

Albany County Planning and Zoning Commission
SPECIAL MEETING of February 9, 2022
Minutes

Staff Present: David Gertsch – Planning Director, Joe Wilmes – Assistant Planner, Matt Ayres – County Civil Attorney, Jennifer Curran – County Civil Attorney

Special Meeting:

A. CALL TO ORDER/ROLL CALL (Time 1:03)

Chairman: The Regular Meeting of the Planning and Zoning Commission will come to order.

Chairman: Will the secretary call the roll.

Vote: Mr. Hinckley: Present Mr. Kennedy: Present
 Mr. Platt: Present Mr. Thyne: Present
 Ms. Hanning: Present

B. Presentations

1. Planning and Zoning Commission Training

- a. David Gertsch gave the presentation
 - i. History
 - 1. Commissioner Hinckley asked when the state allowed land use regulation. Mr. Gertsch was unsure.
 - 2. Commissioner Platt asked what the timeline was when the 2008 Comprehensive Plan compared to Mr. Gertsch’s arrival at the county. Mr. Gertsch was here approximately 2 months before it was approved.
 - 3. Commissioner Hinckley asked if the Ford decision required that in order to have zoning a county had to have a land use plan. The answer is yes, but the zoning did not have to be based on the comprehensive plan.
 - 4. Commissioner Hinckley asked if the Planning and Zoning Commission had different thoughts than the Board of County Commissioner’s for the 2015 Zoning Resolution. Mr. Gertsch said there wasn’t much difference between the two.
 - 5. Commissioner Platt asked if the zoning map was generalized. Mr. Gertsch explained that the map was specific to each parcel.
 - 6. Commissioner Kennedy explained that there have been several times where people come in and need a change in zoning because some assumptions were made when making the original document.
 - 7. Commissioner Kennedy brought up that there is some confusion between zoning and tax classification.
 - 8. Commissioner Hinckley had a discussion with Jennifer Curran about how the zoning map and zoning regulations fit together.
 - ii. Comprehensive Plan and Zoning Resolution
 - 1. Commissioner Hinckley had a question about the land use chart.
 - iii. Planning and Zoning Commission Duties

1. Commissioner Hinckley had a question for the County Attorneys if Planning and Zoning was required to review and certify to the Board of County Commissioners.
 2. Commissioner Thyne had a question about what the Tumbleweed gas station was considered.
 3. Commissioner Hinckley asked a question about the Watson Land Use Change and if it could be considered a grandfathered use.
- iv. Planning Terminology
1. Commissioner Hinckley asked if spot zoning was truly illegal. The legal team confirmed that is illegal but that it is very narrowly defined and would need to be egregious.
- v. Questions
1. Commissioner Thyne asked if there was a residential area and someone drills an oil well, would that be considered spot zoning. Mr. Gertsch said sort of, but mineral rights are preemptive.
 2. Commissioner Hinckley asked if the University is exempt from Planning and Zoning.
 3. Commissioner Hanning asked about how when coming up with the original zonings how something was zoned a certain type of residential, but they don't meet the requirements of those zoning types.
 4. Commissioner Thyne asked if we start out looking at the Comprehensive plan when someone comes to us with a potential change to zoning.
 5. Commissioner Hinckley asked if we can do anything about all of the nonconforming lots that exist currently in the county.

2. Planning & Zoning Commission Board Member Training

- a. Matt Ayres and Jennifer Curran gave the presentation
 - i. General Land Use Law in Wyoming
 1. Commissioner Kennedy asked if there was any limitation to the definition of discontinue.
 2. Commissioner Hinckley thinks that W.S. 9-8-301 (e)(ii) refers to a physical development and not zoning. A discussion took place.
 3. Commissioner Hanning left at 2:53
 - ii. Authority, Duties & Obligations of PZC
 1. Commissioner Kennedy asked if this would be considered 'rules and procedures.'
 2. Commissioner Hinckley asked if "staff" included the legal staff.
 3. Commissioner Platt asked if there are questions that the commission should not ask staff.
 4. Commissioner Hinckley informed the rest of the board that the duty of loyalty has come up in the past.
 5. Commissioner Kennedy noted that in previous years there was a commission member that was at all of the Planning and Zoning meetings that could fill in the rest of the Board on things that happened in the Planning and Zoning meetings.
 6. David Gertsch said that we need to have exactly what has happened in the meetings and not have outside input into what goes in the minutes.
 7. Commissioner Hinckley would like to have more of the responses put into the minutes.
 - iii. Ethical Behavior

- iv. Conflict of Interest
- v. Parliamentary Procedure
 - 1. Commissioner Platt asked if any of the red flags have been an issue in the past. Which has not been a problem in the past.
- vi. Immunity
- vii. Open Meetings Act
- viii. Public Records Act

3. Update on Staff Reports

4. Questions

- 1. Commissioner Hinckley asked about the communication of board members outside of a public meeting.
- 2. Commissioner Kennedy explained the quorum rule as well as using bcc when talking via email.
- 3. Commissioner Hinckley asked about how he should share documents that he thinks is relevant. The legal team suggested having Mr. Gertsch send it out to everyone.
- 4. Commissioner Hinckley asked about conditioning applications. A discussion took place.

