

Erda City Planning and Zoning Commission Meeting
March 1, 2022
Deseret Peak Complex

1. Call to Order & Roll Call: Cory Warnick
Present: Cory Warnick, Russell Brimley, Diane Sagers, Matt Luker, Mark Gull, Jerry Hansen, Kathleen Mallis
2. Pledge of Allegiance: Jerry Hansen
3. Prayer: Russell Brimley
4. Approve Minutes from 2/15/2022
Discussion on amendments to the minutes including spelling errors and adding the vote information.

Cory Warnick motioned to accept the minutes with spelling and carried motion amendments. Second by Jerry Hansen. Motion Carried.

5. Public Comment:

Keith Toone: Missed winning the election by a percent. When I was campaigning and circulating the referendums, the consensus that I got, no matter views, was most everyone was in favor of a one-acre lot situation. The next zoning change allowed for 10 per acre. Going ½ acre would have been acceptable. Smaller lots require curb & gutter. Most want to keep Erda a rural community, this is uniform throughout the community. Different controversial issues that made a difference in the election. When you look at the zoning what type of people are you attracting to Erda? One-acre attracts more responsible. It might not be the young couple can't afford a mansion; common sense says it takes time. A lot of the residents had moved from Tooele/Stansbury to this type of community. If we keep it like this, then this type of people will be moving in. Most of them loved the opportunity to have some type of in-home business. ADU's a lot of people like that and think it is a very useful use of resources. If you own the home, when mother-in-law dies then the kids can move into it or a rental unit that is your responsibility. Not let it turn to crap. Look at the type of rules and regulations you put into place. Will it attract good people or negative people? The neighborhood I moved from in Tooele started to become low-income housing with people who are trapped in professional welfare rights using the government type situation. I wanted a place where people were more self-enterprising. That's my opinion.

Summer Fackler: My dad is Shannon Lawson. We are the ones who want to build on his lot. We have some health concerns with our family and so we want to stay close and rezone and subdivide his lot once. I would like to be 100% ready to do that when you are ready. I'm not sure where to go with that. I want you to be aware that I am the face that will be going next to Craig Smith. My family has been in Erda for as long as I can remember. If I can get any help throughout the way, that would be appreciated. We want to split it into a 3-acre / 2-acre parcel. We want to finance it in our name. ADU only

allows 1200 square feet which is not big enough for my family. We have a subdivision with 5 acre lots. Thank you for your time.

Mark Gull motioned to close public comment. **Kathleen Mallis** second. **Motion Carried.**

6. Direction from the City Council:

Cory Warnick: Our one recommendation to the city council was to engage PSOMAS. They have asked us to at least look at the one provided by Tooele County before we contract PSOMAS. As far as ADUs, Jess Bird wants us to get something through so people can get moving. Jess Bird would also like feedback on business licenses.

7. Administrative Items and Training:

Training presented by State Ombudsman **Jordan Colmore**
See Attached Handout.

Jordan Colmore: Lead attorney in the property right ombudsman's office. Will provide contact information to anyone who would like it. Our office is a resource to everyone. Neutral, non-partisan entity. We are designed to be neutral. 20 years we have been neutral. We encourage people to reach out and contact us. We consult on issues of land use, eminent domain, etc. Provide trainings and help resolve disputes over how rules should be applied. We produce an opinion on what a court would say. Our goal is to help people make legal decisions. LUDMA is the acronym for the Land Use, Development, and Management Act. The intent of your commission is to set floors and ceilings you need to work within. You will be striking a balance between property rights and the public interest. Sometimes they align or they conflict. If you make decisions within that framework, hopefully you'll make good decisions and a great community.

Legislative vs Administrative Decisions:

Legislative: Votes that involve making laws of general applicability. Erda City Council is the only body that can make these decisions. Planning commission's primary role is to be a technical advisory committee. The State is changing things a bit by saying you need to plan for moderate income housing. It's important the city council make good decisions regarding services, infrastructure, etc. Where do things make the most sense? There is a saying that helps: keep the pig out of the parlor. Zoning is to be used to prevent nuisances and ensuring things are compatible. Spend a lot of time with your general plan. And come up with proposals. You were appointed by the elected officials to make recommendations. Sometimes you will work on development agreements until they become a legislative decision. You want to consider all the factors and how to best balance the public interest with property rights.

