



**BLUFFDALE CITY PLANNING COMMISSION
MEETING**

June 15, 2016

Notice is hereby given that the Bluffdale City Planning Commission will hold a public meeting **Wednesday, June 15, 2016**, at the Bluffdale City Fire Station, 14350 South 2200 West, Bluffdale, Utah. Notice is further given that access to this meeting by Planning Commissioners may be by electronic means by telephonic conference call. The Agenda will be as follows. Please note that all times listed on the Agenda are provided as a courtesy and are approximate and subject to change.

PLANNING COMMISSION BUSINESS MEETING 7:00 PM

1. Invocation and Pledge.*
2. Public comment (for non-public hearing items).
3. Approval of minutes from May 18, 2016 meeting of the Planning Commission.
4. **CONSIDERATION AND VOTE** on vacation of a portion of a public street between the section line and the east right of way line of 1690 West Street at approximately 14353 South 1690 West, Debbie Holt, applicant (continued from January 6, 2016 mtg.).
5. **PUBLIC HEARING, CONSIDERATION AND VOTE**, on amending the General Plan from Very Low Density to Low Density Residential and a Zone Map Amendment from R-1-43 to R-1-10 at approximately 14780 South 1690 West, Dale Bennett & Garth Johnson, applicants.
6. Planning Commission Land Use Training with Brent Bateman, Utah State Private Property Rights Ombudsman.
7. City Council Report.
8. Planning Commission business (planning session for upcoming items, follow up, etc.).
9. Adjournment.

Dated: June 10, 2016

Grant Crowell, AICP
City Planner/Economic Development Director

In compliance with the American Disabilities Act, individuals needing assistance or other services or accommodation for this meeting should contact Bluffdale City at least 24 hours in advance of this meeting at (801)254-2200. TTY 7-1-1.

*Contact Gai Herbert if you desire to give the Invocation.

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Present:

Members: Brad Peterson, Chair
Johnny Loumis, Jr.
Kory Luker (arrived at 7:05 p.m.)
Nick Berry

Others: Grant Crowell, City Planner/Economic Development Director
Jennifer Robison, Senior Planner
Paul Douglass, Associate Planner
Gai Herbert, Community Development Assistant

Excused: Connie Pavlakis
Von Brockbank

BUSINESS MEETING

Chair Brad Peterson called the meeting to order at 7:00 p.m.

1. Invocation and Pledge.

Erlene Johnson offered the invocation. The Pledge of Allegiance was recited.

2. Public Comment.

There were no public comments.

3. Approval of Minutes from the May 18, 2016, Meeting of the Planning Commission.

Brad Peterson moved to approve the minutes from the May 18, 2016, Planning Commission Meeting, as printed. Johnny Loumis, Jr., seconded the motion. Vote on motion: Johnny Loumis, Jr.-Aye; Nick Berry-Aye; Brad Peterson-Aye. The motion passed unanimously. Kory Luker was not present for the vote.

4. CONSIDERATION AND VOTE on Vacation of a Portion of a Public Street Between the Section Line and the East Right of Way Line of 1690 West Street at Approximately 14353 South 1690 West, Debbie Holt, Applicant. (Continued from January 6, 2016, Meeting).

Chair Peterson noted that a public hearing took place on the above agenda at the January 6, 2016, Planning Commission Meeting. The item was tabled to give the applicant additional time to work with the City to determine the history of the subject property. The meeting packet included letters from the applicant's attorney and City Attorney, Vaughn Pickell.

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In response to Commissioner Berry's question regarding the role of the Planning Commission regarding this issue, Chair Peterson stated that the Planning Commission can send modifications to the request as part of their recommendation to the City Council, who will make the final decision on the matter. Commissioner Berry had no changes to suggest.

Commissioner Loumis indicated that his only concern from the previous meeting was that the applicant and the City's Planning Department would gather information pertaining to who paid the property taxes on the property. Chair Peterson stated that the payment of property taxes in the past would not have much to do with the vacation of the property now. Commissioner Loumis noted, however, that knowing who has paid the property taxes has a lot to do with the right-of-way. Thus, the question remains as to whether the City would have to buy the property back if they vacate the property and desire to widen 1690 West in the future. Commissioner Luker asked if the City could vacate up to 1690 West and not to the middle of 1700 West.

Associate Planner, Paul Douglass, stated that the City does not have any property tax information on the subject property. He had studied County maps to determine if the County has a different record of parcel lines. The County shows the right-of-way; however, it has not been possible to determine who has been paying the taxes on the property. In response to a question raised, Mr. Douglass clarified that the parcel line on the County map goes through the applicant's home. In response to Chair Peterson's question regarding a statement in the letter from the applicant's attorney that a marker had been moved, Mr. Douglass stated that the attorney presented staff with information from the applicant's deed that contained specific verbiage. The City Attorney also conducted research and found additional information showing that it is not to 1690 West. Chair Peterson observed that ownership of the property continues to be unknown. Mr. Douglass stated that other deeds show differing information.

