

**TREMONTON CITY CORPORATION
PLANNING COMMISSION
APRIL 11, 2023**

Members Present:

Micah Capener, Chairman
Jordan Conrad, Commission Member
Penni Dennis, Commission Member—excused
Jeffrey Seedall, Commission Member
Raulon Van Tassell, Commission Member
Connie Archibald, City Councilmember
Shawn Warnke, City Manager
Cynthia Nelson, Deputy Recorder

Chairman Capener called the Planning Commission Meeting to order at 5:32 p.m. The meeting was held April 11, 2023 in the City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Chairman Capener, Commission Members Conrad, Seedall, and Van Tassell, City Councilmember Archibald, City Manager Warnke, and Deputy Recorder Nelson were in attendance. City Attorney Dustin Ericson was also in attendance (arrived at 5:46 p.m.). Commission Member Dennis was excused.

1. Approval of agenda:

Motion by Commission Member Conrad to approve the April 11, 2023 agenda. Motion seconded by Commission Member Van Tassell. Vote: Chairman Capener – aye, Commission Member Conrad – aye, Commission Member Dennis – absent, Commission Member Seedall – aye, Commission Member Van Tassell – aye. Motion approved.

2. Declaration of Conflict of Interest: None.

3. Approval of minutes—February 28, 2023

Motion by Commission Member Conrad to table the February 28, 2023 minutes until they could be reviewed. Motion seconded by Commission Member Seedall. Vote: Chairman Capener – aye, Commission Member Conrad – aye, Commission Member Dennis – absent, Commission Member Seedall – aye, Commission Member Van Tassell – aye. Motion approved.

4. New Business:

- a. Training on Planning Commission general powers and duties under Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act

Manager Warnke reviewed a presentation on land use in Utah and the legal aspects. He said several years ago the State legislature adopted a law that required

planning commissions to receive annual training (four hours). We will complete one hour on land use tonight with this presentation. We will discuss duties, exactions and invested rights and will cover legal administrative acts. There is an appeal process for people with those authorities when dealing with land use applications. The Planning Commission is involved in legislative acts as an advisory board to the City Council. The Planning Commission makes recommendations, and the City Council is the final authority. If legislative acts are reasonably debatable and advance the general public welfare, they are generally upheld in court as being legal and valid. Administrative acts apply the code, while legislative acts create the rules that are applied. There is broader discretion on administrative decisions and narrower discretion on legislative decisions. The River's Edge development was approved unanimously, but residents filed a referendum, which is a way to overturn a legislative decision. There is a new State law saying that if a decision is unanimous then the public cannot file a referendum. Our decisions are supported by evidence to prove they are legal. We need to be diligent in creating a record because that is the standard of review when determining if an application meets or does not meet the code.

Manager Warnke said the Development Review Committee has a lot of administrative duties in approving land use applications that are administrative in nature. We typically create a punch list of requirements for site plan or plat to comply with the code. We site the code, and they work toward compliance. Once they comply with all ordinances they are approved and have vested rights. If a land use application is appealed, having a record of why you made the decisions is very important. Each zoning district has permitted uses and conditional uses. Permitted uses are allowed by right, conditional uses require additional review to see if there are conditions that should be placed or a proposal to mitigate the impacts on an adjoining neighbor. When a zoning district is changed, the existing land uses that do not comply are called non-conforming uses. They can exist, you just cannot increase their degree of non-conformity.

When asked what the City needs to do in order to be complaint with recent changes at the State level, City Attorney Ericson said we have time to adapt those. We need to make sure our ordinances work. Substantial evidence is one of the standards. It is something a reasonable mind would access as adequate to support a conclusion. If there is substantial evidence that an ordinance is justified, then the court is going to leave it alone.

City Attorney Ericson then reviewed NIMBY (not in my backyard) and public clamor. He said if something conforms with the zoning, no matter how mad it makes someone, it is allowed. If a developer's concept conforms with the ordinances that are applied to that property, no matter how mad it makes me, there is nothing that can be done short of an initiative on the ballot. NIMBY and public

clamor are not sufficient to alter a decision the Planning Commission or City Council makes as it relates to allowing development where that development conforms with all the applicable zoning and ordinances. Manager Warnke further explained that for an administrative decision, when the public raises concerns associated with noise on a conditional use then those issues should be addressed on how they could be mitigated. Those are things to factor in. You cannot factor their emotions into the outcome. State law used to require public hearing at subdivision levels, and it was frustrating for people because they thought they had opportunity to speak against the application when in reality they could discuss the merits and how it complies with the code. Considering public clamor depends on the land use application you have before you. The presumption of approval on conditional uses is it is allowed with conditions. We would do things that help us come to a level of understanding and analysis what is acceptable. Studies on traffic, light, and sound can impact that and guide the decision-making process. City Attorney Ericson said public clamor is not sufficient enough for denial. The default is, you are going to approve it with conditions, but there could be situations where there is no way to adequately mitigate those conditions. There will be times it cannot be done regardless of the conditions you put in place. Landowners feel they should be able to do what they want, but neighbors may not like it. That is why we have ordinances in place. As a City, we have the burden of drafting that ordinance so clearly that it cannot be misinterpreted.

The Commission then discussed exactions. Manager Warnke said when you are evaluating administrative land use application you can exact improvements on the development. Subdivision improvements include streets, water, sewer, sidewalk, etc. There are different tests for a legal exaction. Required improvements have to be proportionate to their impact of the development and the impact they have on City services. For example, the City requires 66 feet as a collector road, that is proportionate to most developments. If we need an 80-foot road, minor arterial, then the City would pay for the upsize. It really comes down to proportionality. Engineer studies can help us figure out their impact. Impact fees are a condition of issuing a land use permit and are not arbitrary numbers.

Manager Warnke said zoning ethics are involved when determining if a decision will exclude individuals unfairly. Affordable housing is a hot topic, and the State has become more involved. We have to create affordable housing. We cannot zone in a way that excludes people by economics or have exclusionary zoning. Tremonton needs to comply with affordable housing.

City Attorney Ericson said the Ombudsman Office is an attorney's office that is free for cities, developers, and landowners to bounce ideas off of. They help determine what is legal. They can give general information all the way to the point where they can serve as an arbitrator for the City and a property owner if

they are not seeing eye to eye. It is either free or a very minimal charge. They are not the same as a judge but give both parties an idea of what a judge might do. Manager Warnke said we have used them, and they help us get things right. These issues can be tough, and it is good to have additional insight.

Chairman Capener said it would be good to have a training on how to use this book. There are so many codes and pieces of the puzzle. This training would be beneficial for our new commissioners as well. I would love training on what the legislature has passed and how that is going to affect us and how we are going to adjust our system to be in compliance with the things that take effect in May. Manager Warnke said at the next meeting they could watch an overview from the Utah League of Cities and Towns. It would be good to talk about the code book, there are tips and tricks to navigate through it.

5. Planning commission comments/reports: None.

6. Adjournment

Motion by Commission Member Van Tassell to adjourn the meeting. Motion seconded by consensus of the Board. The meeting adjourned at 6:55 p.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes of the Planning Commission held on the above referenced date. Minutes were prepared by Jessica Tanner.

Dated this 11th day of July, 2023.

Linsey Nessen, CITY RECORDER

***Utah Code** 52-4-202, (6) allows for a topic to be raised by the public and discussed by the public body even though it was not included in the agenda or advance public notice given; however, no final action will be taken.