

SOUTH WEBER CITY PLANNING COMMISSION MEETING

DATE OF MEETING: 10 February 2022

TIME COMMENCED: 6:00 p.m.

LOCATION: 1600 E. South Weber Drive, South Weber, Utah

PRESENT: COMMISSIONERS:

Gary Boatright (via electronically)
Jeremy Davis
Julie Losee
Marty McFadden
Taylor Walton (excused)

COMMUNITY SERVICE DIRECTOR:

Trevor Cahoon

CITY ENGINEER:

Brandon Jones

CITY ATTORNEY:

Jayne Blakesley

DEVELOPMENT COORDINATOR:

Kimberli Guill

Transcriber: Minutes transcribed by Michelle Clark

ATTENDEES: Paul Sturm, Michael Grant, Ivan Ray, Becky Marino, Tina Cosby, Teresa Maass, Shanna Edwards Melanie Schenck, Jed Schenck, Jeff Clifford, Becc Reisbeck, and Rob Edwards.

Commissioner Davis welcomed those in attendance.

1.PLEDGE OF ALLEGIANCE: Commissioner Davis

2. Public Comment: Anyone requesting to comment live via Zoom must pre-register at the following <https://forms.gle/PMJFhYFJsD3KCi899> before 5 pm on the meeting date.

Comments will also be accepted at publiccomment@southwebercity.com

- a. Individuals may speak once for 3 minutes or less.**
- b. State your name and address.**
- c. Direct comments to the entire Commission**
- d. Note Planning Commission will not respond during the public comment period.**

Paul Sturm, 2527 Deer Run Drive, commented on agenda item #7 and agenda item #9 and questioned the process procedure for these agenda items in the packet. He asked why the Planning Commission is creating a complete city ordinance for the City Council.

ACTION ITEMS:

3. Approval of Consent Agenda

- **Planning Commission Minutes of 13 January 2022**

Commissioner Losee moved to approve the consent agenda. Commissioner Boatright seconded the motion. A roll call vote was taken. Commissioners Davis, Losee, and McFadden voted aye. Commissioner Boatright abstained as he was excused from the meeting. The motion carried.

4. Welcome new Planning Commissioner Marty McFadden

Trevor reported Commissioner McFadden has completed four hours of training required to serve on the Planning Commission.

5. Appointment of Chair and Vice Chair

Commissioner McFadden moved to appoint Jeremy Davis as Chairperson and Julie Losee as Vice Chairperson for 2022. Commissioner Boatright seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

Commissioner Losee moved to open the public hearing for Preliminary Plat, Improvement Plans & Rezone (C-H to R-M) for Sophia’s Haven Subdivision 3 Lot Plat R-M zoning. 1.41 acres located at 1589 East South Weber Drive. Applicant Rob Edwards. Commissioner McFadden seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

***** PUBLIC HEARING *****

6. Preliminary Plat, Improvement Plans & Rezone (C-H to R-M) for Sophia’s Haven Subdivision 3 Lot Plat R-M zoning. 1.41 acres located at 1589 East South Weber Drive. Applicant Rob Edwards.

Trevor Cahoon, Community Service Director, reported this property is located across the street from South Weber City Hall. After a review of the preliminary application for Sophia’s Haven, staff would recommend approval. Some considerations to note on this project are:

- Rezone: The developer is requesting a rezone from Commercial to Residential Moderate Density. This request is consistent with the General Plan zoning designation and meets the characteristics of the surrounding area.
- Access on South Weber Drive: One lot in this project will have an access on South Weber Drive. This access point is an existing access, and the Utah Department of Transportation has approved this access. All remaining will be removed.
- Existing private drive access: There is an existing private drive that is on the south side of the property feeding off of 1550 E. The access easements are in place and will provide access to the cell tower in the rear.
- Dedication of Right-of-way: The plat includes 1550 E with some other minor dedications. 1550 E is owned by South Weber City. However, it is owned as a parcel and

not a ROW. By including it in this subdivision and dedicating it as a ROW this corrects this issue.

- Wellhead Protection Zone: This project includes a source protection zone. This is notated on the drawings.
- Demolition of Buildings: The plans indicate that all buildings outside of the cell tower will be removed prior to construction.
- Pedestrian ROW: The development will update the sidewalk along 1550 E within the project area and dedicate the ROW to the City.
- Easements: All easements have been noted on the drawings.
- All other provisions have been met in the staff's review of the preliminary design and are notated either on the designs or within the application.