Commissioner Loumis noted that at the January meeting he also asked the applicant to find information regarding the existence of title insurance. City Planner/Economic Director, Grant Crowell, stated that the City Attorney recommended shifting the discussion from ownership to whether there is reason to vacate a portion or retain beyond the sidewalk. It was important to determine what the public use is because regardless of whether the City owns the property, if the City Council adopts an ordinance to vacate it, revising the legal description will determine whether the City has an interest in the parcel. The purpose of tonight's discussion was not to determine survey accuracy and title. Commissioner Loumis noted that the street was recently redone and, therefore, he believed the City would have no need for the property.

Chair Peterson inquired about the 20-foot setback. Mr. Crowell stated that in the event a utility or other project is needed, it is proactive to provide room for easements. If the Commission believes a 20-foot setback is too much, they can recommend a reduction. Chair Peterson noted that the applicant's attorney referenced the notion of setbacks multiple times in his letter, so it was apparent that he understands them. Commissioner Berry wanted to see a positive recommendation to vacate the property but maintain the easement.

Perceiving an inconsistency in the verbiage of the recommendations in the staff report, Commissioner Luker asked if they need to be modified. Chair Peterson asked what a standard

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setback is for an easement. Mr. Douglass responded that side setbacks are 10 feet for utility easements. Mr. Crowell added that the front setback is 20 to 30 feet, depending on the zoning. However, the public utility easement in the front yard is typically 10 feet, including the sidewalk. Mr. Crowell explained that usually the back of the sidewalk is the edge of the right-of-way. In response to a question raised by Chair Peterson, Mr. Douglass reported that the distance from the curb to the front of the applicant's house is approximately 30 feet.

Brad Peterson moved to forward a positive recommendation to the City Council for the vacation of a portion of 1690 West Street located approximately at 14353 South 1690 West, Application 2015-62, subject to the following:

Conditions:

1. **That the vacation request is adjusted to reserve all public right of way within 20 feet from the top back of curb of 1690 West.**

Findings:

1. **That good cause exists for the vacation of a portion of 1690 West Street and that the public interest or any person will not be materially injured by the vacation.**
2. **That this request will clarify the historical residential property line.**
3. **That the proposed changes will not be detrimental to the health, safety, or general welfare of persons or property within the area.**

Nick Berry seconded the motion. Vote on the motion: Nick Berry-Aye; Kory Luker-Aye; Johnny Loumis, Jr.-Aye; Brad Peterson-Aye. The motion passed unanimously.

5. **PUBLIC HEARING, CONSIDERATION, AND VOTE on Amending the General Plan from Very Low Density to Low Density Residential and a Zone Map Amendment from R-1-43 to R-1-10 at Approximately 14780 South 1690 West, Dale Bennett & Garth Johnson, Applicants.**

Mr. Douglass presented the staff report and stated that the applicants were seeking to develop a subdivision. He identified the location of the subject property on a map displayed. The northern portion of the proposed subdivision is already zoned R-1-10 (Low Density Residential); however, the southern portion is zoned R-1-43 (Very Low Density Residential). Accordingly, the applicants were seeking to rezone the southern portion to be consistent with the northern portion. It was noted that there is commercial property to the west along Camp Williams Road.

Mr. Douglass indicated that the subject property is 6.77 acres in size. He gave a detailed description of the subject property using a map of the area. He identified where the public road ends and the canal road begins and stated that there is a gate that precludes entry to the Jordan Canal

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Road. The only access to the subject property is from 1690 West. Mr. Douglass stated that there are currently 20 homes along 1690 West that are accessed from 14600 South.

Although the purview of the application entails only the zone change, Mr. Douglass stated that the applicants provided a concept design of what they plan to do with the property. Chair Peterson clarified that the proposed subdivision will consist of 23 homes. Both the LDR and VLDR parcels are 6.77 acres each. As a result, the subdivision would be just over 13 acres in size if the zone change were granted. Mr. Douglass noted that the 23 new homes would be in addition to the 20 existing homes. He indicated that subdivisions with 30 or more units require two access points.

Chair Peterson opened the public hearing.