Meeting end at 4:05



1

PLANNING AND ZONING COMMISSION TRAINING 2022 OVERVIEW

- History of Planning and Zoning in Albany County
 - Land Use Management System
 - Comprehensive Plan
 - Zoning Resolution
- How the Comprehensive Plan and Zoning Regulations work together
 - What is a comprehensive plan
 - What is zoning
- Planning and Zoning Commission Duties
- Planning Terminology

2

A BRIEF HISTORY OF PLANNING AND ZONING IN ALBANY COUNTY

- Land Use Management System
 - Adopted 1982
 - This document included the County's land use goals and policies, land use regulations (based on performance measures), land use permits, and subdivision regulations (zoning regulations did not exist)
- 1996 Ford v. Board of County Commissioners of Converse County
 - Comprehensive plans are prerequisite for the adoption of zoning resolution
 - Comprehensive plans are not regulatory
 - Zoning is the only way authorized by statute to regulate land use in Wyoming
 - The "Ford" decision voided the LUMS and prompted Albany County to develop a "comprehensive plan", a zoning resolution, and a planning and subdivision resolution adopted in 1997

3

COMPREHENSIVE PLAN HISTORY

- 1997 Albany County Comprehensive Plan
 - Created in response to the Ford decision
 - Twelve pages long
 - Robust public input?
 - Comprehensive?

4

COMPREHENSIVE PLAN HISTORY

- 2008 Albany County Comprehensive Plan
 - Included a robust public engagement process
 - Process lasted more than a year
 - Citizen's Advisory Committee/Technical Advisory Committee
 - Series of public meetings
 - Stakeholder interviews
 - Work sessions with Planning and Zoning and the Board of County Commissioners
 - Telephone survey of 500 households
 - Chapters included background conditions, objectives, implementation strategies, actions

5

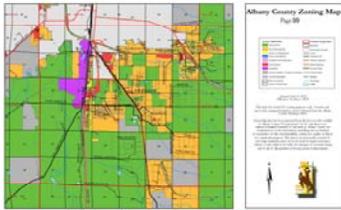
COMPREHENSIVE PLAN HISTORY

- What's inside?
 - Identified Albany County vision statement
 - 12 chapters
 - Chapters include a statement of intent, background, objectives, and implementation strategies and actions
 - Regulatory and non-regulatory strategies and actions

6

COMPREHENSIVE PLAN AND ZONING

- Comprehensive Plan vs. Zoning
 - Comprehensive plan land use and development policy, not regulation
 - Zoning implements comprehensive plan, regulation
 - Comprehensive plan includes non-regulatory policies, not only regulatory policies



The image shows a zoning map of Albany County with various colored zones and a legend. The legend includes categories like Residential, Commercial, Industrial, and Agricultural. There is also a small inset image of a person standing next to a building.

13

PLANNING AND ZONING COMMISSION DUTIES

- Planning and Zoning Commissions Purpose
 - Prepare and amend a comprehensive plan...and certify the plan to the board of county commissioners" (W.S. 18-5-202 (b))
 - Albany County Comprehensive Plan
 - Casper Aquifer Protection Plan
 - Prepare recommendations to effectuate the planning and zoning purposes and certify its recommendation to the board of county commissioners" (W.S. 18-5-202 (c))
 - Adoption of zoning regulations
 - Adoption of subdivision regulations
 - Land use application recommendations
 - Zoning changes
 - Conditional uses
 - Tower permit (conditional use)
 - Variances
 - Wind Energy Conversion System (WECS) Permit (conditional use)
 - Subdivision applications

14

PLANNING TERMINOLOGY

- Zoning District/Zone
- Overlay Zones
- Density
- Lot Size
- Spot Zoning
- Leapfrog Development

15

QUESTIONS?



The image shows a group of people's hands raised in the air, symbolizing a question or a vote.

16

Planning & Zoning Commission Board Member Training

Jennifer M. Curran & Matthew E. Ayres

Deputy Albany County & Prosecuting Attorneys

February 2022

1

Introduction

- General Land Use Law in Wyoming
- Authority, Duties & Obligations of PZC
- Ethical Behavior
- Parliamentary Procedure
- Conflict of Interest
- Immunity
- Open Meetings Act
- Public Records Act

2

County Authority

- Counties – Political subdivisions of the state
 - Authority limited to what is granted by the legislature through statute
 - Cannot exercise authority in contravention of statute, but provisions of the zoning resolution may be more restrictive if allowed by statute