Commissioner Davis asked if there was any public comment.

Ivan Ray, 7268 S. 1600 E., stated he and his sister-in-law were the previous owners of the property located on 1589 E. South Weber Drive. He acknowledged the property was sold 30 March 2020. At the time he included a \$20,000 grant to clear the property. The day after the property was sold, a representative from True Homes took the \$20,000 from the bank. It was a 90 day agreement, but nothing happened. He is concerned because he retained ownership of the property south of the metal building. He identified the yellow highlighted area on his map in which the property is still in his name. He also identified the location of the cell tower, and an orange fiber optic cable that is buried. The cell tower links up South Ogden, Layton, Roy, and Morgan. He has retained this property so the cell tower people can work on the cell tower. He is concerned about the fiber optic cable, and he doesn't want the cell tower to be compromised.

Paul Sturm, 2527 Deer Run Drive, voiced his concern with not having legends on several of the drawings. He stated the information on the plat map on page 13 of 40 does not match the information provided on pages 12 and 14-16 of the packet. There are different areas and numbers shown. He pointed out the drawings also seem to show the subdivision includes a portion of South Weber Drive which is UDOT property. He questioned if an Environmental Assessment/Review needs to be performed since this site had USTs. He identified this property contain a potential historical site. The brick building in the middle of the property is the site of the remains of South Weber Amusement Hall that was built in 1897. He believes any building more than 100 years old needs to be considered as a potential historical site by the Federal Government and that they should be contacted. He suggested the State of Utah should be informed, especially the Utah Division of State History or the Utah State Historic Preservation Office regarding any potential change/destruction of this site so that any required preservation or documentation can be accomplished.

Commissioner Boatright moved to close the public hearing for Preliminary Plat, Improvement Plans & Rezone (C-H to R-M) for Sophia's Haven Subdivision 3 Lot Plat R-M zoning. 1.41 acres located at 1589 East South Weber Drive. Applicant Rob Edwards. Commissioner Losee seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

***** PUBLIC HEARING CLOSED *****

Commissioner McFadden stated he has a lot of questions for Rob Edwards, owner of the property, who is not in attendance. He asked if there was any communication with the cell tower company to move the fiber optic line. Brandon Jones, City Engineer, discussed the fiber easement and described it goes through the property where a future home would go.

Commissioner McFadden asked about the historical building section. Brandon reported there hasn't been any historical investigation on that.

Commissioner McFadden asked Mr. Edwards if there has been any contact with the cell tower owners as to how to re-locate the fiber optic line because it is currently not in a utility easement on the property.

Rob Edwards, 2704 New Castle Drive, Sandy, Utah, reported they there has been some discussion and they have decided they will be leaving the fiber line where it is and provide an easement.

Commissioner McFadden asked Mr. Edwards if there has been any communication with the State Historic Preservation Officers (SHPO) in regards to the 100 year old building on the site, which may be considered a historical building. Rob reported he will look into that.

Commissioner Losee acknowledged she has concerns. She asked if the property is being used as a storage unit. She asked if this is an allowed use on the property.

Mr. Edwards explained it is not being used as commercial storage.

Jayne recommended Trevor look into it to make sure it isn't going against any city code.

Commissioner Losee questioned the access onto South Weber Drive.

Commissioner Boatright moved to approve the Preliminary Application for Sophia's Haven and recommend the approval of the rezone of the property located at approximately 1589 East South Weber Drive from Commercial (C) to Residential Moderate Density (R-M) to the City Council. Commissioner Davis seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, and McFadden voted aye. Commissioner Losee voted nay. The motion carried 3 to 1.

