

**MINUTES OF THE JOINT MEETING OF THE
CITY COUNCIL AND PLANNING COMMISSION
OF PLEASANT VIEW CITY, UTAH**

September 15, 2020

The public meeting was held through ZOOM with an anchor location at the city office at 520 West Elberta Dr. in Pleasant View, Utah, commencing at 6:01 P.M.

MAYOR:

Leonard Call

Attendance method:

(via Zoom and office)

COUNCILMEMBERS:

Ann Arrington

(via Zoom)

Kevin Bailey-Mayor Pro-tem

(via Zoom and office)

Steve Gibson

(absent)

David Marriott

(via Zoom)

Sara Urry

(via Zoom)

PLANNING COMMISSION MEMBERS:

Andy Nef

(via Zoom)

Julie Farr

(via Zoom)

Alicia Lund

(via Zoom)

James Cummings

(via Zoom)

Keith Preece

(via Zoom)

Jeff Bolingbroke

(via Zoom)

Ashley Walker

(via Zoom)

Dean Stokes

(via Zoom)

STAFF:

Bill Cobabe

(via Zoom and office)

Laurie Hellstrom

(via Zoom and office)

Jill Hunt

(via Zoom)

VISITORS:

Jordon Cullimore

(via Zoom)

Marcie Jones

(via Zoom)

Richard Plehn

(via Zoom)

Read the Electronic Meeting Determination for conducting a meeting w/o an anchor location: Leonard Call

Declaration of Conflicts of Interest:

None were given.

Business:

Introductions. Introductions were made from all attendees.

Jordon Cullimore, Utah State Ombudsman: the common legal issues in land use that their office addresses are legislative/administrative decisions, proper role of the planning commission, subdivisions, vested rights, exactions, public clamor, nonconforming uses, conditional use permits, illegal lots, impact fees, variances, short-term rentals, annexations, roads & trails, and group homes. Mayor Call: I have two questions. 1) Setting a precedent: If you do this you have to do it for everyone or is it on a case by case bases? 2) What is the single most mis-step cities make that you are dealing with? Jordon Cullimore: on precedent the short answer is no. You do not set a precedence by granting a rezone to one person and then not the other. The long answer there is a legal principle called equal protection/uniform operation of law that stands for the principle that you need to treat everyone fairly and equitable and should not make arbitrary decisions. And make decisions that are based well-reasoned opinions and good evidence. If your ordinance requires something then you have to require that but you can build in discretion and exceptions. Keith Preece: what about the grandfather clause? Jordon Cullimore: if the rules change. No one has the right to continuity of zoning right. You comply with the rules at time of application. Some of the biggest missteps that we have seen right now is related to vested rights. Utah is an early vesting state meaning that someone comes in with an application and they pay their fee then they have a right to have their application considered under the rules that are in existence at they time they apply. Mayor Call: is there a sunset to that vested right or is it something we put in our code? Jordon Cullimore: the state law says that they need to pursue it with reasonable diligence and if they do not then they lose their vested right. And it can say it in the local ordinance on when it expires. CM Urry: are there guidelines to what is reasonable? Jordon Cullimore: I am not aware of any. Bill Cobabe: does vesting apply to state code? Jordon Cullimore: yes. It applies to state law. But if it is related to health and safety there are situations in which you can retroactively apply certain provisions and show definitively that it related to health and safety then probably. Keith Preece: how is property valued with eminent domain? Jordon Cullimore: it falls under what is called the project influence rule. You cannot consider the project being considered for the highest and best use of the property. The entity negotiates with property owners to the extend possible and come to an agreement about what is fair and if not they get an additional appraisal that the condemning agency has to pay for and property owner gets to chose the appraiser and if they can't come to an agreement the agency files a condemnation lawsuit. Julie Farr: I have a question on trails and open space. The walking trail under the power lines, the property was sold, and the new owner fenced it off. Same thing along the canal trail. At what point are these trails and areas do the public have a right to. Jordon Cullimore: is all this property privately owned? Julie Farr: it is privately owned. Jordon Cullimore: so, we are talking about easement rights and there are prescriptive rights. There is a prescriptive easement right when you have a situation of two private property owners and one private property owner starts using the other private property owner's as an access right for 20 or more years and the underlying property owner doesn't stop me and I don't have their permission to do so then I can obtain a prescriptive right to continue to do that right even if the property is sold. That is called tracking right and you can track the years over the 20-year period as long as you have the evidence to show that permission was never given by a property owner or a subsequent owner. There

was further discussion on easement rights. Mayor Call: from this discussion it shows how complicated things can be and it is not always an easy answer. That is why Jordon exists. Jordon Cullimore: If you have any questions, our website is propertyrights.utah.gov. We are happy to talk. CM Urry: one more question. Variances. They basically allow somebody to not comply to the law. Are there parameters to allow variances and should there be? Jordon Cullimore: you can build exceptions and discretion into your code and they can be appealed to the appeal authority. We do not consider financial hardships but it is about not being able to enjoy some property right that everyone else in the area enjoys. Mayor Call: thanks everybody.

The next meeting will be October 20, 2020.

Adjournment: 7:23 P.M.