Garth Johnson gave his address as 14516 South Camp Williams Road and identified himself as one of the applicants. He gave a history of the property and reported that it was originally owned by another individual. Mr. Johnson's parents eventually purchased property with the Andersons. Each piece was 6.77 acres in size and they split it down the middle. The property is isolated geographically, with a canal to the east, to the west, and most of the north. In addition, there is a hill to the south. The property was originally all one farm. Mr. Johnson stated that because it is one pasture, it does not make sense to zone the southern property for one-acre lots and the northern property for one-quarter acre lots. The Johnson and Anderson families have owned the property together for approximately 40 years. The Johnsons own the south end and the Andersons own the north end. Mr. Johnson stated that the two families want to work together to develop the property.

In response to Chair Peterson's question regarding the improvements that would need to be done with the canal road, Mr. Johnson stated that there is a small section that is narrow. As a result, they will need to meet the City requirements to widen it. In response to Commissioner Loumis' question regarding width, Mr. Johnson deferred to the Project Engineer. Mr. Johnson also confirmed Chair Peterson's statement that they would also have to put a bridge across the canal.

Dale Bennett, from Benchmark Engineering, gave his address as 9130 South State Street, in Sandy, and identified himself as the Project Engineer. He reviewed the topography of the subject property. He reported that he met with Fire Chief, John Roberts, who indicated that the canal road would need to be paved and at least 26 feet wide. With some modifications to the site, Mr. Bennett stated that the Fire Chief's requirements could be met. It was unknown whether the applicants would have to purchase property to meet the Fire Chief's requirements. Mr. Bennett added that the applicants would build a bridge that complies with City requirements. He commented that the subject property is challenging, but the applicants are willing to do what is necessary.

Chair Peterson next referenced the City ordinance that specifies that any development with more than 30 homes requires a second point of ingress and egress. To accommodate the proposed homes, an additional access would have to be provided. In response to Chair Peterson's question regarding how the applicants propose to meet that requirement, Mr. Bennett stated that in speaking with the Fire Chief, it was determined that the road is needed for the subdivision to the south. There is a break-away gate to allow for emergency access.

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In response to Chair Peterson's question about whether break-away gates count as secondary accesses, Mr. Crowell stated that they cannot as the ordinance is currently written. Mr. Bennett stated that access through the Anderson property could be considered an emergency access, however, the details were being worked out. Chair Peterson reiterated that the issue under consideration tonight is the zoning change and not prospective subdivision plats.

Linda Crane gave her address as 14846 South 1690 West and did not believe that one-quarter acre lots are feasible on the subject property because in order to turn off past Johnson's bridge, it would be necessary to go onto neighboring private property. She did not support a change to the zoning. Mr. Bennett was confident that the topography of the subject property would be feasible. Discussion ensued on the bridge. Ms. Crane stated that the canal road is very narrow. In addition, when she purchased her property 13 years ago, she was told that if the property was subdivided, certain requirements would have to be met. Particularly, access would be needed so that the area is not negatively impacted. She commented that the canal road is very narrow and dangerous and there have been incidents where cars have ended up in the canal. She did not believe it was safe to have a subdivision coming off the canal road. She added that there is an emergency access, but she did not think it should be considered a secondary access.

Chair Peterson reiterated that the City only allows up to 30 homes on a single ingress and egress, so the fact that the applicants want to zone the property for one-quarter acre lots does not necessarily mean they will get four homes per acre. Discussion ensued on the requirements that must be met. Ms. Crane added that before the property is rezoned, confirmation is needed on whether the Jordan River Canal Company will allow the canal road to be widened. Chair Peterson reiterated that the applicants' proposed use is merely a concept plan at this point. If the zone change is granted, the applicants will have to meet all of the requirements, which include the safety issues mentioned. Chair Peterson noted that denial of a zone change cannot be based on hypothetical considerations. There was further discussion on the approval processes of zone changes and subdivision proposals.

Ianthius Barlow gave his address as 14789 South 1690 West and reported that he also owns a home at 14658 South 1690 West. Mr. Barlow did not believe the change was feasible. He stated that the Canal Company owns from the center of the canal out 50 feet. The Canal Company would need to be contacted regarding the widening of the canal road. Mr. Barlow proposed that the applicants find an alternative off of Redwood Road through Anderwood Lane. He was not opposed to the growth but believed there should be a solution that is suited for everyone. He did not think it would be necessary to come down 1690 West because it is already heavily traveled. When Commissioner Berry sought to confirm that Mr. Barlow was not opposed to the zone change to R-1-10 if the applicants can come up with a better access plan, Mr. Barlow stated that he would prefer one-third acre lots instead of one-quarter acre lots.