Commissioner Losee moved to open the public hearing for Rezone (Ordinance 2022-02) for Parcel ID# 130330093 3 acres located on the SE corner of 2100 E & South Weber Drive. This property is currently zoned C-O (a zone that was repealed by Ordinance 19-15 on 9/24/2019) to C-H (the zone that is shown on the General Plan Projected Land Use Map) Applicant: South Weber City. Commissioner McFadden seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

******* PUBLIC HEARING *******

7. Public Hearing & Action on Rezone (Ordinance 2022-02) for Parcel ID# 130330093 3 acres located on the SE corner of 2100 E & South Weber Drive. This property is currently zoned C-O (a zone that was repealed by Ordinance 19-15 on 9/24/2019) to C-H (the zone that is shown on the General Plan Projected Land Use Map) Applicant: South Weber City Trevor Cahoon, Community Service Director, explained in the September 24, 2019 City Council meeting the City Council voted to repeal the C-O Zone from the zoning code. The City has two properties within the City zoned C-O. One of those properties has a development agreement in place which allows the entitlement of those rights of the C-O zone, however the second property (the property subject to this ordinance) needs to be rezoned to come into compliance with current code.

The property owner was notified at the time of the repeal of the C-O zone that the property would need to be rezoned in order to be considered for development. The City is now acting on that need to rezone the property. The City is requesting the zone to be designated as C-H which is in compliance with the General Plan zoning map.

Jayme explained the Ordinance reference is required by LUDMA. Brandon suggested including the legal description to the parcel id.

Commissioner Davis asked if there was any public comment. There was none.

Commissioner McFadden moved to close the public hearing for Rezone (Ordinance 2022-02) for Parcel ID# 130330093 3 acres located on the SE corner of 2100 E & South Weber Drive. This property is currently zoned C-O (a zone that was repealed by Ordinance 19-15 on 9/24/2019) to C-H (the zone that is shown on the General Plan Projected Land Use Map) Applicant: South Weber City. Commissioner Losee seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

******* PUBLIC HEARING CLOSED *******

Commissioner Losee moved to approve Rezone (Ordinance 2022-02) for Parcel ID# 130330093 3 acres located on the SE corner of 2100 E & South Weber Drive. This property is currently zoned C-O (a zone that was repealed by Ordinance 19-15 on 9/24/2019) to C-H (the zone that is shown on the General Plan Projected Land Use Map) Applicant: South Weber City with the condition to include the legal description to the ordinance. Commissioner McFadden seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, McFadden, and Walton voted aye. The motion carried.

Commissioner Boatright moved to open the public hearing for (Ordinance 2022-04) amending South Weber City Code Chapter 15 Landscape Regulations. Commissioner Losee seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

***** PUBLIC HEARING *****

8. Public Hearing & Action on (Ordinance 2022-04) amending South Weber City Code Chapter 15 Landscape Regulations.

Trevor Cahoon, Community Service Director, reported due to current impacts of the prolonged drought across the state, it has become necessary to reduce water usage to preserve this resource for future generations. A particular concern for water usage is the impact that landscape maintenance has on the supply. Excessive watering for non-native and drought intolerant vegetation brings a need for change.

Weber Basin as well as other water districts throughout the state are implementing incentive programs to help users convert current vegetation to a more water-wise solution, and are encouraging municipalities to update ordinances to promote, encourage, or require water-wise landscaping on new construction. Weber Basin has provided a draft ordinance for cities to consider. Cities must adopt a water-wise landscape ordinance in order to qualify for incentive programs.

At the October Planning Commission, the commission heard a presentation from Weber Basin Water Conservancy District about the programs that are available and discussed what changes they would implement in a draft ordinance. City Staff has reviewed the ordinance and made some revisions.

Trevor reported there are currently three legislative actions being considered by the Utah Legislature concerning landscaping. He will be requesting a plant list from Weber Basin to include as an exhibit.

Commissioner Davis asked if there was any public comment.

Paul Sturm, 2527 Deer Run Drive, acknowledged there are at least three legislative actions now being considered in this current session of Utah Legislature concerning landscaping. They are: HB095, HB121, and SB110. Since there are potential changes to State law, he believes it would be prudent for South Weber City to table this item and its discussions at this time.

Commissioner Losee moved to close the public hearing for (Ordinance 2202-04) amending South Weber City Code Chapter 15 Landscape Regulations. Commissioner Boatright seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

***** PUBLIC HEARING CLOSED *****

Commissioner Losee acknowledged this ordinance is only for new development. She suggested the city present a new homeowner information on what is considered exceptional design. Brandon recommended moving the ordinance forward and review what qualifies as exceptional design at a later date. Commissioner Davis asked about enforcement. Trevor replied the enforcement is done when the property is being developed. The city code enforcer will review any violations.

