

# SOUTH WEBER CITY CITY COUNCIL MEETING

**DATE OF MEETING:** 20 October 2020

**TIME COMMENCED:** 6:01 p.m.

**LOCATION:** South Weber City Office at 1600 East South Weber Drive, South Weber, UT

**PRESENT: MAYOR:**

**Jo Sjoblom**

**COUNCIL MEMBERS:**

**Hayley Alberts  
Blair Halverson  
Angie Petty (excused)  
Wayne Winsor**

**CITY PLANNER:**

**Barry Burton**

**CITY RECORDER:**

**Lisa Smith**

**CITY MANAGER:**

**David Larson**

**CITY ATTORNEY:**

**Jayne Blakesley**

**ELECTRONICALLY:**

**COUNCIL MEMBER:**

**Quin Soderquist**

**PLANNING COMMISSION:**

**Taylor Walton**

**Transcriber:** Minutes transcribed by Michelle Clark

**ATTENDEES:** Paul Sturm and Lillyann Livingston.

Mayor Sjoblom called the meeting to order and welcomed those in attendance as well as those joining in electronically. She excused Councilwoman Petty from tonight's meeting.

**1. PLEDGE OF ALLEGIANCE:** Mayor Sjoblom

**2. PRAYER:** Councilman Halverson

### **3. TRAINING LAND USE ROLES**

Mayor Sjoblom explained while the Code Update Committee was reviewing Title 10 of the City Code questions were raised regarding land use roles for Council, Commission, staff, and public. They requested additional training to have a better understanding before they consider any code amendments.

Mayor Sjoblom introduced City Attorney Jayme Blakesley. She announced Todd Godfrey, who is a partner in Jayme's law firm, recently replaced David Church as counsel for the Utah Leagues of Cities and Towns.

Jayme reviewed the land use roles, responsibilities, and objectives. He conveyed in the state of Utah the state who holds the land use authority. All land use decisions in South Weber City must comply with the Land Use Development Management Act (LUDMA). The City may adopt its own land use standards as long as they are consistent with federal and state law. There are six predominant themes with LUDMA which include: (1) respect for private property right, (2) cities may regulate private property, (3) once written and duly established, land use regulations are binding, (4) land use ordinances must be plainly written to be enforceable, (5) process matters, and (6) tie goes to the applicant/property owner.

The roles and responsibilities of LUDMA include: Legislative Body, Land Use Authority, and Appeal Authority. The Legislative Body is the City Council. The Land Use Authority will make the land use decisions (may be staff, City Council, or Planning Commission). The Appeal Authority is essentially what is decided within city code. It is the entity who would hear an appeal of a land use decision made by the Land Use Authority.

**The Legislative Body (City Council):** Only the legislative body can enact land use regulations. It is responsible for adopting land use regulation to create or amend a zoning district and designate general uses allowed in each zoning district. It may establish or modify other restrictions or requirements, including the configuration or modification of uses or density, through a land use decision that applies certain criteria or policy elements. The legislative body shall consider (but may adopt, reject, or revise) each proposed land use regulation that the Planning Commission recommends. It may establish a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

**The Land Use Authority (City Council, Planning Commission, or staff):** This body applies the plain language of land use regulations. In the absence of a “plain” restriction, they shall interpret and apply the land use regulation to favor the land use applicant. The land use authority approves a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

**The Appeal Authority:** Requests for variances and appeals from decisions applying the land use ordinances/fees are heard and decided by this authority. It may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority. The appeal authority may be an individual or a multi-person board, body, or panel.