When a court looks at a legislative decision, then the court will ask – was it consistent with the state and federal law? Was the decision reasonably debatable that it will advance the public welfare? The courts say they are not policy makers – they don't make the law; they interpret the law. A solemn responsibility to make reasonable decisions. Only checks you have will be yourselves and the city council.

Land Use Authority and Land Use Appeal:

Land use authority is sometimes delegated to the planning commission or can be delegated to an employee or city planner. Administrative decisions can't be denied on emotion. If it fits the law, it must be allowed. Administrative swings in the favor of the property owner. You can't change the rules once the rules are locked in place. You must support decisions on factual evidence. You can't just guess this or that will happen. Look to evidence and experts to support your decisions. If it meets all the requirements, then they are entitled to approval.

The danger in designating the city council as the land use authority is that they will need to switch between legislative and administrative roles carefully. They are better to delegate that.

Cory Warnick: The planning commission will recommend who we will designate as the land use authority. Cory Warnick has a chart from Kamas of which group is reviewing, recommending, or making the decisions.

Appeal Authority is legislative and goes to court or referendum. City council legislative is co-equal to the public. You must file and gather signatures for a referendum and then it goes to the ballot. Legal issues go straight to court. With administrative then there is an administrative level of appeal. The landowner can get an unbiased ruling from this body. They can go to the board of adjustment or an appointed appeal authority as an individual. They need to show they have standing. It's usually not just a general citizen.

Matt Luker to Jordan Colmore: Is there a city you don't like to take calls from?

Jordan Colmore: The vast majority don't of calls we get are people not wanting to make a wrong decision. So, we like to hear from them. Everyone has different perspectives.

Matt Luker: What cities have the hardest time? Maybe we could read about it on the internet. **Jordan Colmore:** Look for cities in a supreme court decision, you can learn from them.

Justin Loretz: Where do I get my permit for an ADU. **Cory Warnick:** We don't have anywhere to submit an application for and ADU for a month to six weeks. **Craig Smith:** The fee schedule is there now so you can submit now. **Cory Warnick:** A temporary ordinance has been passed so you can submit.

Craig Smith: Conditional use permits, what can be approved or denied? **Jordan Colmore:**

The industry is saying that best practice is to get rid of CUPs. Just have permitted or not. Make a list and how to mitigate those issues. A conditionally permitted use is a use that is permitted if it has unique issues. Like churches in residential areas, they are liked by residents who go to those churches. But they add traffic and lighting. You should have standards (more general terms) for CUP. Then when the use comes in you can impose standards with evidence. You must be able to show there is no way to mitigate the detrimental impacts. If you are ready to deny an application, it's recommended that you consult your attorney before you do.

Jess Bird: Is it possible to make ADUs just a permitted use? **Jordan Colmore:** IADU are permitted by state law. ADUs can be permitted use after deciding the rules. **Justin Loretz:**

So, the ECA can pretty much decide that? **Jordan Colmore:** Erda City will decide that. **Justin Loretz:** I've been trying to get someone to figure it out for three weeks. I've been to Ensign. **Cory Warnick:** We will get that sorted out (Justin Loretz)

Derald Anderson: Could you discuss public input vs public clamor?

Jordan Colmore: Courts have used this term because of cities who have made administrative decisions based on public clamor. You must base decisions on evidence. On legislative issues, we call it public input or opinion. How much weight do you give to opinion or to the information coming from experts? Administrative decisions have to be based on facts and law. **Gwen Young:** For clarification on clamor and input, we are not talking about the majority. Clamor might be the minority. Legislative decisions shouldn't be made on a minority of the clamor. **Jordan Colmore:** Yes. If someone says they represent most of the city, but they really don't, or the issue might be that the majority is not wanting what is best for the city then arguably, you should give that argument less weight.

