explained staff was able to help the Planning Commission and City Council because they were knowledgeable about planning processes and current legislation. He added staff helped keep governing bodies on track legally and could assist them to see a variety of options available related to land use issues.

Mr. Allen shared some of the difficulty recently with staff recommendations and interpretations. He pointed out staff tried to address how a reasonable person might interpret a standard and also protect the City even though it might conflict with what they knew had been the Council’s vision. He acknowledged information in the staff report could be causing the noted irritation, but it was likely there to keep the land use authority out of trouble which was difficult to communicate in a staff report. Mr. Sommerkorn asked what the Planning Commission and Council wanted to hear from staff in the staff reports.

Commissioner Blackwood commented it would be best to know what the General Plan said because that was the guiding document for decisions not the will of the Council. She pointed out the Planning Commission’s recommendation should be based on whether it met the requirements of the General Plan and City Code and then the Council could accept or reject that recommendation.

Mr. Sommerkorn stated staff should examine the General Plan to determine if the requested land use either fit or did not, and then provide the recommendation to the Planning Commission. He acknowledged the City Council did not have to follow the General Plan. He explained in Utah plans were advisory not mandatory, but land use ordinances were mandatory. He noted if the Council did not want to follow the General Plan then it would need to be changed.

Mr. McIlrath stated developers sometimes used staff and its recommendation as a pawn to influence the Planning Commission or Council in its decisions. Mr. Sommerkorn recalled having worked for various groups of elected officials where the General Plan was followed closely or others that did not. He suggested if the policy or plan was going to mean anything it was better to stick to it. He explained plans could be out of date and needing revisions based on the current vision for the community. Councilmember Phipps commented sometimes it was hard to articulate what the vision was in a document; thus, a request could meet the wording of the plan but the vision behind it might not have been expressed very well. He noted the difficulty in trying to express a concept in writing that could stand up in Code and not be a misinterpretation of the vision. Mr. Sommerkorn acknowledged the challenge.

Mr. Sommerkorn stated staff was helpful and knowledgeable to make sure applications met all the standards in the ordinances and generally compiled the information into a staff report. He explained staff had the expertise and was an extension of the land use authority. He indicated the staff report would have a lot of evidence for how a request met the ordinance requirements or did not. Mr. Sommerkorn acknowledged there might be times when the land use authority disagreed with staff's recommendation. He suggested if the land use authority denied staff's recommendation it would be appropriate to cite the information included in the staff report where there was disagreement. He stated this approach would be helpful if a decision were ever appealed and the evidence would be under review. He commented if the land use authority felt the information of the staff report was subjective then that should be communicated to staff so more information or evidence could be retrieved before a decision was made. He indicated staff could be designated as the land use authority as well.

Mayor Shepherd thanked Mr. Sommerkorn for the training and the Planning Commission for its participation.

There being no further business to come before the Council and the Commission,
Councilmember Peterson moved to adjourn the joint work session and reconvene as the City Council in policy session at 7:00 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.

APPROVED AND ADOPTED
This 26th day of October, 2021

/s/Mark R. Shepherd, Mayor

ATTEST:

/s/Nancy R. Dean, City Recorder

I hereby certify that the foregoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Tuesday, March 23, 2021.

/s/Nancy R. Dean, City Recorder