3

Statutory Authority

- W.S. 9-8-301 – Local Land Use Planning
- W.S. 18-5-201 et seq – P&Z Commission
- W.S. 18-5-301 et seq – Real Estate Subdivisions
- W.S. 18-5-401 et seq – Conservation Design Process
- W.S. 18-5-501 et seq – Wind & Solar Energy Facilities
- W.S. 34-12-103 – Contents of Plat

4

Zoning Power – W.S. 18-5-201

- To promote the public health, safety, morals and general welfare of the county,
- each board of county commissioners may regulate and restrict
 - the location and use of buildings and structures
 - and the use, condition of use or occupancy of lands
 - for residence, recreation, agriculture, industry, commerce, public use and other purposes
 - in the incorporated area of the county

5

Restrictions on Zoning – W.S. 18-5-201

- 4 Restrictions:
 - Cannot regulate within municipality
 - Cannot regulate extraction or production of mineral resources
 - Cannot regulate minimum lot sizes of divisions of land that are exempt from subdivision requirements
 - Cannot regulate development of private schools meeting certain conditions

6

Quasi-Restriction: Nonconforming Use

- “Nonconforming Use”
 1. A pre-existing use,
 2. Which was lawful when it was established, and
 3. Which becomes noncompliant due to later enacted zoning resolution.

7

Quasi-Restriction: Nonconforming Use

- 18-5-207: Zoning cannot prohibit continuation of the use of any land, building, or structure for the purpose for which land, building or structure is used at the time the regulation is adopted
 - But alteration or addition to existing structure or building for the purpose of effecting a change in use may be regulated or prohibited
 - Applies to structures/buildings only, not to land itself
 - If nonconforming use is discontinued, any future use shall be in conformity with regulations
 - County cannot regulate or eliminate livestock grazing on private or county land
- ACZR: expansions/alterations of nonconforming structures and uses generally prohibited, repairs (less than 50% of value) generally permitted, and non-use/change of use requires compliance with current regulations

8

Zoning Certificates

- W.S. 18-5-203: Unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or use any land within any area included in the zoning resolution without first obtaining a zoning certificate.
 - W.S. 18-5-204 – each day’s continuation of violation is separate offense
 - W.S. 18-5-205 – enforced through injunction, mandamus, or abatement
 - W.S. 18-5-206 – \$750 for each offense
- ACZR: Requires application and approval, different requirements based upon type of certificate/permit
 - Permitted use zoning certificate (reviewed and issued by Planning Director)
 - Conditional use permit – reviewed by PZC and approved by BOCC (includes sign permits, tower permits, and WECS permits)

9

Zoning Certificate - Example



10

Comprehensive Plan

- W.S. 9-8-301 – all local governments shall adopt a local land use plan within their jurisdiction
 - “Local land use plan” means any written statement of land use policies, visions, goals and objectives adopted by local governments. Local land use plans shall provide an explanation of the methods for implementation of the plan, however, these plans shall not require any provisions for zoning...
 - “Zoning” means a form of regulatory control granted to local governments which may be used to guide and to develop specific allowable land use

11

Comp Plan - Statutory Authority

Development of Land Use Plans W.S. 9-8-301:

(e) Local land use plans may guide local governments in adopting or amending local zoning regulations, however, such plans shall not be construed as a substitute for, or equivalent to, duly enacted local zoning regulations, which have the force and effect of law. Local land use plans shall be implemented in accordance with the following:

(i) In the event of a conflict between a duly enacted local zoning regulation and a local land use plan the local zoning regulation shall control;

(ii) No local government shall require that a land use or physical development be consistent with a local land use plan unless the applicable provisions of the local land use plan have been incorporated into the local zoning regulations.

(f) Nothing in this article shall allow any local government to use a local land use plan as authority to deny or restrict a permissible land use or physical development which is not restricted or prohibited under existing zoning regulations.

12

Value of Comprehensive Plan

- Policy statement – community goals and vision for future land use
- Guides adoption of zoning regulations
 - “Engraft” the desired provisions of the comp plan into the Zoning Resolution – giving legal effect to the product of stakeholders’ hard work

13

Comp Plan – Advisory in Nature

EXECUTIVE SUMMARY

The Albany County Comprehensive Plan has been adopted pursuant to Wyoming State Statutes 18-5-202(b), which states that “the planning and zoning commission may prepare and amend a comprehensive plan including zoning for promoting the public health, safety, morals and general welfare of the unincorporated areas of the county.”

This Comprehensive Plan serves as a guide for future land use and development in Albany County. It is advisory rather than regulatory in nature, but is the foundation for land management documents such as zoning and subdivision regulations as well as all other decisions made by the County.



