

Minutes of the Ogden Valley Planning Commission Combined Joint Training Session May 24, 2016, in the Weber County Commission Chambers, commencing at 4:00 p.m.

Present: Greg Graves, John Howell, Kevin Parson; Will Haymond, Stephen Waldrip, Jami Taylor

Absent/Excused: Laura Warburton, Chair

Staff Present: Rick Grover, Planning Director; Jim Gentry, Principal Planner; Charles Ewert, Principal Planner
Ronda Kippen, Principal Planner; Courtlan Erickson, Legal Counsel; Kary Serrano, Secretary

BOA Members: Rex Mumford, Nathan Buttars, Bryce Froerer,

Western Weber Planning Commission: Mark Whaley, Wayne Andreotti, Roger Heslop,

Guest: Brent Bateman, Utah Property Rights Ombudsman

1. Board of Adjustment Training with Brent Bateman, Utah Property Rights Ombudsman

From: 4:00 p.m. to 5:00 p.m.

Director Grover introduce Brent Bateman, State Ombudsman will provide training on Rules and Procedures and ways to manage our meetings to make them more functional. He asked Mr. Bateman to explain what an Ombudsman is. Mr. Bateman clarified that an Ombudsman is someone that is part of an organization and solves problems with the organization. I am the State Ombudsman and it is my job to help resolve complaints against the government over land and property rights only. So let's start talking about variances, on appeals, and some procedural issues like due process, and ex parte communication.

Brent Bateman said you have a land use code and that is the time to decide what you want in your community; and the discretion you have with the land use code is huge. When you have a land use code, you have to do it very carefully and make sure it reflects what you want. The thing about variances is the ability that the Board of Adjustment has, is give an exception to a land use code. When someone comes with an application that doesn't fit the land use code but they want an exception. The problem is when we keep giving out exceptions to the land use code; we might as well just put it in the land use code. Exceptions should be rare; because your discretion to put things in the right code is huge, and that discretion to the exception is so narrow. It should be very difficult to get a variance because there are so many rules they have to meet in order to get the variance. Keep in mind that the rule is the law that we have decided are needed to do for a variance, and the reason is to protect applicant's property rights, but also protect the property rights of the neighbors. These are the five rules for variances:

- Literal enforcement of the ordinance causes an unreasonable hardship on the applicant.
 - Unreasonable Hardship does not have that much discretion. It has to be a hardship and it has to be unreasonable.
 - The purpose of a variance is to prevent a regulatory taking.
- There are special circumstances attached to the property that does not apply to other properties.
 - There is a feature to that land that prevents people from doing what everyone else is able to do.
 - Special circumstance must relate to the hardship.
 - What special about the land that is causing the problem.
- Granting the variance is essential to the enjoyment of substantial property rights possessed by other properties.
 - Use Variances – We cannot grant use variances ever.
 - If someone wants to do something that is not a (permitted or conditional) use on their land, you can't grant a use variance.
- The variance will not substantially affect the General Plan of the public interest.
 - It is impossible to not affect the zone.
 - The public interest is what the neighbors think or want.
- The spirit of the ordinance is observed in substantial justice done.
 - This gives you the opportunity to say that all the four there, but I just don't like it, so I am going to find that #5 is not there. - Because the spirit of the ordinance for substantial justice done, and it gives you that right.
 - You have to find all five and they get more subjective as you go.

Brent Bateman said a lot of places shy away from amending the code but your code can always be improved. It needs to react to what you have in your community. If certain things are happening in your community, changing the code to reactive is the best way to do it. Say you decide whatever reason; to up the 75 foot setback from the street that would be a change for the community, and why not change the code to enable that to work.

Brent Bateman informed the board members that a whole bunch of groups got together and created what is called LUAU which stands for Land Use Academy of Utah that is funded by the legislature. The point is to create videos and training for people to watch because we can't be everywhere. You can watch it anywhere and it provides training on land use body like the training that was just provided now. You can go online and it's under luau.utah.gov

2. Ogden Valley and Western Weber Planning Commission Training with Brent Bateman, Utah Property Rights Ombudsman: From: 5:00 p.m. to 6:00 p.m.

Director Grover said we are privileged to have Brent Bateman, the State Ombudsman. He will provide training on Rules and Procedure, and some ways which we can better manage our meetings to make them more functional.

Brent Bateman, State Property Rights Ombudsman, said his job is to prevent lawsuits between government and citizens. What is trying to do is provide some information with the goal that by doing so and when people come to us with questions or applications, we have a better understanding of the law. We will make better decisions that don't violate people's property rights. He credits Weber County for not having problems and that is because you show up for training and you take your public service job seriously.