Chris Nielsen gave his address as 14648 South 1690 West and indicated that he is on the west side of the road. Mr. Nielsen was not opposed to development but with the addition of 23 more homes to the existing 20 homes in the area, he concurred with Mr. Barlow that making 1690 West the access point would be a poor decision. He did not object to changing the zone, but the proposed use needs a more suitable ingress and egress. In addition, he agreed that the main access point should

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come from Redwood Road. He added that the topography of 1690 West already creates safety concerns and adding more traffic would only exacerbate the situation.

Shawn Anderson gave his address as 9668 Oquirrh View Drive, in Eagle Mountain and stated that his mother owns a portion of the subject property. Mr. Anderson stated that the primary concern at this point is the zone change. The issues regarding access will be addressed as part of the development process in the future. He wanted to see both parcels zoned R-1-10. Chair Peterson noted that Mr. Anderson's property to the north is already zoned R-1-10 and asked what the future intentions for the northern parcel would be if the southern property remains as R-1-43. Mr. Anderson stated that he had not thought that far ahead and commented that the subdivision layout will not work well without the southern parcel.

Erlene Johnson gave her address as 14516 South Camp Williams Road and identified herself as the owner of the property in question. She recognized the problem of developing homes on the property but her current interest involved rezoning the property to allow for one-quarter acre lots. She stated that the other issues can be resolved later. Ms. Johnson believed the City would progress more with one-quarter acre lots than one-acre lots. She expressed appreciation to the Planning Commission Members for their efforts.

Kristina Robinson gave address as 8763 Sandy Parkway and reported that she owns the lot directly to the south. She and her family moved from Parry Farms three years ago. She was opposed to the property being rezoned to allow for one-quarter acre lots. She and her family moved to Bluffdale for the country feel and she believed the City was selling out by allowing higher density. She was also very concerned about using 1690 West. She noted that the Canal Company owns the canal road and they are very picky about what can be done on it.

Mr. Johnson believed the property should be rezoned R-1-10 because the two parcels are essentially part of the same piece of property as a single pasture with one ditch irrigating one field. To him it did not make sense to zone the north end one-quarter acre and the south end one-acre. He explained that the land is isolated by geographical features such as hills and canals on all sides. He pointed out that the property to the west is zoned Commercial. As a result, he thought it seemed sensible to have tighter zoning next to the Commercial property. He acknowledged that there are issues to be resolved and he and his associates were exploring different access points even though the zoning issue is the only item under consideration. He added that the preliminary plat shows the lots as being one-half acre in size.

Mr. Barlow asked what R-1-10 zoning entails. Chair Peterson explained that the R-1-10 zone increases the density from one to four units per acre. Mr. Barlow stated that if the change is approved he preferred to see one-third or one-half acre lots to preserve the flavor of the community.

Heather Stewart gave her address at 14873 South 1690 West and stated that when her family built their home in 2008, they were told that the zoning specified one-acre lots. One of the reasons they moved to Bluffdale was for the open space. She commented that the road she lives on is very narrow. Chair Peterson stated that the north parcel was probably already zoned R-1-10, contrary to the information Ms. Stewart may have received in 2008.

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Linda Crane's understanding was that the main purpose of tonight's discussion was to change the zoning of the south parcel to match the zoning of the north parcel. Given that fact, she felt that someone should determine why and when the north parcel was zoned R-1-10. Chair Peterson stated that, as suggested by Commissioner Loumis, it was probably part of the Camp Williams Corridor when it was changed many years ago.

Ms. Robinson read a quote from Mayor Timothy where he stated that he and his family had lived in several communities in the Salt Lake Valley, but ultimately moved to Bluffdale 20 years ago because they wanted to live in a rural area and the one-acre zoning met that need. Chair Peterson stated that one-acre zoning still exists in Bluffdale but there have been changes over the years.

Deeann Devey gave her address as 14771 South 1690 West and was speaking on behalf of her father, Joseph D. Jorgensen. Ms. Devey had heard that the bridge over the canal was coming out, which concerned her. Specifically, she was concerned that if the existing bridge is used as an access point, it will create major safety issues. She explained that the road is narrow and right on the canal, which makes it dangerous to drive on. When her father purchased the property, the parcel had the same one-acre zoning and he hoped it would remain that way.

Mr. Johnson stated that he and his associates would like to make the road safer if it ends up being used as an access. They had looked three different accesses. He reiterated that for him the main issue was keeping the same zoning as the property to the north. He noted that the proposed subdivision will have an average lot size of .50-acre. The four options explored for the access to the proposed subdivision were:

1. The canal road;
2. Camp Williams Road;
3. Anderwood Lane; and
4. The canal to the west. Mr. Johnson commented that the narrow canal road needs to be widened, regardless.

