

Joint Meeting of P & Z and BTC with Chris McAnany  
February 12, 2020  
Bluff Community Center at 6:30 p.m.  
190 N 3rd East P.O. Box 324  
Bluff UT 84512  
435-672-9990  
Draft Minutes

Roll Call

PZ: Sarah Burak, Amanda Podmore, Michael Haviken, Malysa Egge, Robin Cantrell  
Town Council: Ann Leppanen, Luanne Hook, Jim Sayers, Linda Sosa  
Advisory Council: Wendy Smith, Deborah Westfall

**Introduction of Chris McAnany** -Dufford Waldeck Firm in Grand Junction practices in land use and local government. Land use in Utah is tough with constantly changing law and strict review of local governments. McAnany is here to give tools for an atmosphere where the Commission is "working under the microscope."

**1.Presentation by Marcia Hadenfeldt** - In 6.01.020.i of the Zoning Ordinance, Hadenfeldt recommended changes to the archaeological requirements. She argued that local government cannot tell private landowners what to do with archaeology on their private land. Hadenfeldt called Elizabeth Hora-Cook of the State Historic Preservation Office (SHPO) and they confirmed that a municipality cannot regulate archaeology on private land. She suggested encouraging the people of the town to protect archaeology and suggested language including: "Building envelopes are encouraged that take into consideration the vegetation, archaeology, and topography of the lot." She also encouraged the Town to adopt language that encourages the protection of old-growth vegetation. Burak thanked Hadenfeldt for all her help and thorough research and explained that the Commission will be reviewing the ordinance for future changes. McAnany read the Town Ordinance at 6.01.020.i. McAnany believes it is consistent with state law but the Town Council can change it. Hadenfeldt added that SHPO only expects to hear from law enforcement on human remains, not general artifacts.

Westfall directed the group to the list of ordinances the Commission was working on because the list includes an archaeological protection ordinance. Hora-Cook explained to Hadenfeldt that the three hooks that trigger NAGRA are publicly owned lands, a public good or permit like a pipeline, or a publicly-funded project.

**2.Overview of Town Governance by Chris McAnany-** McAnany presented a written document with best practices in Town Governance. McAnany first suggested adhering to the agenda. He recommended adhering to formality, especially in public hearings. In a public hearing, the Commission should hear from an applicant, follow up with public comment, allow a rebuttal from the applicant, and then allow discussion and deliberation by the Commission. The Chair is responsible for making sure the meeting is controlled and fair. LUDMA requires certain types of due process, notice and hearings and the Commission needs to follow those. Public hearing should be formal and the public should clearly state their name and factually-based

position. Be clear about how long the record is open for, like if it closes after the hearing or if it's open for two weeks after the hearing.

McAnany said that decisions should be made by the majority, not by someone who feels most strongly about an issue. McAnany explained the parliamentary procedure, which is in the Commission bylaws. He suggested withdrawing a motion if someone offers a better motion.

Decisions granting a permit or approving an action are final. It is better to table a decision than ask for a do-over on a decision. If an action is tabled, let the applicant know the timeline and what information is missing.

The Commission may want to select someone to screen packets or applications to see if they are complete. Ask the applicant questions to incorporate into a final decision, like an approval subject to a requirement or an action committed to by the applicant - though these are strongest if founded in the ordinance. Avoid asking questions that are far afield from the ordinance, like will a business compete with another business in town. Treat all people with respect because personal animus may be the basis for overturning a decision if the decision was based on personal factors. Be aware of the public perception of bias, including being overtly friendly to an applicant at a public hearing. McAnany suggested recussing oneself if one is too close to an application. The Commission is bound by the Municipal Officers Ethics Act.

Utah law has the public clamor doctrine where land use decisions have been overturned if they were found to have yielded to public clamor. A public "show of hands" can be a reason that a decision is overturned.

McAnany encouraged the Commission to avoid ex parte contact or contact that occur outside of official proceedings. It is a fairness issue in an adjudicatory process. In a legislative process like changing the zoning ordinance, it is appropriate to talk to members of the public outside of the official process. Podmore asked a clarification question about members of the public approaching the Commission for advice on a Land Use Clearance. He suggested it was best to point them to the process. McAnany recognized the Commission is challenged because it doesn't have paid staff and suggested the Commission elect certain individuals to field questions for the Land Use Clearance process.

The Commission cannot adjudicate private disputes. If the applicant can't show clear title or lack of dispute, this should be worked out by the applicant and the Commission should seek legal advice. The most common private disputes are boundary disputes, road disputes, and covenant disputes. McAnany said it is reasonable to ask for a title report or a copy of the deed.

McAnany suggests stating facts and the basis for decisions and making them in writing. Courts rarely set aside findings of fact that are clear and rational. Conditional approvals are ok when requiring certain requirements be satisfied and the approval is not granted until those conditions are met.