Brent Bateman said he had a list of subjects that he could talk about but he wanted talk about issues that relate to Weber County. The following issues were brought up:

- Grandfathered Property: In order for something to be grandfathered; it has to be legal when it happened, and it has to be continued, and State Law states that it has to be within two years. If it was built back before there were any inspections, before there were any ordinances, and if there were no ordinances it's legal.
- Nonconforming Use: Expansion of a Nonconforming can cause you to lose your non-conforming use. So can changing the use, if the changing of the use adds to the burden of the community or the county. Once they expand their use or abandon it, they will lose the grandfather use.
- Grandfathered Property Continued: If you sell the property the grandfathering use goes with the property. If it has a legal nonconforming right, as long as the use is continued with the new owner, it doesn't matter who owns the property.
- Amortization: That is one way to get rid of grandfathered property.
- Conditional Uses: Weber County has rules and it's your responsibility to enforce and enact your rules. People are free to contract with each other; that's the thing about private covenance, CC&R's, and stuff like that. Those are not based on the law, they are based on contracts. You have your own ordinance and they have their contracts, and the enforcement is a matter for them. If it fits your ordinances you have to say yes.
- Impact Fees: Are very specific fees that can only be done on new development, if there is impact on that development in certain things. For instance, power, water, contour roads, some safety, and those kinds of things. As a government, you are allowed to raise revenues to taxes and fees. Taxes are how you raise revenues; you enact taxes and follow with tax laws and tax people for their property or for the sale. That money comes in that that pays for all our salaries. You are also allowed to charge fees, and fees are cost recovery. If providing some service imposes a cost on the government, because of a person's time or paperwork. You can charge a fee to have a person who asks for that service pay for that. Fees are only cost recovery and are never used to raise revenue.
- Trails on Personal Property: You cannot do immanent domain for trails. Immanent Domain is the power of the government to take some property for public use, and that's how we get revenue. The government has this power of immanent domain to come and take their property and pay them some compensation. In Utah you are not allowed to take property for trails, so if wanted to build a trail somewhere, and you came across someone who did not want to redo their property for trails, and all you can ask if they would like to donate property for trails. However, there are multiple ways that trails get created, roads help you create them. There is a statute in Utah that if someone is used at a right-of-way long enough ten years, it becomes a public right-of-way, and that applies to trails as much as anything.
- Right-of-Way Grants: Once something becomes a public road, no matter how it becomes a public road, it is always a public road until it is expressly abandoned by the counsel. It has to be expressly abandoned and there is no sustained as a statute of limitations on the kinds of abandonment. We have a lot of cities in Utah where roads are platted out and never built.
- Utility Right-of-Way: This rule about physical abandon comes from the doctrine called You Can't Adverse with Public. It's only by government that you can adverse on government land. No matter how long that land has been, no matter how long your house has been on it, no matter how long you have been cutting grass, if its government land it never becomes yours. The government has to physically give it to you. There are two ways to get that property. There is adverse possession which takes 10 years but you have to pay the taxes; and there is down by acquiesces which takes 20 years.
- Conditional Use: When someone comes to you with a conditional use application; you judge the detrimental effects, you impose conditions that are allowed in the standards in the ordinance to mitigate detrimental effects. If you did that and came up with 57 feet that is fine. The next application that comes in, you go through this same process that leads to 55 feet. The point is you make a decision based on the conditional use according to the process. You make your decision based on the current application and adhere to the ordinance. Even though they got this at 57 feet, it does not set precedence.
 - When you get a conditional use permit application; it is because it has been listed in your code as conditional use, but having it here might cause detrimental effects that we want to mitigate, and there is a lot to consider when you get a conditional use application.
 - You have to consider what detrimental effects are and what conditions you can impose to mitigate those.
 - The statute says that you should have a discussion with the property owner, and if the property says no and he won't accept that condition, or there can't be no conditions. That does not give you the right to say no to this conditional use.
 - It all comes back to the government to impose those conditions. Your legislative body has said, if it's listed in the conditional use, you are looking for ways to say yes.
 - There are permitted uses, conditional uses, and there is forgiveness. Permitted Uses are yes, forgiveness are no, and conditional uses are maybe.
- Personal Property Rights: Our base property right is we can do whatever with our own land and that was part of the constitutional element. For the first 150 years that America existed that was not a problem. As it got more crowded, people starting suing, and it went all the way to the Supreme Court. The court allowed it because there needed to be an ordered society. The copy right is I can do whatever I want with my land, but the land use laws are the exception to the rules. This is important because it creates a conflict.

- The conflict is between the personal property owner and the public good. What the property owner wants to do often clashes with what is the public interest.
- Your job is to make sure that both are protected. The way to make sure that balance is protected; that the public interest is met without going too far without violating personal property rights is to follow the law.
- Public Clamor: As Planning Commissioners you have two roles; the legislative role and the administrative role. It's important to know the difference and know which ones you are assuming. The legislative role makes law. The County Commission is the only one that can change the law. But anytime they want to do a land use ordinance, they have to get a recommendation from the Planning Commission. If the County Commission wants to make an amendment to the zoning, they have to receive a recommendation from the Planning Commission. When you are working through those ordinances, you are doing a legislative act that makes law. If you are doing other things like applying the law, those are administrative. When someone brings in a conditional use permit, they are not asking you to make the law, they are asking you to apply the law to their application. In your administrative law, you are applying the law, and at that point it is illegal to make a decision based on public clamor.
- Public Hearing: There is only one time that State Code requires a public hearing; it is required to have a public hearing for legislative decision at the Planning Commission. If you have a legislative item and you have a public hearing, you have to let the public speak.

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3. Adjournment: The meeting was adjourned at 6:11 p.m.

Respectfully Submitted,



Kary Serrano, Secretary;
Weber County Planning Commission