Chair Peterson did not understand how a subdivision the size of the one proposed could possibly come off of the canal road unless the developers were able to acquire the property needed widen it substantially. Even after being widened, it would still have only one ingress and egress, which is in violation of the City Ordinance. If the zoning were changed, he would not vote in favor of a subdivision plat, even if the canal road was wider and safer, without viable options for access. Consequently, he did not support changing the zoning without a viable option. Mr. Johnson stated that he explored other options, such as coming over the canal to the west, using Anderwood Lane, and widening the canal road, even if it means obtaining more property.

There were no further public comments. Chair Peterson closed the public hearing.

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Commissioner Berry stated that although this is not a plat issue, he concurred with the concerns expressed by Chair Peterson regarding the seeming lack of viable options for ingress and egress to the subject property. This made him question whether it would be right to change the zoning until the Planning Commission is presented with more viable options.

Chair Peterson understood Mr. Bennett's point that the applicants are not going to do a lot of work to address the outstanding issues unless the zoning is changed. Commissioner Berry added that even if the zoning is changed, the applicants will have a difficult time acquiring the property needed to widen the canal road. Chair Peterson commented that the City Ordinance regarding the 30-lot rule is still an issue to be resolved.

Commissioner Luker did not see the applicants' desire to change the zoning of the south parcel as a problem because they will still have to address all of the other requirements. He believed that if the zoning is not changed, someone in the future will likely ask for much higher density. He believed it was better to resolve the problems now in terms of how to use the property as R-1-10, especially as the Commercial land to the west is developed.

Commissioner Loumis believed strongly in property rights and stated that when the Planning Commission makes a recommendation to the City Council, it should include strong findings. He remarked that developers have to do their due diligence. With regard to the subject property, he did not see that that was done. If the Planning Commission does not plan to attach findings to a positive recommendation, he preferred not to change the zoning.

Chair Peterson noted that whether the Planning Commission's recommendation to the City Council is positive or negative, the City Council can vote as it sees fit since and have the final say. The City Council will address the matter at their next meeting and make a final vote. Chair Peterson agreed with Commissioner Loumis that property owners have rights. He also thought it made sense for the two universal plots to have the same zoning. He observed that the area where the subject property is located is rural. Even if both parcels were zoned R-1-43, there would be 13 homes using the canal road, which would nearly double what currently exists. He considered that to be excessive. He did not expect the Jordan River Canal Company to permit the canal road to be widened. Before he votes to change the zoning, he wanted to see if that option is a possibility. He did not think it would require extensive financial resources to determine. Until that question is answered, he was not willing to support the zone change.

Brad Peterson moved to forward a negative recommendation to the City Council on the Johnson Anderson General Plan and Zoning Map Amendments, Application 2016-23, based on the following:

Finding:

- 1. That there is a lack of information on what possible ingresses and egresses there are, and the developers need to do their due diligence on this issue.**

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Nick Berry seconded the motion. Vote on motion: Nick Berry-Aye; Kory Luker-Nay; Johnny Loumis, Jr.-Aye; Brad Peterson-Aye. The motion passed 3-to-1.

Chair Peterson clarified that the Planning Commission's negative recommendation will be forwarded on to the City Council who will discuss the matter at their next meeting. Chair Peterson expressed appreciation for the public input. Commissioner Loumis urged the applicants to do their due diligence.

6. Planning Commission Land Use Training with Brent Bateman, Utah State Private Property Rights Ombudsman.

City Planner/Economic Development Director, Grant Crowell, introduced Utah State Private Property Rights Ombudsman, Brent Bateman, who provided the Planning Commission with training regarding private property rights. His job is to help citizens and government leaders understand property rights and help avert as many lawsuits as possible. Mr. Bateman reported that he is an attorney and deals with land use law extensively within his law practice. He commented that Bluffdale City has one of the best City Attorneys for land use law in the State. In addition, the City has an excellent staff. Mr. Bateman was very impressed with the Planning Commissioners as they dealt with the issues on the agenda.

Mr. Bateman noted that he is a property owner and developer. Commissioner Loumis inquired about a situation where the government condemns property for the betterment of the community. In addition, he gave an example of a situation where UDOT has on occasion purchased property, not used it, and then turned around and sold it at a profit. He asked about the legal ramifications of that practice. Mr. Bateman explained that under the law, the government can take property for public purposes, such as a road. The government, however, is only supposed to take what it needs. Sometimes when UDOT takes property, they ask that they take the entire lot. UDOT used to look at what an entire whole lot would cost since sometimes it is less costly than purchasing only a portion. UDOT recently did this and was sued by the property owner and lost. They no longer do that and instead only take what they need. If a landowner voluntarily sells an entire lot to UDOT and later finds that only a portion is needed, the surplus can be sold for a profit. Under most circumstances, however, the original owner is given first right of refusal before the property is sold to an outside party.