14

Zoning - Caselaw

- Scholler v. Board of Commissioners of Park County, 568 P.2d 869, 879 (Wyo. 1977)
 - Moratorium processes
- Crouthamel v. Board of Albany County Commissioners, 951 P.2d 835 (Wyo. 1988)
 - Failure to explicitly follow moratorium processes
- Ford v. Board of County Com'rs of Converse County, 924 P.2d 91 (Wyo.1996)
 - Court held that a county's comprehensive land use plan is merely a policy statement, while its zoning resolution has the force and effect of law.
- Laughter v. BOCC for Sweetwater County, 110 P.3d 875 (2005)
 - “[W]e find the county met the dictates of Ford by engrafting the Plan's enforcement tool—the conditional use permit process—into the county's zoning resolution.”
- Asphalt Specialties Co., Inc. v. Laramie County Planning Commission, 2021 WY 19 (2021)
 - Use restriction only through zoning. “Absent zoning, the Commission cannot substitute public disapproval for legal authority to deny ASCI its proposed project”

15

Subdivisions

- W.S. 18-5-302
 - The regulation and control of the subdivision of land in the unincorporated areas in each county is vested in the BOCC
 - “Subdivision” means the creation or division of a lot, tract, parcel or other unit of land for the immediate or future purpose of sale, building development or redevelopment for residential, recreational, industrial, commercial or public uses
 - “Parcel” means a contiguous piece of property lawfully created or conveyed of record as a single piece of property

16

Subdivision Permits & Standards

- W.S. 18-5-304 – no person shall sell land subject to subdivision regulations, record a plat or commence construction of a subdivision without first obtaining a permit
 - ACZR – any split into 3+ parcels is a subdivision (but regulations can allow up to 5 without being subdivision under statute)
- W.S. 18-5-306 – long list of subdivision requirements/minimum standards
 - Not all applicable depending on sizes of subdivisions
- Albany County has separate Platting & Subdivision Regulations
 - Generally, small and regular subdivision regulations
 - Application of the regulations can become complicated, see the regs for our specific requirements and standards

17

Exempt from Subdivision Regulations

- W.S. 18-5-303
 - Family subdivision
 - Immediate family (child, stepchild, spouse, sibling, grandchild, grandparent, parent)
 - Holding requirements: grantor must generally hold for 10 years prior to division and grantee must generally hold for 5 years after division
 - Eminent domain, court order, sale to State of Wyoming or other political subdivision
 - Division of agricultural lands that will remain agricultural lands
 - Cemetery lots
 - Utility parcels that are less than 5 years
 - Parcels that are 35+ acres, unless 11+ parcels on parcel greater than 140 acres (see 18-5-301)

18

Subdivision Platting & City Review

- W.S. 34-12-101 et seq. – Platting generally
 - Selling lots not platted is prohibit W.S. 34-12-115
- W.S. 34-12-103 – City Review
 - Before 2019, subdivisions within 1 mile of a town or city had to be jointly approved by municipality and county
 - After the amendment, if a county has a comprehensive plan, the town or city only has an opportunity for review and comment.
 - Municipalities are however allowed to enter in joint voluntary agreements

19

Variances

- Allows specific deviation from regulations which is not offensive to the regulations in the particular circumstance
- Granted to avoid injustice in individual and unique cases, in which adherence to the regulations would result in practical difficulties or unnecessary hardship
 - Hardship must generally be due to a special circumstance of the property and cannot be self-inflicted
 - Cannot result in a detriment to public health, safety, or welfare
- Must be requested by the applicant and must be found to meet the specific standards in Chapter 5, Section 14 of the ACZR

20

Zoning Limits – Regulatory Takings

- U.S. Constitution, Fifth Amendment
 - “...nor shall private property be taken for public use, without just compensation.”
- Wyoming Constitution Art 1, Sec 33
 - “Private property shall not be taken or damaged for public or private use without just compensation.”

21

Economic Impacts of Land Use Regulations

Development Regulations

Zoning
Subdivision
Resource Protection
Design Requirements

Economic Impacts

Reduction in property values
Reduction in the highest and best use of a property
Use
Density
Direct financial outlays for regulatory compliance

Mere adverse economic consequences do not create a regulatory taking

22

Regulatory Takings – A matter of degree and character

- Private property rights vs. Government’s police power to protect public health, safety, welfare, and morals.
- Pennsylvania Coal v. Mahon (U.S. 1922) – First case to recognize regulatory takings
 - Whether a regulatory act constitutes a taking requiring compensation depends on diminution in the value of the property

23

Permanent Physical Taking
Loretto

Total Taking
Lucas

Exaction
Nollan/Dolan

Partial Taking
Penn Central

24

Permanent Physical Taking

- Loretto v. Teleprompter Manhattan CATV (U.S. 1982)
 - NYC law requiring apartment house owners to offer tenants access to cable – Cable company installed equipment on Loretto's property without her consent and without Loretto applying for any permit
- Rule – any government incursion, no matter how small, on a private party's property requires compensation if the incursion is nonconsensual, permanent, and physical

25

Total (Categorical) Takings

- Lucas v. South Carolina Coastal Council (U.S. 1992)
 - Coastal setback line covered owner's entire lot, only use allowed was conservation
 - Rule – if a regulation denies all economic use of a property, just compensation is required (regardless of investment backed expectations)