Derald Anderson: Vested rights is important right now. Can you explain that.

Jordan Colmore: Vested rights are very important. Also called grandfathered rights/no conforming uses. You can't pull the rug out from someone and change the rules. They are entitled to have their application reviewed. Utah is an early vesting state which is pro-property rights. The rules lock in place when the application is in and paid for. Other states use late vesting; meaning the applicant must start the project and make and investment before you can get a vested right. This creates a lot of litigation to prove that the financial investment was sufficient. Utah sets the rules up front and makes things simpler. **Kathleen Mallis:** Do vested rights pass from one legislative authority to another such as from Tooele County to Erda City? **Jordan Colmore:** There is a provision in State law that they should transfer between municipalities. **Derald Anderson:** 509-D is where the code is found. **Jordan Colmore:** As long as the county followed the rules then the city has to accept those vested rights.

Mark Gull: What about illegal lots? **Jordan Colmore:** They are in quotes. It's a parcel whose lines were created without going through the proper jurisdiction. When they are done properly, they can be bought and sold. When an application comes in you can say

it's not eligible for development because it is an illegal lot. In some cases, some people divided the property into 10 parcels without bringing in the proper subdivision proposal. The problem is when they get sold to someone who doesn't realize it's an illegal lot. It would be good to have something in your ordinances for good faith purchasers to legalize those lots.

Mark Gull: Let's go over short-term rentals. **Jordan Colmore:** The state has left this to each local government. If you do want to regulate or prohibit then you need to be very specific. A single-family home could turn into a different single-family living in it every night, then that is legal. You must be specific. If someone were already doing short-term rentals legally, they can keep doing it as long as they don't stop doing it. **Diane Sagers:** If it's just summer then they could lose their right to rent over the winter? **Jordan Colmore:** It's usually a year or more or use it as much as they are using it. Not getting a business license is showing they aren't conforming. You would need to show they are not conforming to the use they had legal right to.

Question from the audience: Does a person have any right to their current zoning?

Jordan Colmore: As long as you don't come in with a proposal to use the property in another way, the answer is yes. When you pay your fee, that's when you get a right to the zoning. It can be changed by the city as much as they want until it is vested into something by you. **Scott Droubay:** What happens if you have property that is zoned R1-10 and then the city says they are getting rid of R1-10? **Jordan Colmore:** If they take it out then no, you can't use it if you haven't done anything with it. You must propose a new development to keep it. **Terry Miner:** What if it is an R-5 but it's being used as an A-20? Can it be used as an A-20? **Jordan Colmore:** If you establish a use when it's legal to do it, then you are entitled to do agriculture. **Kathleen Mallis:** If they have a farm, the city can come in and change the zoning? **Diane Sagers:** You can also get the zoning to apply to your farm. **Jordan Colmore:** It runs with the land and not with the owner. **Brian Walters:** In the general plan they are trying to change my zoning. I border an airport. Eminent domain vs fair market value? I try to keep zoning to RR1 or RR5. In the general plan they are converting it back to a farm which is a devalue of land. Now you are saying they have the right to do that. **Jordan Colmore:** Regulatory taking. The government has regulated so much that it has devalued the land so much that it is a taking. That owner can get an appraisal of what it was worth when it wasn't rezoned by the city. Courts will say that is the consequences of living in a civilized society. What if they zone it for an oil field? If they eliminate all viable use, then the courts call it a taking. Devalue does not equal a taking.

Kathleen Mallis: How is an overlay related to a land use??

Jordan Colmore: You can implement a health and safety and the courts will hold that up. Outside of health and safety the discussion we are having is applicable.

Cory Warnick: We will be able to ask you specific questions. We have covered all the general questions here.

Jordan Colmore: More information can be found at Propertyrights.utah.gov

8. Legislative Items

Cory Warnick: Commission is not taking public input at this time.

A. Discussion of Developing a Permanent Ordinance

Cory Warnick: A permanent ordinance will have to be done piece by piece. ADUs are something the city council has directed us to get this as a permitted use.