Commissioner McFadden moved to recommend approval (Ordinance 2022-04) amending South Weber City Code Chapter 15 Landscape Regulations with the amendments from the Planning Commission discussion. Commissioner Boatright seconded the motion. A roll call vote was taken. Commissioners Boatright, Davis, Losee, and McFadden voted aye. The motion carried.

Commissioner Boatright was excused at 7:21 p.m.

Commissioner Losee moved to open the public hearing for (Ordinance 2022-03) amending South Weber City Code Section 10- 8-5 Number of Parking Spaces. Commissioner McFadden seconded the motion. A roll call vote was taken. Commissioners Davis, Losee, and McFadden voted aye. The motion carried.

***** PUBLIC HEARING *****

9. Public Hearing & Action on (Ordinance 2022-03) amending South Weber City Code Section 10- 8-5 Number of Parking Spaces.

After review of the Private Right-of-way ordinance, the City Council has asked for a review of the parking space requirements that are currently part of the City Code feeling that there were inadequacies listed. Staff has reviewed the ordinance and has presented changes that would allow our ordinance to answer most uses that could be developed within the City. The list that was modified used the International Building Code as reference. Below is a comparison of the two tables.

Current Code

1. Residential; all dwelling types	2 parking spaces per primary dwelling unit, plus 1 additional space per 3 units for multi-unit dwellings, and 1 additional space per IADU.
2. Golf courses, tennis courts and similar recreation areas	Determined by specific review by Planning Commission
3. Hotel, motel, and lodge	1 space per each 1 rental units, plus 1 space per 200 square feet of assembly, banquet, and restaurant area
4. Intensive retail commercial shops selling directly to the public	3.5 spaces for each 1,000 square feet of floor space
5. Less intensive commercial business, such as furniture, appliance, and lumber sales	1.5 spaces for each 1,000 square feet of floor area
6. Offices and personal services, including medical and dental clinics	2 spaces for each 1,000 square feet of floor area, plus 1 space for each employee per shift
7. Restaurants, bars, dining rooms	1 space for every 4 seats
8. Churches, auditoriums, assembly halls, theaters	1 space for every 5 seats
9. Bowling alleys, skating rinks	2 spaces for every 1,000 square feet of floor area
10. Industrial and wholesale establishments; industrial park	1 space for every 2 employees on the largest shift
11. Hospitals, schools, civic buildings	Determined by specific review by Planning
	Commission
12. Shopping centers, complexes, or rentable commercial space	At least 3.5 spaces per 1,000 square feet of floor

Updated Table

USE	NUMBER OF PARKING SPACES REQUIRED
Assembly	1 per 300 gross square feet
Dwelling Unit	2 per dwelling unit
Multi-Family Dwelling Visitor	1 per 3 dwelling units
Health Club	1 per 100 gross square feet
Hotel/Motel	1 per sleeping unit plus 1 per 500 square feet of common area
Industry	1 per 500 gross square feet
Medical Office	1 per 200 gross square feet
Office	1 per 300 gross square feet
Public Building/Space	Determined by specific review of the Planning Commission
Recreation; Commercial	1 per 500 gross square feet plus 5 per individual outdoor recreation space
Restaurant	1 per 100 gross square feet
Retail	1 per 200 gross square feet
School	1 per 3.5 seats in assembly rooms plus 1 per faculty member
Warehouse	1 per 500 gross square feet

Commissioner Davis asked if there was any public comment.

Paul Sturm, 2527 Deer Run Drive, pointed out parking spaces have been a concern for several years. He opined it is difficult to compare what is being proposed between current city code, and what is being proposed as the information is being presented. This has recently become more of an issue within the city when considering resident and visitor parking at multi-family dwellings, IADU's, Airbnb's, etc. He stated a direct one to one comparison of current code to proposed code would be a benefit to South Weber City citizens to see what changes are really being made. It is difficult to compare any increases or decreases in the number of "parking spaces" when the denominators, i.e., dwelling unit, square feet, seats, etc. in the calculation are not comparable in some cases. He opined the International Build Code used may be too high of a standard for the size of South Weber City and residential makeup with large families. He suggested codifying this number at 2.5 parking spaces per dwelling unit.

Commissioner Losee moved to continue the public hearing for (Ordinance 2022-03) amending South Weber City Code Section 10- 8-5 Number of Parking Spaces. Commissioner McFadden seconded the motion. A roll call vote was taken. Commissioners Davis, Losee, and McFadden voted aye. The motion carried.