**Land Use Decisions (Legislative, Administrative, or Quasi-Judicial):**

	LEGISLATIVE	ADMINISTRATIVE	QUASI-JUDICIAL
<b>CHARACTERISTICS</b>	<ul style="list-style-type: none"> <li>- Promulgation of laws of general applicability</li> <li>- Based on the weighing of broad, competing policy considerations</li> <li>- Subject to voter referendum</li> </ul>	<ul style="list-style-type: none"> <li>- Applying the law to particular individuals or groups based on individual facts and circumstances</li> <li>- Decision is bound by the law and cannot be based on public opinion</li> </ul>	<ul style="list-style-type: none"> <li>- Defers to established law and Legislative/Land Use Authority</li> <li>- Review limited to error, illegality, or abuse of authority</li> </ul>
<b>RESPONSIBLE BODY</b>	City Council or General Electorate	City Council, Planning Commission, or Staff	Appeal Authority or Court
<b>EXAMPLES</b>	<ul style="list-style-type: none"> <li>- Zoning Ordinances (including a site-specific zoning ordinance)</li> <li>- General Plan</li> <li>- Rezones</li> <li>- Annexation</li> </ul>	<ul style="list-style-type: none"> <li>- Conditional Uses</li> <li>- Site Plans</li> <li>- Development Agreements</li> <li>- Subdivisions</li> </ul>	<ul style="list-style-type: none"> <li>- Variance</li> <li>- Appeal</li> <li>- Judicial Review</li> </ul>

Jayne explained only a legislative body may amend the number, shape, boundaries, area, or general uses of any zoning district; any regulation of or within the zoning district; or any other provision of a land use regulation. A legislative body may not make any amendments to a zoning district unless it first submits the amendment to the Planning Commission for the Planning Commission’s recommendation.

There are two types of land use decisions (appeals and variance). Under an appeal the city establishes the standard of review (“de novo” or “on the record”). The applicant has the burden of proving that the land use authority erred. To be overturned, the decision must have been illegal, or arbitrary and capricious. Under a variance any person or entity with an interest in a parcel of property may apply to the appeal authority for a variance. The appeal authority may grant a variance only if all five of the statutory criteria are met.

Jayne discussed judicial review and explained a party may not appeal for judicial review unless it has exhausted all administrative remedies. A petition for a review may come from a land use applicant or an adversely affected party.

A judicial review will look at the validity of the ordinance in which a court shall presume that a properly enacted land use regulation is valid. A challenge will hinge on whether the regulation is expressly preempted by, or was enacted contrary to, state or federal law. The judicial review will also include application of the ordinance. A court shall presume that a final decision of a land use authority or an appeal authority is valid. It will uphold the decision unless it is found to be (a) arbitrary and capricious, or (b) illegal. A decision is arbitrary and capricious if it is not supported by substantial evidence in the record of the proceeding.

Jayne expressed the best practice is to understand the nature of the decision (administrative/legislative/quasi-judicial). It is important to know your role and responsibility (legislative body/land use authority/appeal authority), follow procedural requirements exactly, and document your decision in writing. For legislative decisions public hearings should be considered opportunities to learn. For administrative decisions know the law and apply it exactly. Delegate whenever it is reasonable and if you are a delegating authority, give clear directions.

**4. DEVELOPMENT APPROVAL PROCESS DISCUSSION**

The City Code Update Committee was reviewing the authority of each decision-making body involved in the development approval process (e.g. City Council, Planning Commission, staff) and felt this is a foundational element of the city’s land use code. Before proceeding further, the Committee would like some feedback/direction from the full City Council on this topic.

The City Council must ultimately accept the public improvements made during the development process and is the only body that has the authority to approve/accept a development on behalf of the City. However, other land use decisions may be delegated if the Council so chooses.

Each land use action includes a land use authority and appeal authority, often with a recommendation given to the land use authority by a recommending body (though not always). In most cases, the Planning Commission acts as the recommending body, the City Council as the land use authority, and an unbiased attorney with expertise in land use as the appeal authority.

Generally, the Committee would like the Council to provide direction on how much land use authority the Council would like to delegate to Planning Commission and staff. Specific questions the Committee would like direction on from the Council include the following:

- Does the Council want to give final approval for both residential & commercial proposals?
- Does the Council want to give preliminary approval for both residential & commercial proposals? (Currently only Planning Commission gives preliminary approval.)
- Which body should approve elements of a proposal such as zoning code elements, architectural elements, etc. and at what stage of the process (i.e. preliminary or final, etc.)?
- Should the Council or Planning Commission approve residential Conditional Use Permits?
- Should the Council or Planning Commission approve commercial Conditional Use Permits?