Mr. Bateman noted that there are two aspects of eminent domain. These include the taking and the compensation. The U.S. Constitution states that the government shall not take private property for public use without just compensation. This means that government can take private property, but they have to pay the landowner. With regard to the taking, there is very little the landowner can do to stop it. With regard to compensation, the landowner has some influence on the amount paid for the property.

Mr. Bateman emphasized that "the take" element of eminent domain is very important for the Planning Commission and City Planners because everything the City does has "take" implications. The City has to make sure it doesn't take private property without just compensation. The following are two ways of taking private property:

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1. Simply taking it like UDOT does when they occupy the property and take it away from a property owner.
2. Regulatory taking. The City should be mindful of this since this method does not necessarily take the person's property. There are ordinances, rules, or actions of the government do not necessarily involve taking someone's property, but they eliminate the owner's ability to do anything with it. Any time private property is taken, there must be just compensation.

Mr. Bateman explained how the City can know if they are engaging in regulatory taking, per the U.S. Supreme Court. The City can regulate property without taking it unless they go too far. With regard to the rezoning application, Commissioner Loumis stated that the Planning Commission did not go too far because the land is still zoned R-1-43. Even down zoning is not going too far, unless doing there is nothing logical, feasible, or economically sensible that can be done with the property.

Referencing comments made during the public hearing, Mr. Bateman stated that no one ever has a right to a specific zoning. The City has the legal right to change or keep a zone because zoning is a legislative and not an administrative decision. A legislative decision makes law, such as a change to ordinances or zoning maps. An administrative decision applies law, such as the approval of a subdivision. A determination needs to be made as to whether the subdivision complies with City Ordinances. Any time a decision is made, it is one or the other and City leaders need to know which it is.

Commissioner Loumis was excused from the remainder of the meeting at 8:32 p.m.

Mr. Bateman stated that the proposed zone and map changes discussed were legislative decisions because they changed the law. The vacation of the road was also a legislative decision. He noted that a subdivision plat is an administrative decision. A conditional use permit application is also an administrative decision because the applicant is not asking for a change to the law but to apply the law to their application. Annexation is a legislative decision while a building permit is administrative.

Mr. Bateman stressed the importance of understanding the difference between the two since the City Council is the only governing body that can make legislative decisions in the City. He noted that only elected officials can make legislative decisions. If the citizens do not like the decisions their elected officials make, they can vote them out of office. When the Planning Commission makes a recommendation to the City Council, the City Council is under no obligation to follow the recommendation. The City Council can determine and delegate who makes administrative decisions. The latitude the City Council has for legislative decisions is significant because the standard of review is based on whether the issue under consideration is reasonably debatable as a decision that pertains to the public welfare of the citizens.

Unless City Ordinance states otherwise, the General Plan is generally an advisory document that is not legally binding on the City Council. However, under State law, a General Plan is purely

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advisory. Thus, the City Council can change a zone from how it appears in the General Plan. Land use is such a complicated and important issue that State law requires:

1. A city to have a General Plan, even though it is advisory.
2. A city must have a Planning Commission so that there is another group examining complicated land use issues. The Planning Commission still functions in an advisory capacity to the City Council. The City Council has the benefit of the Planning Commission's perspective as well as the perspective of the General Plan, which is the result of extensive deliberations by interested stakeholders.

The City Council has given the Planning Commission certain authority to make administrative decisions by applying the law to an application. The standard of review for administrative decisions is substantial evidence on the record. This standard of review does not include items that are reasonably debatable, as previously noted. Those making administrative decisions must have substantial evidence to support a decision. An example of this involves determining whether an applicant has met the City's requirements for the issuance of a Conditional Use Permit. Making an administrative decision is not a matter of determining whether the decision makers want the proposed land use. Determining whether a land use is desirable is a legislative decision. Once that land use option is included in the City Ordinance, it becomes an administrative decision to determine whether the applicant's request complies with City Ordinance. In short, the guiding question for an administrative decision is whether the request complies.

Mr. Crowell observed that when public notices are issued for administrative decisions, the citizens do not understand the complicated issues of land use and think they can influence a decision when, in fact, it is a matter of determining whether an application complies with City Code. It puts the Planning Commission in an awkward position to have to explain that reality repeatedly to citizens. Mr. Bateman concurred with Mr. Crowell's concern and explained that it is the responsibility of the City Council to listen to the citizens when ordinances are developed and adopted. Citizens have the right to express their views on administrative decisions but they do not have the right to expect the Planning Commission or City Council to contravene City Ordinances. If citizens want to influence the creation of law, they need to attend the public hearings on those issues.