******* PUBLIC HEARING CLOSED *******

Commissioner McFadden feels this is a great starting point. Commissioner Losee suggested accounting for employee parking. Brandon voiced during the site plan review it is difficult to know the exact number of parking spaces needed because parking does depend on the use. Commissioner McFadden suggested being respectful of the data of the International Build Code. Commissioner Davis recommended using gross square feet in the calculation of parking spaces. Trevor discussed exploring the concept of shared parking spaces. Commissioner Davis recommended possibly shared parking spaces for a commercial option, but not necessarily residential and commercial mixed.

Commissioner Losee moved to continue (Ordinance 2022-03) amending South Weber City Code Section 10- 8-5 Number of Parking Spaces. Commissioner Davis seconded the motion. A roll call vote was taken. Commissioners Davis, Losee, and McFadden voted aye. The motion carried.

10. Commissioner Training provided by Jayme Blakesley

City Attorney, Jayme Blakesley, reviewed South Weber City Open & Public Meetings Act. Public bodies need to conduct their meetings in an open meeting. A public meeting requires the following:

- 24 hours' notice: agenda; date; time & place (exception: emergencies)
- Agenda: "reasonable specificity of topics"
- Topic raised by the public – discretion of chair
- Notice: post at principal office; Utah Public Notice Website; and to newspaper or local media correspondent. Other electronic means encouraged.
- Annual notice of scheduled meetings

Electronic Meetings are allowed

- Prior formal authorization of the City is required

- Public notice required
- Anchor location – offices
- Facilities so all can attend, monitor, participate

- Minutes and Recording are required of all meetings.
Written minutes include:
 - Date, Time and Place
 - Names of members present and absent
 - The “substance” of all matters proposed, discussed or decided
 - Record (by person) of votes – Roll Call vote for Ordinances, Resolutions, and matters where liability is incurred.
 - Name of each person providing comments & the substance of comments received
 - Any other information from meeting that a member requests be included
 - Pending minutes – reasonable time
 - Approved minutes – 3 business days after approval → official record
 - Permanently retained

Recording:

- **“COMPLETE UNEDITED RECORD”** of all open portions – from beginning to end
- Properly labeled: date, time & place
- Available within 3 business days of meeting
- **PERMANENTLY RETAINED**

Closed Meeting:

- Quorum + 2/3 vote
- Must meet subject matter requirements §205
- Publicly announced and record: the reason for closed meeting; location; and each member’s vote for or against the closed meeting

Closed Meeting Purpose:

- Discuss individual’s character, professional competence, or physical or mental health
- Strategy session – litigation
- Strategy session – real property (value, best possible terms); Sale = prior notice; terms disclosed before final
- Deployment security measures
- Investigative proceedings – criminal misconduct
- Deliberations; procurement evaluation committee; protest; appeals
- Procurement: trade secrets; misc.

Prohibitions:

- Interview – elected position; discuss filling interim or temporary vacancy

Closed Meeting Record:

- Recording required: beginning to end; date, time, place; names present and absent & names of others who attend
- Minute allowed (if taken, details above)
- Permanently retained
Exceptions: Recording/minutes not required: character, competence, health; security measures. Presiding officer - affidavit

Emergency Meeting:

- “Emergency” is not defined

- Attempt to notify all members
- Best notice practicable
- Majority members approve of the meeting

Chance Social Gathering:

- Act does not apply
- Don't conduct any City business

Criminal Penalty Violation:

- Class B misdemeanor: 6 months jail; \$1,000 fine

Electronic Messaging:

- Text messages? Emails?
- Purposes of act
- Not restricted when meeting not convened
- Interplay with the Government Records Access and Management Act

RULES OF ORDER

Basic Parliamentary Procedure:

- 1) The meeting is governed by the agenda and the agenda constitutes the agreed-upon roadmap for the meeting.
- 2) Any matter that requires a decision shall be brought by motion.
- 3) One question at a time and one speaker at a time.
- 4) The chairperson may use General Consent (aka Unanimous Consent) with all motions except those where the votes are used for purposes of the meeting minutes and require a roll call of the council.
- 5) There are only three basic forms of motions allowed: initial motions, motions to amend, and substitute motions.
- 6) There should be no more than three motions on the floor at the same time.
- 7) The debate/discussion can continue as long as members wish to discuss an item, subject to the chairperson determining it is time to move on and take action by using General Consent to limit debate or by a proper motion by a council member to limit the debate
- 8) Three yes votes are required to pass any item, with limited exceptions (e.g., 2/3 for closed session).
- 9) A motion to reconsider any item requires a majority vote to pass (NOTE: there are very specific rules for a motion to reconsider).
- 10) The chairperson and council members shall adhere to the bylaws and code of conduct.