26

Exaction – Regulatory Takings

- “Exaction” – the regulation or permit condition the property owner to surrender property for public use (generally a public access easement or a portion dedicated to county/municipality)
- Two-pronged test requiring both:
 - Essential nexus between a legitimate government interest and the condition/exaction (Nollan – access to beach)
 - Rough proportionality between the condition/exaction and the impacts of the development (Dolan – pathway for pedestrians)
- Koonz v. St. John's River Water Management – exaction analysis applies to fees as well

27

Partial Takings

- Penn Central Transportation Company v. New York City (U.S. 1978)
- 3-part test:
 - Economic impact – the affected property's value with and without the regulation
 - Investment backed expectations – investments made before the regulation
 - Character of the regulation - what purpose is the regulation advancing: public health and preventing public harm given greater latitude; aesthetics given less deference

28

Regulatory Takings

- These are the four common categories of takings analysis as developed by the U.S. Supreme Court – additional scenarios and analyses exist
 - Wyoming takings law, regarding local government, is less developed
- Takeaway – land use regulation which amounts to a taking of private property for a public use or benefit may expose the county to liability by requiring the payment of just compensation

29

Roles and Responsibilities: Legal and Ethical

- Board's Authority:
 - Statute and Caselaw
 - Rules, Regulations, Bylaws

30

Statutory Authority – PZC

- Prepare and amend a comprehensive plan including zoning for promoting the public health, safety, morals and general welfare of the unincorporated areas of the county. W.S. 18-5-202(b)
- Prepare recommendations to effectuate the planning and zoning purposes and certify its recommendation to the BOCC. W.S. 18-5-202(c)
- Requires prompt action on any application filed and when the application complies with the requirements of the zoning resolution it shall be granted. If denied the reasons for denial must be specified. W.S. 18-5-203

31

Rules, Regulations, Bylaws

- Rules and Regulations of the Albany County Planning and Zoning Commission
 - Bylaws adopted 1975
- Albany County Zoning Resolution
- Albany County Platting & Subdivision Regulations
- Design and Construction Standards for Small Wastewater Facilities and Regulations for Permit to Construct, Install or Modify Small Wastewater Facilities

32

Fiduciary Duties

- Legal Obligations
- Define how board members are to exercise power
 - Duty of Care
 - Duty of Loyalty
 - Duty of Obedience

33

Duty of Care

- Be prepared for meetings
 - Review materials prior to meetings
 - Reach out to staff with questions
- Be informed; make sound decisions
- Attend to your duties with diligence, care and skill

34

Duty of Loyalty

- Adhere to conflict of interest policy
- Do not use your agency position for personal gain
- Maintain confidentiality
- Once decisions are made, board members speak as a united voice
 - See *County-Appointed Board Member Handbook* (2008)

35

Duty of Obedience

- Know how laws pertain to your agency
- Examine agency's governing documents
- Be informed of agency requirements

36

Board Speaks As One

- Individual board members cannot speak for the Board except in limited, predetermined cases
- Not speak board business on an individual basis
- Not offer individual opinions

37

Recusal

- Declining from participation in a decision because of special interest or relationship perceived as not permitting independent judgment.

38

If Recusal Becomes Detrimental

- For the record:
 - State your interest in the matter
 - State your recognition that recusal would hinder the board's ability to function
 - State your ability to vote impartially and fairly

When in doubt, recuse yourself

39

Conflicts of Interest

- The following are the questions you may want to pose yourself whenever your question whether you have a potential conflict. If you respond "yes" to any of these questions, you may want to abstain from voting on the matter.
 1. Is your interest direct and immediate as opposed to speculative and remote?
 2. Does your interest provide you a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated?

40

Conflicts of Interest (Continued)

3. Does your interest give the appearance of impropriety? (Although it may not be necessary to consider the appearance of impropriety in determining an actual conflict of interest, the AG suggested it be considered to maintain the public's confidence in the integrity of lawmakers.)

41

Conflict of Interest - Statute

- **§ 6-5-106. Conflict of interest; penalties; disclosure of interest and withdrawal from participation.**
- (a) Except as provided by subsection (b) of this section, a public servant commits an offense if he requests or receives any pecuniary benefit, other than lawful compensation, on any contract, or for the letting of any contract, or making any appointment where the government employing or subject to the discretion or decisions of the public servant is concerned.
- (b) If any public servant discloses the nature and extent of his pecuniary interest to all parties concerned therewith and does not participate during the considerations and vote thereon and does not attempt to influence any of the parties and does not act for the governing body with respect to the contracts or appointments, then the acts are not unlawful under subsection (a) of this section. Subsection (a) of this section does not apply to the operation, administration, inspection or performance of banking and deposit contracts or relationships after the selection of a depository.
- (c) Violation of subsection (a) of this section is a misdemeanor punishable by a fine of not more than five thousand dollars (\$5,000.00).