Chair Peterson gave an example of when a proposal fits within the City Ordinance but doesn't fit well within the proposed location, such as with lighting. In response to Chair Peterson's question about whether the City has the right to require special modifications from the ordinance, Mr. Bateman stated that if the proposal complies with the ordinance, it is an administrative decision and the proposal must be approved. He clarified that in the case of a Conditional Use Permit, if there are detrimental impacts that need to be mitigated, the Planning Commission can impose conditions. Mr. Bateman added that the conditions have to relate to standards in the ordinance. For example, if the ordinance specifies nothing about noise, the City would not be able to impose a noise condition. If, however, there is a noise standard within the City Code, conditions can be imposed to meet the standard. Mr. Bateman noted that standards are often stated in general terms, which gives latitude to those who impose conditions that are tied to a standard. Mr. Crowell noted that the Planning Department strives to be attentive to the ordinance and standards specified therein.

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Chair Peterson brought up the issue of when State law supersedes City law, such as billboards on I-15 and the recently approved charter school. In response to Chair Peterson's question regarding other situations where State law supersedes City law, Mr. Bateman explained that group homes, such as half-way houses for recovering addicts or homes for the elderly, are regulated by the ADA. Mr. Bateman clarified that group homes are residences and must be treated the same as residences in the same zone. Mr. Crowell stated that there are more group homes in Bluffdale than many realize. Mr. Bateman explained that a group home application is a good example of an administrative application that incurs the anger of the neighbors.

The issue of the charter school was reiterated. There was discussion by both the applicant and the City about the traffic impacts, yet ultimately the charter school had the legal right to build. Mr. Bateman explained that schools typically try to address and mitigate traffic concerns that are brought up by the citizens in order to be good neighbors or avoid undue delays.

Cell towers were next discussed. Mr. Crowell stated that certain types of cell towers are allowed in certain zones. Mr. Bateman explained that if someone wants to put up a cell tower, the City cannot prohibit them. Mr. Bateman commented that the City Council has tremendous control over what happens in Bluffdale.

In response to Chair Peterson's question, Mr. Bateman stated that the City ultimately has the right to annex property and determine how the City is developed. He added that developers have the right to disconnect, just as the City has the right to decide whether to annex. He noted that annexation is a legislative decision and a city can impose conditions as part of the annexation approval process.

Chair Peterson stated that the current challenge in Bluffdale is that it was historically a rural city with one-acre lots. This has changed over the years and now there are areas with higher density, such as in Independence. There are very few parcels remaining and some are difficult to develop. Chair Peterson believed there were ways to build on smaller lots but there are not many zones to accommodate that type of development. Compounding the problem is the fact that developers want to maximize the number of residences they can fit in an area. Chair Peterson asked for advice on the best way to build out the rest of the City. Mr. Bateman commented that he is not a planner and stated that staff's expertise should be utilized. He commented that land use diversity is vital to a healthy community. He cited an unnamed community in Utah that prides itself on being rural with large lots. Although the citizens and city leaders are happy, it is a disaster because there is no economic base.

Senior Planner, Jennifer Robison, stated that the problem with mid-sized lots is that the City only has two residential zones consisting of the R-1-10 and R-1-43 zones. Chair Peterson added that there is now the SD zone, which allows for flexibility, however, developers always ask for the maximum density. Mrs. Robison commented that the City could create a zone for one-half acre lots. Chair Peterson liked the diversity but did not want everything to be on one of two ends of the spectrum. He wanted to see something in between, as well. Mr. Bateman suggested that the City

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consider creating more residential zones. Most cities he was aware of have five or six residential zones of different densities.

Mr. Bateman stated that ultimately the Planning Commission needs to determine what is best for the community. Chair Peterson's issue with the zone change was the canal road. If it had been a different and wider road he would have had no problem recommending the zone change. Commissioner Berry commented on the decision making process the Planning Commission goes through. Legislative versus administrative decisions were discussed.

Mr. Bateman's comments prompted a discussion on the City's noticing requirements and practices. He explained that the citizens do not have the right to speak on administrative decisions, however, sometimes there are political considerations. With legislative decisions, the citizens have the right to speak and the public hearing must occur during the formal meeting, which has been noticed. With legislative decisions, the public notice must comply with State statute and City Code. Discussion ensued on the process the City has explored with regard to public notices. Mr. Bateman explained that City-wide noticing, particularly public mailings, is not required under State statute. Mr. Crowell noted that the City Ordinance requires noticing be provided to property owners within 1,000 feet, even for administrative decisions. Chair Peterson observed that the City Ordinance is far stricter than State Code with regard to public noticing.

Mrs. Robison noted that the City's new web site will go live on Thursday, June 16th and will include public notices. Mr. Bateman stated that a Utah legislator tried to propose a bill that would require city-wide noticing that ultimately failed.