Types of Motions:

- Main motion – Introduce a new item
- Subsidiary Motion (e.g., motions to amend or substitute motions) – Change or affect how to handle a main motion (vote on this before main motion)
- Incidental Motion – Questions procedure of other motions (must consider before the main motion)
- Motion to Table – Kills a motion
- Motion to Continue/Postpone – Delays a vote (can reopen debate on the main motion).

Every Motion has (at least) six steps:

- 1) **Motion** – A member rises or raises a hand to signal the chairperson
- 2) **Second** – Another member seconds the motion
- 3) **Restate motion** – the chairperson restates the motion

- 4) **Debate/Discussion** – the members debate/discuss the motion
- 5) **Vote** – the chairperson restates the motion, and then first asks for affirmative votes, and then negative votes
- 6) **Announce the vote** – The chairperson announces the result of the vote and any instructions

How the vote is taken:

- **Role call vote:**
 - Ordinances;
 - Resolutions; or
 - Any action which would create a liability against the City
- **Simple “yes” or “no”:**
 - All other matters

Point of Things:

- **Point of order** – Draws attention to breach of rules, improper procedure, etc.
- **Point of information** – A member may need to bring up an additional point or additional information so that the other members can make fully informed votes
- **Point of inquiry** – A member may ask for clarification to make better voting decisions
- **Point of personal privilege** – A member may address the physical comfort of the setting, such as temperature or noise

Public Hearings:

- Residents of the City have a right to be heard.
- Members of the public body are not required to respond to questions or comments.
- Public hearings are opened by motion and vote.
- On land use decisions, the applicant has a right to respond to public comment with information and argument.
- Public comment may be limited to a reasonable amount of time (e.g., a few minutes per person/topic)
- Public hearings are closed by motion and vote
- No member of the public shall be heard until recognized by the chairperson.
- Speakers must state their name and address for the record.
- Any resident requesting to speak shall limit their comments to matters of fact regarding the issue of concern.
- Personal attacks made publicly toward any person, official, or employee are not allowed and are grounds for removal.

LAND USE TRAINING

Objectives:

- Understand the legal framework for making land use decisions in the City
- Identify the powers and duties of the City Council, Planning Commission, and Staff for making land use decisions
- Know how to avoid illegal, arbitrary, or capricious decisions by establishing a thorough record for each and every land use decision
- Consider the best framework for making, applying, and enforcing land use decisions

State V. Hutchinson, 624 P.2d 1116 (1980)

“... When the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare. ... And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States.”

Bradley v. Payson City Corp., 70 P.2d 47 (2003)

- Municipal land use decisions should be upheld unless . . . arbitrary and capricious or illegal.
- The determination of whether a particular land use decision is arbitrary and capricious has traditionally depended on whether the decision involves the exercise of legislative, administrative, or quasi-judicial powers.
- When a municipality makes a land use decision as a function of its **legislative** powers, we have held that such a decision is not arbitrary and capricious so long as the grounds for the decision are “**reasonably debatable.**”
- When a land use decision is made as an exercise of **administrative or quasi-judicial** powers, however, we have held that such decisions are not arbitrary and capricious if they are supported by “**substantial evidence.**”

LAND USE REGULATION v. LAND USE DECISION

Utah Code Ann. § 10-9a-103 (32)

- (32) "Land use regulation":
 - (a) Means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;
 - (b) includes the adoption or amendment of a zoning map or the text of the zoning code; and
 - (c) Does not include:
 - (i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
 - (ii) A temporary revision to an engineering specification that does not materially:
 - (A) Increase a land use applicant's cost of development compared to the existing specification; or
 - (B) Impact a land use applicant's use of land.

LAND USE REGULATION v. LAND USE DECISION

Utah Code Ann. § 10-9a-103 (30)

- (30) "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:
 - (a) A land use permit;
 - (b) A land use application; or
 - (c) The enforcement of a land use regulation, land use permit, or development agreement.