42

Official Influence vs. Personal Interest

- Causes for Recusal:
 - Appearance of conflict
 - Personal knowledge or connection

43

Basic Fairness

- Ability to make an impartial decision
- Avoidance of Prejudice
 - Possession of information not commonly known that may have an adverse effect

44

How do you know when you have a conflict of interest

- No outward Appearance of Bias
 - Can you administer your public duty without bias
 - Disclose possible bias
 - Don't take a chance

45

Personal Code of Ethics

- Step away from the decision
- Do not state aloud your conflict

Can I be Fair and Impartial?

46

Ethics

- Definitions § 9–13–102
- Use of Title and Prestige of Public Office § 9–13–103
- Nepotism § 9–13–104.
- Misuse of Office § 9–13–105
- Official Decisions and Votes § 9–13–106.
- Actions Taken While Negotiating for Employment § 9–13–107
- Disclosure Required § 9–13–108
- Penalties § 9–13–109

47

Official decisions and votes – Wyo. Stat. §9-13-106

- Shall not make an official decision or vote on an official decision if the public official has a personal or private interest in the matter. In determining whether he has a personal or private interest in a matter the public official shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest as defined in this subsection.
 - an interest which is direct and immediate as opposed to speculative and remote; and
 - Is an interest that provides a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated.

48

Official decisions and votes (Continued)

- If the above slide applies, the public official shall abstain from voting on the decision and from making any official decision in the matter. Abstention from voting must be recorded in the governmental entity's official records

49

Caution – Red Flags

- Accepting any fee, gift, compensation, payment of expense or anything of value – appearance of impropriety
- Outside employment or any outside activity which is incompatibility with the discharge of employee's duties and responsibilities
- Accepting meal expense, lodging or reimbursement of travel or expenses incident to travel from other source

50

Parliamentary Procedure

- Meetings should be conducted in a fair and orderly manner

51

Tools for Conducting Meetings

- Robert's Rules of Order
 - Codify behavior in meetings
- State statutes
 - Takes precedence over Robert's Rules
 - Public Meetings Act

52

Robert's Rules of Order

- Consider one matter at a time
- Majority Rules
- Minority's right to be heard
- Free and impartial debate
- Conduct business in a timely manner
- Courtesy

53

Quorum

- Simple majority
 - Three of the five members must be present for a quorum.

54

Board Chair

- Assures the board is fulfilling its responsibilities
- Leads the board through its tasks
 - Policies
 - Meetings

55

Guidelines for taking action:

- Introduce proposed action
 - I move that we buy new books
- Get agreement from at least one other person
 - I second the motion
- Discuss proposed action
- Amend the motion as needed
 - I move to amend the motion
- Vote on the action (motion)

56

Parliamentary Procedure

- Overseen by board chair:
 - The board chair does not make motions and should not second a motion unless no other second is available.
- The board chair's primary duty is to keep order

57

Resources

- <http://www.robertsrules.com>
- <http://www.robertsrules.org>
- <http://www.robertsrules.org/motions.htm>
- <http://www.portlandonline.com/>

58

Immunity from Legal Liability

- Qualified Immunity – while acting within scope of duties
- Provide defense if within scope of duties
- Erode immunity – unethical actions or wrongful purpose could lead to exposure to liability e.g. intentionally violating due process rights, equal protection or acting contrary to legal advice.

59

Eroding Governmental Immunity

- Conduct outside the scope of duties
- Official acts done for wrongful purpose
- Beware of putting other board members at risk
- Constitutional violations i.e. privacy
- Disregard for legal advice

60

Meetings

- Conducted in public
- Advance notice of meetings
- Minutes available to the public

61

Types of Meetings

- Regular
- Special
- Emergency
 - Must be reconsidered at a public meeting

62

Open Meetings Act

- The agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided in this act. Wyo. Stat. §16-4-401
- Citizens have a right to attend public meetings
- The public is entitled to know

63

Open Meetings Act

- All meetings must be open to public – although advisory (– conduct public business)
- Open – Notice of place, location & agenda
- Public to attend does not to state name or sign in
- Seek recognition – may be required to state name & affiliation
- Must keep minutes of proceedings

64

What is a Meeting?

- “Meeting” means an **assembly** of at least a **quorum** of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking **action** regarding public business. W.S. § 16-4-402

65

When is there an assembly?

- “Assembly” means communicating in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously;

W.S. § 16-4-402

66

What is Action?

- Action” means the transaction of official business of an agency including a collective decision, a collective commitment or promise to make a positive or negative decision, or an actual vote upon a motion, proposal, resolution, regulation, rule, order or ordinance at a meeting W.S. §16-4-402

67

Penalty – Violate Open Meeting Act

- Anyone who knowingly or intentionally violate the provisions of this act shall be liable for a civil penalty not to exceed seven hundred fifty dollars (\$750.00)
- Remain at meeting, liable unless object at next meeting – recorded in minutes.
- Ethic Statutes overrides this act.