Councilman Winsor thanked Jayme for his presentation. He suggested the City Council discuss this information so that suggestions can be taken back to the Committee. Jayme reviewed the matrix of current land use decision-making roles and responsibilities. He indicated there are areas under the administrative decisions which need to be identified by which body and land use authority. Councilwoman Alberts identified the site approval plan process allows little say by the City Council during the initial stages. City Manager David Larson explained the steps of the process from the beginning in which a concept meeting is held. A developer will then take the concept and prepare for a sketch plan (or architectural design) meeting. Following the sketch plan meeting, the developer will put together information for a preliminary plan meeting, which is then reviewed by the Planning Commission. The type of development (residential etc.) determines whether it goes before the City Council. David wondered if the City Council wants to be involved in the very beginning of the development. He explained the city code isn't clear on the administrative decisions.

Councilman Winsor voiced the greatest difficulty seems to lie within the commercial development zone. Councilwoman Alberts asked if it is possible to do a moratorium while amending the city codes. Jayme replied it would need to be an emergency ordinance. It was stated the committee should review those issues with commercial development first. David understood the legislative decision that needs to be addressed first is the permitted uses. Councilman Winsor suggested the possibility of the City Council being a part of the process at the preliminary approval level. Councilman Soderquist agreed the areas that are uncertain or unclear should be rolled forward to the City Council for comment. He advised City Council should provide feedback during preliminary plat review.

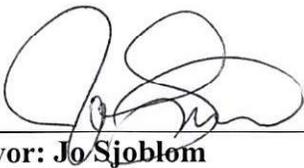
Jayne reviewed priority changes that need to take place. He pointed out the City Council is limited with applications that have already vested. David reviewed the City Council was suggesting working through commercial development and permitted uses first. He queried whether the concept meeting and sketch plan meeting need representation from the City Council. He recommended the City Council submit a review to the Planning Commission to include their perspective just as staff currently does. Mayor Sjoblom expressed concern because one member does not represent the opinions of all.

Jayne encouraged looking at the general conditional use process and state the standards specifically. Councilwoman Alberts asked the City Council if they want a say on all conditional use permits. Councilman Soderquist believed the Planning Commission should handle them if the code is clear. Councilman Halverson expressed the Planning Commission has done a good job with short term rentals but felt the City Council should have the final say on most Conditional Use Permits. Councilman Winsor charged the City Council should decide CUP's in non-residential zones. Mayor Sjoblom agreed. David commended the City Council for tackling this issue.

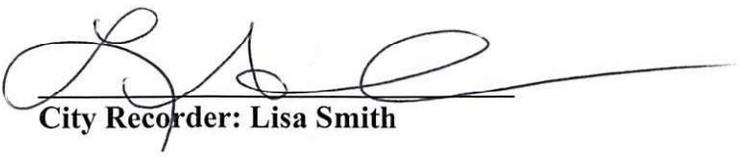
Commissioner Walton appreciated the time the City Council was putting into this discussion. He related he was working on matching the conditional uses for each zone according to use and zone. City Planner Barry Burton reviewed CUP's, which are more than one acre, come before the City Council, but under one acre it is reviewed by the Planning Commission. The City Council agreed they would like all CUP's in commercial zones to come before the City Council for final approval. It was decided the Committee would put together a suggestion for short term rental CUPs and who reviews them. David suggested sending an email to him concerning items the City Council feels are "hot" so he can coordinate them and share them with the Committee.

Councilman Winsor thanked the City Council for allowing this discussion. David echoed this is a big item and important to decide what the Council feels comfortable delegating.

**ADJOURN:** Councilman Winsor moved to adjourn the Council Meeting at 7:37p.m. Councilman Halverson seconded the motion. Mayor Sjoblom called for the vote. Council Members Alberts, Halverson, Petty, Soderquist, and Winsor voted aye. The motion carried.

**APPROVED:**  \_\_\_\_\_ **Date** 11-10-2020  
**Mayor: Jo Sjoblom**

  
Michelle Clark (Nov 11, 2020 12:34 MST)  
\_\_\_\_\_  
**Transcriber: Michelle Clark**

**Attest:**  \_\_\_\_\_  
**City Recorder: Lisa Smith**

# Minutes

Final Audit Report

2020-11-11

Created:	2020-11-11
By:	Lisa Smith (lsmith@southwebercity.com)
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## "Minutes" History

-  Document created by Lisa Smith (lsmith@southwebercity.com)  
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-  Document emailed to Michelle Clark (mclark.1166@gmail.com) for signature  
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