In response to Commissioner Berry's question regarding the frequency with which eminent domain is invoked, Mr. Crowell stated that UDOT uses it frequently. The City is in its first case involving invoking eminent domain where the City could not complete the negotiation for a portion of Noell Nelson Drive. Invoking eminent domain takes a great deal of time and resources and does not foster good will. As a result, the City goes to great lengths to negotiate in such a way that eminent domain is not necessary. Mr. Crowell added that in Utah, public use eminent domain does not include trails.

Chair Peterson referenced a case where an individual asked the City to allow for the creation of establishing a point on the Jordan River for kayakers and other recreationists. Mr. Crowell recently obtained information on the issue and explained that the State is in the process of developing a Comprehensive Management Plan for the Jordan River. It encompasses the river from bank to bank, and requires coordination with Fire, Forestry, and State Lands to obtain permits. The conditions of the river bank will be classified on a 1-to-6 scale for determining the permitted uses and facilities along the river. Mr. Crowell described the process for obtaining funding to create facilities along the river.

Mr. Bateman stated that all property owners have property rights and need to be treated equally. He emphasized that if anyone in the City treats a property owner badly just once, that experience will override all positive attempts to work with that property owner. Mr. Bateman referred to the Bill of Rights, which is intended to protect citizens from the government. He concluded by stating that it is

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important for the Planning Commission to recognize what kind of decision they are making and obey the law. He complimented the Planning Commission on how they handled the two agenda items addressed tonight.

7. City Council Report.

Mr. Crowell stated that no land use items were addressed at the last City Council Meeting. When Chair Peterson commented that a joint meeting regarding the approval of an SD zone had been proposed by the Planning Commission, Mr. Crowell explained that the Planning Commission forwarded a negative recommendation to create the tool but the City Council decided to create the tool and passed the SD zone. It took the City Council one hour to review the ordinance, during which they discussed whether a Joint Planning Commission/City Council Meeting should be required when there is an application to create an SD zone. The City Council did not establish the requirement for a Joint Meeting, however, there is a requirement to have a work session.

At the City Council Meeting, Mr. Tolman and Mr. McCutchan presented the same plan. They can now proceed with their application, which will be presented to the Planning Commission in July. The City Council had received all of the necessary information.

Chair Peterson next referenced the Preserve at Spring View Farms, for which the Planning Commission forwarded a negative recommendation to the City Council. Mr. Crowell stated that the application passed at the City Council Meeting. A great deal of discussion took place about where the counting point starts. As a result, Mr. McCandless offered to combine four lots into three. Discussion also took place regarding what to do with the corner lot on Loumis Parkway. The home might be addressed off of the interior street, but it has frontage on Loumis Parkway. The City Council determined that it was close enough to not be counted as one of the 30.

With regard to secondary accesses, Mr. Crowell emphasized that the City Code requires that secondary accesses be open and unobstructed. Discussion ensued on what occurred regarding the accesses provided at Spring View Farms. The current City Ordinance regarding secondary accesses was not in place at the time Spring View Farms was approved. Mr. Crowell referenced what occurred with the approval of Porter's Place at Parry Farms. He noted that there are differing points of views about where the counting should begin for homes with just one access point. It was determined that the starting point would be an administrative interpretation. The Fire Code contains language on the types of facilities and safety needed under certain conditions. There are also appendices in the Fire Code that have not been adopted that provide additional guidance.

Mrs. Robison explained that when Westgate wanted to develop more lots, they changed the City Ordinance to allow it. The Planning Commission recommended against the change. Mr. Crowell added that in staff and DRC meetings, extensive discussion takes place regarding the standards and the reasoning behind them. As a growth management tool, the rules have a legitimate legislative purpose. Discussion ensued on why the number 30 was selected. Chair Peterson believed it was likely a means of controlling growth. Mr. Crowell noted that there are traffic and safety components associated with the number of homes allowed on a single-access street. He stated that it is good to have a standard, but it should allow for flexibility.

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Mr. Crowell believed that noticing a public hearing for an administrative decision is complicated. If the application complies with City and State Codes, it must be approved regardless of the feelings of the citizens.

In response to Commissioner Luker's question regarding how fire lanes are determined, Mr. Crowell explained that they are determined by the International Fire Code. Those with questions were encouraged to contact the Fire Chief.

8. Planning Commission Business (Planning Session for Upcoming Items, Follow Up, Etc.).

There was no discussion on the above agenda item.

9. Adjournment.

The Planning Commission Meeting adjourned at 9:42 p.m.



Gai Herbert
Community Development Secretary

Approved: _____ July 6, 2016