68

Meeting Notice

- Regular Meeting - Provide by ordinance, resolution, bylaws or rule for holding regular meetings
- Special Meeting - Called by the presiding officer - Notice to Council; Media or Request Party – 8 hour notice – business to be transacted - agenda

W.S. § 16-4-404

69

Notice (Continued)

- An order of recess
- Exception to Notice
 - Emergency Meeting - matters of serious immediate concern to take temporary action without notice -to become permanent shall be reconsidered and acted upon at an open public meeting within forty-eight (48) hours in no event later than thirty (30) days from the date of the emergency action.
- No Agenda required

W.S. § 16-4-404

70

Public Records Act

- Purpose:
 - Accessibility of Records held by the board
 - Allowing access to public records and public meetings is how agencies provide this information to the county citizens.
- The public should have access to governmental transactions, including records associated with the transaction of business.
- Response to Records Request by Executive Director

71

Public Record

- Papers
- Photographs
- Film or microfilm
- Forms
- Open to the public

72

Penalty – Violation Open Records Act

- Knowingly or intentionally violates the provisions of this act is liable for a penalty not to exceed seven hundred fifty dollars (\$750.00).
- The penalty may be recovered in a civil action and damages shall be assessed by the court. Any action pursuant to this section shall be initiated by the attorney general or the appropriate county attorney

W.S. § 16-4-205

73

Certification to BOCC

- Changes in process to reflect P&Z motions and vote in the BOCC Staff Report
- Updates in the Staff Report as a whole

74

Albany County Planning and Zoning Commission
REGULAR MEETING of February 9, 2022
Minutes

Staff Present: David Gertsch – Planning Director, Joe Wilmes – Assistant Planner, Matt Ayres – County Civil Attorney, Jennifer Curran – County Civil Attorney

I. PLEDGE OF ALLEGIANCE

II. CALL TO ORDER/ROLL CALL (Time 5:01)

Chairman: The Regular Meeting of the Planning and Zoning Commission will come to order.

Chairman: Will the secretary call the roll.

Vote: Mr. Hinckley: Present Mr. Kennedy: Present

 Mr. Platt: Present Mr. Thyne: Present

 Ms. Hanning: Present

III. Approval of Agenda

Chairman: Are there any additions or deletions to the agenda for February 9, 2022?

Chair will entertain a motion to accept the agenda February 9, 2022 (as AMENDED).

Commissioner Hinckley motions to approve the agenda with a second from Commissioner Platt with an amendment to add another item under Current Planning Projects 12A to discuss litigation.

The vote for the amendment was unanimous.

The vote for the motion was unanimous.

Motion Carried.

IV. Approval of Minutes

Chairman: Are there any corrections to the minutes for the January 12, 2022, meeting?

Chair will entertain a motion to accept the minutes for the January 12, 2022, meeting as presented/with corrections.

So moved by Commissioner Hinckley.

Seconded by Commissioner Platt.

The vote was unanimous.

Motion Carried.

V. DISCLOSURES:

Chairman: The Chair calls for any disclosures to be known.

Commissioner Hinckley disclosed that Jason Watson is a good friend of his.

Chairman: The discussion will be conducted in accordance with the State Statutes, the Rules of the Planning and Zoning Commission, and other applicable laws. I would ask the individuals who address the Commission to approach the lectern, identify yourself, and state your address.

VI. ELECTION

A. Election for Chairperson

- i. Commissioner Hinckley was voted as Chairman.

B. Election for Vice Chairperson

- i. Commissioner Kennedy was voted as Vice Chairman.

VII. PUBLIC APPLICATIONS

A. Mecca Conditional Use Application CU-01-22

Joe Wilmes, Assistant Planner, gave the staff report.

Commissioner Hinckley had a question regarding the fire departments comment about the haul water program. This program is for subdivisions. He also had a question about “no new clients.” It was explained that this daycare is already existing and is just moving locations. He also had a question regarding the septic system. It was explained that our calculations are based on bedrooms and their main use is still a residence. He had a question regarding the maximum number of kids allowed.

Commissioner Platt asked when the staff report was finalized and how the timeline with the public comment happened. He also asked a question about the last sentence in the public comment, “Finally, please not Mecca Daycare has been operating at 4935 Valley View Road since Monday, January 31st with drop-offs and pick-ups are occurring daily.” It was unknown if this was true but was a concern and the question should be asked to the applicant.

Commissioner Thyne had a question about the structure of the options listed in the staff report. Commissioner Kennedy explained the possible options.

Cindy Mecca, the applicant, said that she was up for any questions the commission had. She said that the daycare is currently running, and the reason is that the families would have no daycare if she was not doing it, she didn't realize it would be such a long process.

Commissioner Hanning had questions regarding the DFS permit and the city conditional use. The DFS permit is in motion, and she had a conditional use permit from the city when she lived in the city.

Commissioner Thyne asked how many kids are involved with the daycare and if there are plans for expanding. She stated that there are 5 kids, and she plans on retiring when these kids get to kindergarten.