REGULATION-Decision / appeal Standards:
Utah Code Ann. §10-9a-801

(3) A court shall:

(i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and

(ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c)

(i) A decision is arbitrary and capricious if the decision is not supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

State law – Land Use Development and Management Act (“LUDMA”)

- The City is a political subdivision of the State of Utah
- All land use decisions in the City must comply with LUDMA

What does LUDMA do?

Authorizes:

- The City may adopt its own land use standards so long as they are consistent with federal and state law

Mandates:

- Creation of a Planning Commission
- Establishment of a Land Use & Appeal Authorities
- Adoption of a General Plan & a process for considering land use applications

LUDMA general themes:

- Respect for private property rights
- Cities may regulate private property
- Once written and duly established, land use regulations are binding
- Land use ordinances must be plainly written to be enforceable
- Process matters
- Tie goes to the applicant/property owner

LUDMA Roles & Responsibilities:

Legislative Body-----Land Use Authority-----Appeal Authority

Legislative Body (City Council)

- Only a Legislative Body may enact a land use regulation
- Shall adopt a land use regulation to create or amend a zoning district and designate general uses allowed in each zoning district
- 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
- Shall consider (but may adopt, reject, or revise) each proposed land use regulation that the planning commission recommends

- 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.

Land use Authority (City Council, Planning Commission, or Staff)

- Shall apply the plain language of land use regulations
- In the absence of a “plain” restriction, shall interpret and apply the land use regulation to favor the land use application.
- Shall approve 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.

Appeal authority

- Hears and decides requests for variances and appeals from decisions applying the land use ordinances/fees
- 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
- May be an individual or a multi-person board, body, or panel

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

LIMITATIONS ON LAND USE DECISIONS/REGUALTIONS

- 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

Land Use ACTIONS

APPEAL:

- The City establishes the standard of review (“de novo” or “on the record”)
- 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

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

JUDICIAL REVIEW:

- A party may not appeal for judicial review unless it has exhausted all administrative remedies
- Petition for review may come from a land use applicant or an adversely affected party

Validity of the ordinance

- 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

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

Judicial review OF LAND USE DECISIONS: arbitrary & capricious

- A decision is arbitrary and capricious if it is not supported by substantial evidence found in the record of the proceeding

Best practices

- Understand the nature of the decision (administrative/legislative/quasi-judicial)
- Know your role and responsibility (legislative body/land use authority/appeal authority)
- Follow procedural requirements exactly
- Document your decision in writing
- State the reasons for your choices
- For legislative decisions, consider public hearings as opportunities to learn
- For administrative decisions, know the law and apply it exactly
- Delegate whenever reasonable
- If you are delegating authority, give clear directions

Practical pitfalls

- “that’s outside the scope of our review tonight”
- Site visits
- Hi, I’m the developer of the site that’s on the agenda tomorrow night. Can we talk for second?
- I get that this meets the ordinance standard, but I really prefer...
- “I’ve had so many people from this neighborhood call and talk to me about this”
- Text communication during a meeting
- Pre-meeting commitments

11. Planning Commissioner Comments

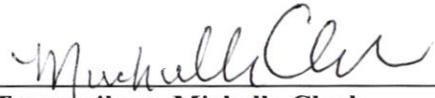
Commissioner Losee: requested removing unbuildable area from density calculations. Mayor Westbrook reported the code committee is currently working on this.

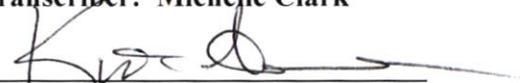
Commissioner Davis: thanked everyone for their hard work on the agenda. He thanked Commissioner Boatright and Walton for their service as chair and vice chair.

Commissioner McFadden: asked if options can be reviewed for an historical area in the city that has more architectural restrictions. A way to help create historical significance is by putting into the code architectural requirements. Jayme reviewed ways in which code amendments can take place and who can initiate that.

ADJOURNED: Commissioner Losee moved to adjourn the Planning Commission meeting at 8:56 p.m. Commissioner McFadden seconded the motion. Commissioners Davis, Losee, and McFadden voted aye. The motion carried.