Matt Luker: It would have to meet the health department rules **Diane Sagers:**

We can use the county ordinance as a template **Russell Brimley:** We would have to have rules so a ¼ acre doesn't have 12 mini houses on it. We can allow a certain square footage. **Matt Luker:** Just like the county. **Cory Warnick:** Jess had someone write one up for a basic ordinance. We can add to this and get something that is somewhat workable. We must give 10 days' notice and then 10 days for the city to give notice. Jess wants it on a fast track. We would take a month to get this done. It's not going to be quick. Making ADUs permitted use would make it easy so they don't have to come before us. **Jess Bird:** We are just talking temporary ordinance. Make ADUs permitted use so they don't have to come before the planning board. **Mark Gull:** Do we have an allocation to subdivide for the Lawson's? **Matt Luker:** They will need a well agreement and a separate sewer. There could be an architectural committee in the neighborhood? **Mark Gull:** She has a family where 1,200 feet will not work so we need to think about that. We might put stipulations where it doesn't need to be a certain size. **Diane Sagers:** If she's in a one-acre zone, then she is ok. **Cory Warnick:** If they want to build it the same size as their house, I have no problem with that. **Mark Gull:** We see these big barns go up which aren't residential. We need to give people enough rights to do what they need in their situation.

Cory Warnick: What impact is there from the basement or the backyard? It's the same. **Russell Brimley:** Should we put together a generalized plan to present by next meeting? **Cory Warnick:** Solid rough draft so we can have a public comment. **Craig Smith:** You can have a public hearing on a rough draft and make changes on the fly or table it for two weeks. **Mark Gull:** Read through all this in the next couple days and post it by Saturday? **Cory Warnick:** Let's try to get something somewhat reasonable by Friday. **Mark Gull:** We really need to look at it as a group. **Cory Warnick:** How are we going to notice the public? Do we have to mail this out to the public? **Craig Smith:** Application information that needs to be mailed out; Ensign Engineering will do those. ADUs will not require a mailing. CUPs will require mailings. **Cory Warnick:** Brems, city attorney, said it should go to the whole city? **Craig Smith:** No legal requirement to do so.

B. General Plan

Cory Warnick: Direction from the city council is that we need to go over the Tooele County plan and see what changes we want. **Jerry Hansen:** I don't think that AG sensitive fits our city's needs. It should be changed to low intensity residential. **Mark Gull:** What are the stipulations of agricultural sensitive? **Jerry Hansen:** Agricultural sensitive lands are MU-40, MU-80, MU-160, etc. **Mark Gull:** They are specifying that they will be used for agriculture? **Craig Smith:** Changing the general plan does not change the zoning. If it came to the commission, then you look at the zoning map. The general plan is a guideline. **Jerry Hansen:** Ray Walters changed it from RR5 to RR1 and some to commercial. **Craig Smith:** What needs to be done is that you suggest the zoning to the city council. **Craig Smith:** The airport condemned and took Ray Walter's airspace. He can't build anything over 12' building next to the airport. **Jerry Hansen:** Does the general plan change that? **Craig Smith:** The general plan does not change the zoning. **Cory Warnick:** On a scale from 1-10 how likely would we want to adopt the general plan? **Mark Gull:** How much public input should there be on this? Lots of land use aspects that are good in a general sense. It is probably a starting point. But what do we as a new community want to ensure gets put in place? Can we use public input? Is this plan ours to use or would we be under copyright infringement if we start using this plan? **Cory Warnick:** The cost would be \$25,000 to the city. If we adopt the plan, it's not a savings of the total \$25,000. We have to purchase the rights and the software. **Russell Brimley:** I think we need public involvement. Tooele wrote that without our involvement. For me, it had some good things in it we can utilize but left a lot to be desired. As far as the small constitute that I am aware of, it left a lot to be desired. But it's a plan. **Diane Sagers:** We are a city, and this is county so some changes will be made. This was done over a long period of time with experts. Throwing everything out would be a big mistake. For one thing, we don't know what we don't know. We can't just try and pick it out of our heads, and it would not be as good. **Jerry Hansen:** I don't see anything in all three concepts that are that different. I actually think the concept they have for the general plan for Erda is good. There are a few specific items in there that need clarification. Concept one has a little more commercial. Other than that, they are pretty much the same. **Cory Warnick:** You think we can use it as is? **Jerry Hansen:** I think so. Because how we zone the property can be different from the general plan. **Craig Smith:** We ask that you try to follow the zoning as close as you can by the general plan. **Cory Warnick:** This plan will govern how we allow zoning. **Russell Brimley:** We can't change the plan once it is set. Then we just make sure they follow the law. **Craig Smith:** You guys draw the general plan now then send it to us. Then it can be changed or approved from there. When new plans come to you, you see how they fit the general plan. **Mark Gull:** It would be good for people to look at and comment it but is there copyright. **Matt Luker:** We are going to pay them anyway. Just tell them to move a few pieces around. **Terry Miner:** The county general plan only had input from 50 people. **Cory Warnick:** We had 70 people show up to the ordinance discussion. We would have more at our meeting than the entire county had. **Mark Gull:** We