Commissioner Hinckley asked how many kids the permit would allow. She stated that she could have up to 10 kids but has no desire to have that many. He asked a question regarding the parking concerns that were brought up in the public comment. She stated that there isn't any concern with parking as the families come and go at separate times.

Commissioner Platt said that he went to take a look at the property and sees no concern with the parking.

Public comment was opened, but there was no comment.

A motion was made by Commissioner Thyne and seconded by Commissioner Hanning to approve the Mecca Conditional Use Application CU-01-22.

Discussion among the Planning and Zoning Commission was opened.

Commissioner Platt had a question for Mr. Gertsch about whether there was any applications that have been approved in the past where the applicant has already started the use before it was approved. Mr. Gertsch said that there have been applications in the past that have been approved under those conditions, but the one good thing that this application has for it is that the applicant came to us about the application instead of the County pursuing the applicant to fix the problem, the legal staff agreed with Mr. Gertsch.

Commissioner Hinckley asked if the conditional use permit would expire when the applicant retires. Matt Ayres, County Civil Attorney, said that the conditional use would expire 1 year after the use is abandoned.

The vote was unanimous.

Motion Carried.

B. Watson Zoning Change Application LUC-10-21

Joe Wilmes, Assistant Planner, gave the staff report.

Commissioner Hinckley had a question regarding the boundary line adjustment. He asked if a zoning certificate would be needed following this application. The zoning certificate would only be needed for a new building. He also asked what we would be allowing in the future if the zone change went through.

Commissioner Hanning had a question about the boundary line adjustment property. Mr. Gertsch explained the process. She asked if there was any other process that could do what the applicant wants without expanding a commercially zoned area.

Commissioner Platt had a simplifying question for Joe.

Flint Polson, the applicant's representative, said that when ownership changed, they didn't get a proper survey done and they are trying to rectify the situation.

Commissioner Hinckley had a question for Flint regarding the buffer between Watson Well and Antelope Ridge Subdivision, public comment, water haul, new buildings. Flint said that only one person would be affected, and their house is no

where near this border and that this is only to be in compliance and there are currently no plans for expansion.

Public comment was opened, but there was no comment.

A motion was made by Commissioner Platt and seconded by Commissioner Thyne to approve the Watson Zoning Change Application LUC-10-21.

Discussion among the Planning and Zoning Commission was opened.

Commissioner Thyne said that this seems to him that all the applicant is only trying to bring this parcel into compliance.

Commissioner Kennedy agrees with that statement.

The vote was 4-0, Commissioner Hinckley abstained from the vote due to his disclosure.

Motion Carried.

C. Summit View Estates Subdivision Application Final Plat SD-10-21

Joe Wilmes, Assistant Planner, gave the staff report.

Commissioner Hinckley asked about the engineering concerns, the haul water program, and noted that the technical report was exemplary. The engineering concerns were taken care of, and the haul water program will be used.

Casey Palma, the applicant's representative, talked about timeline of this project, the haul water program, the new road, and the landscape plan.

Commissioner Thyne had questions about the alternative leach field that was in the report.

Casey Palma, the applicant's representative, said that it was standard where they are from to include an alternate leach field position in the plans.

Larry Gallagher, the applicant's representative, doesn't believe there is a modified system.

Public comment was opened, but there was no comment.

A motion was made by Commissioner Platt and seconded by Commissioner Hinckley to approve the Summit View Estates Subdivision Application Final Plat SD-10-21.

Discussion among the Planning and Zoning Commission was opened, but there was none.

The vote was unanimous.

Motion Carried.

D. Cottontail Subdivision Application Preliminary Plat SD-11-21

This item was pulled from the agenda due to the notice requirements not being met.

Commissioner Hinckley asked for the Chapter 23 report to be included.

IX. CURRENT PLANNING PROJECTS

A. Determine 2022 Planning and Zoning Commission Meeting Times

- i.** Commissioner Hinckley makes a motion to schedule the meetings at 5:00 p.m. on the second Wednesday of the month through January 2023 doing a hybrid format, seconded by Commissioner Platt.

The vote was unanimous.

Motion carried.

B. Planning Projects Update

- i.** David Gertsch, Planning Director, discussed the Natural resource management plan, the Casper Aquifer Protection Plan, and the Growth Area Plan

C. Litigation

- i.** Matt Ayres, County Civil Attorney, discussed the current County litigation for land use or zoning decisions.

X. OTHER ITEMS/ANNOUNCEMENTS

- A.** Next Meeting March 9, 2022, at 5:00 p.m.

XI. CITIZEN COMMENTS – Non-Agenda Related Topics

- A.** There were no public comments.

XII. ADJOURNMENT

Chairman: There being no further business to conduct, the Chair would entertain a motion to adjourn the meeting.

So moved by Commissioner Hinckley

Seconded by Commissioner Platt

The vote was unanimous.

Motion Carried.

Meeting adjourned at 6:29 p.m.