APPROVED:   Date
Chairperson: Jeremy Davis


Transcriber: Michelle Clark


Attest: Development Coordinator, Kimberli Guill

**Comments to South Weber City Planning Commission
for 10Feb22 Meeting
by Paul A. Sturm**

**Public Comments General Comment on Agenda Items #7 (Pages 20-21 of 40) and
Agenda Item #9 - (Pages 38-40 of 40)**

I have a question regarding the process/procedure being used for Agenda Items #7 and # 9 in this packet. This is the first time, possibly in a long time, where we have had two potential City Ordinances presented to/developed by the Planning Commission in the same meeting. Why is the Planning Commission now preparing a complete City Ordinance document with all of the "Whereas" statements and signature blocks for the City Council?..It thus appears that what the Planning Commission is proposing for a City Ordinance is a foregone conclusion, and that the City Council will approve it without changes. Is this the case, or has this process/procedure been changed? Has the City Council been consulted about this process, if this is a protocol change?

End of General Public Comments

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Comments For Public Hearing - Agenda Item #6 -Pages 8 through 17 of 40

6. Public Hearing & Action on Preliminary Plat, Improvement Plans & Rezone (C-H to R-M) for Sophia's Haven Subdivision 3 Lot Plat R-M zoning. 1.41 acres located at approx. 1550 E/South Weber Drive. Applicant Rob Edwards.

- 1) Several of the drawings in this presentation do not have "Legends" which make them difficult to fully interpret. I realize that these are just preliminary drawings, but a legend would assist in their assessment by the Planning Commission and the Public.
- 2) The information on the Plat Map on Page 13 of 40 does not match the information provided on Pages 12 and 14-16 of the packet. There are different areas and numbers shown.
- 3) These drawings also seem to show that the Sophia's Haven Subdivision's property includes a portion of South Weber Drive. This is UDOT property.
- 4) Does an Environmental Assessment/Review need to be performed since this site had USTs.
- 5) And probably of greater importance is that this property contains a potential Historic Site. The brick building in the middle of the property is the site of the remains of South Weber Amusement Hall that was built in 1897. (For reference, please see Pages 327 thru 333 of the book "SOUTH WEBER" 'The Autobiography of One Utah Community' by Lee D. Bell, published in 1990, and which was distributed/sold by South Weber City.)
It is also believed that any building more than 100 years old needs to be considered as a potential historical site by the Federal Government and that they should be contacted. The State of Utah should also be informed, especially the Utah Division of State History or the Utah State Historic Preservation Office regarding any potential change/destruction of this site so that any required preservation or documentation can be accomplished.

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Comments For Public Hearing - Agenda Item #8 -Pages 22-35 of 40

- 8. Public Hearing & Action on amending South Weber City Code Chapter 15 Landscape Regulations.
 - 1) There are at least three legislative actions now being considered in this current session of Utah Legislature concerning landscaping. The actions that I know of are: HB095, HB121, and SB110.
 - 2) Since there are potential changes to State law, I believe that it would be prudent for SWC to table this item and its discussions at this time. SWC needs to see if there are any potential impacts or changes required, to what is currently being proposed, as a result of any over-riding or pending State law changes.

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Comments For Public Hearing - Agenda Item #9 -Pages 36-40 of 40

- 9. Public Hearing & Action on (Ordinance 2022-03) amending South Weber City Code Section 10-8-5 Number of Parking Spaces.
 - 1) Parking spaces have been a concern for several years. It was difficult to compare what changes are being proposed between current City Code, and what is being proposed as the information is being presented.
 - a) This has recently become more of an issue within the City when considering resident and visitor parking at Multi-Family dwellings, IADU's, Airbnb's, etc., since these categories have become more common in SWC.
 - b) A direct one-to-one comparison of "From (current code)-To (proposed code" would be a great benefit to SWC Citizens to see what changes are really being made. It is difficult to compare any increases or decreases in the number of "Parking Spaces" when the denominators, i.e., dwelling unit, square feet, seats, etc., in the calculation are not comparable in some cases.
 - 2) The International Build Code used may be too high of a standard for a City of SWC's size and residential makeup with large families. Having discussed the Lofts and its parking requirement of two and one half parking spaces per dwelling unit, I was informed that this was a negotiated number. I suggest that we codify this number at 2.5 parking spaces per dwelling unit for these types of dwellings because of the past research, discussions, and decisions made and agreed upon by SWC!