need guidelines and timelines of how that would flow. We are on a time constraint on when this needs to be done. Right? **Cory Warnick:** PSOMAS did a great presentation for the county. **Craig Smith:** Adopt it as is or much as you can. You can't do it without a public hearing. Don't do a recommendation without a public hearing. PSOMAS will hold additional public hearings then bring it back to you for another public hearing. **Cory Warnick:** It's good to have as much public input as possible. **Diane Sagers:** Can we send an email to the whole city? Is there a communication method other than Facebook? **Craig Smith:** I don't know how we would collect email for every person in the city. **Matt Luker:** Maybe Erda City will have its own Facebook page? **Camille Higgins:** Using Facebook is not a through way to get the word out. **Cory Warnick:** On the map less than 10% is low intensity. There are things that are not accurate such as total number of moderate-income households, population, household size, employers, etc. for Erda City in the demographics. It all has to be redone. Brems said if you can get it done for \$25,000 its worth its weight in gold. **Matt Luker:** The county has spent so much money and now it's easy for us and we just change it a little. **Mark Gull:** Change the sample size and area. **Jerry Hansen:** Do we put it out to have a public meeting on the general plan right away? **Cory Warnick:** Craig wants us to have a public meeting to see if we want to engage PSOMAS or not. My motion will be to recommend back with them to contract with PSOMAS. **Mark Gull:** Our comments show we have value in what it is so we can take it to the next step. **Diane Sagers:** From a practical standpoint do we have \$25,000? **Matt Luker:** That doesn't matter. We just borrow it. **Mark Gull:** From engineering services that is relatively cheap. **Cory Warnick:** If we buy the software and do it ourselves, we have a high chance of violating state code. Jordan Colmore said we need to spend a lot of time with the general plan. **Cory Warnick:** Wants to make a motion to hire someone to work on the general plan and the second recommendation to hire PSOMAS. **Mark Gull:** Another entity cannot plagiarize this general plan if we don't us PSOMAS. If the value is in using the entity that created the plan, then it's not being exclusive.

Cory Warnick made a motion that the city engage PSOMAS to work with us on tweaking and developing this general plan. Mark second. Motion Carried.

9. General Comments:

Jerry Hansen: I'm enjoying working with this group. We are a good group.

Mark Gull: I like to see the people come and engage their excitement to protect their rights. I wish I could have been at the ordinance meeting because people in Erda care and want to have their voice heard.

Matt Luker: These tables are nice, and we should buy some.

Cory Warnick: The bad vibes going on show that people care even though it is inconvenient.

Diane Sagers: I think as a community we have more in common than we think.

Cory Warnick motioned to adjourn. Matt Luker seconded. Meeting adjourned.

Respectfully Submitted:

Camille Higgins
Interim Commission Clerk

 3/17/2022
Cory Warnick, Planning Commission Chair

Camille Higgins, Interim Commission Clerk