McAnany suggested keeping a file for every application that contains the entire record including commission statements, public statements. Hard copy, electronic or a mixture of both is good.

Comment [1]: ask TC for file folders?

Be aware that the public may not understand that the authority of the Commission is different from that of the Town Council. Joint meetings are a good way to avoid an ordinance being drafted that is not going to be considered by the Town Council.

Fees can be used to recoup reasonable costs. Some fees require studies and ordinances.

Zoning is the power to regulate health, safety, and welfare on private property. McAnany warned not to fall for the “you can’t tell me what to do on private property.” If the government takes private property for public use, this is a “taking” unless the owner is compensated at fair market value. Land use laws do not constitute a taking unless they destroy all reasonable economic use of the property. Saying a property cannot be used for commercial use but can for residential is not a taking. McAnany suggested avoiding orphan zoned parcels. If there is a question of preemption (state law trumping local law), get legal advice. Be careful about disclosing legal advice in a public meeting because that may waive the lawyer-client privilege.

A master plan or general plan are guidance documents, binding on the local government, and can be cited in decision-making processes. If the Commission departs from the general plan, then this should be clear facts as part of the record. If questions get far afield from the ordinance, then this can be perceived as acting on a bias. Some questions, like “who will be living in a house”, can be problematic and lead to discrimination claims. It’s also problematic to say something like “we don’t want a Walmart coming in here” because it looks like the Commission is discriminating against a specific business.

**3. Business License Process** - Sosa said the TC circulated business license applications and has received some back. The licenses will be used as data and for control over new business applications. McAnany said the business license wants to cover health, safety, and welfare and see that the use is consistent with zoning, that they have a sales tax license, and a few other considerations. Burak asked for clarification on the process and whether the license application comes to TC or the Commission first. McAnany said that under state law, the only ordinances that need to come before PZ are land use ordinances so business licenses don’t necessarily need to come before the PZ. Burak says that as a volunteer board, it has to be a part of the meeting so it’s not requiring a Commissioner to work as a staff. McAnany suggests having someone serve as a clearinghouse for reviewing licenses. Podmore said that if the Commission is going to consider any business licenses tonight, it should consider all so as not to favor a particular business. Egge said that the zoning information is available to the public and asked if the Commission needs to be involved. McAnany suggests the Town Council screens then and lists the specific business licenses on the next agenda and slates then for approval at the next meeting. Leppanen suggests that the Town Council take it on and relieve the Commission from any obligation.

**4. Conditional Use Permits** - Cantrell said this was an issue not tackled earlier but the Commission understands this is a gray and controversial area. The Commission requests guidance as to whether it should recommend creating a conditional use permit system or look at updating zones. This is based on an issue that came up recently. Moab recently did away with conditional use permits. McAnany defined a conditional use as a use that may be permissible in a given zone if conditions can be attached to the use that mitigates the impacts. It is not a use by right. Conditional uses are defined by ordinances and are defined by off-site impacts like those of a gravel pit. A conditional use process is an adjudicatory process: if criteria can be met to mitigate impacts, then it can be approved. Utah law disfavors conditional use permits. Typical conditional use criteria are dust, use, noise, and traffic. A conditional use permit runs with the land. McAnany said it is easiest to establish criteria that must be met in the ordinance. Cantrell gave examples of other towns that allow things like a licensed 8-child daycare or a small office in a residential zone. McAnany said the Commission can loosen up zoning restrictions to allow less-intensive uses that are compatible with a residential neighborhood. The Commission will put this on a future agenda to discuss.

Chris added that often a town doesn't know it needs a conditional use permit until it's required. The Town can enact a temporary moratorium to address the issue.

**5. Amending Existing Ordinances, ie, the 2000 square foot exemption for additions** - Haviken shared his concerns about the page 18 of the Zoning Ordinance that discusses site plan requirements and creates a site plan exemption for 2,000 square foot commercial remodel. The question is what the Commission should do for a business remodeling under 2,000 square feet. McAnany said a site plan is typically intended for large projects and the land use clearance serves as a "site plan lite." McAnany said the ordinance needs a trigger point for site plans but the Commission needs to decide what that is. The ordinance could be changed with requirements for construction that doesn't require a site plan. For example: "For a project under 2,000 square foot, you shall submit x, y and z." The land use clearance can specify a process that is less onerous than the code. The Commission can make the changes in the submittal standards and/or the code but both would be best. Burak clarified that the process would be reviewing the code, looking into an amendment, and updating the submittal documents. Haviken pointed out a heading issue that can be fixed in an amendment. Haviken asked about advisory information that is at the end of the Land Use Clearance document and why it was included; McAnany suggested it be included so as to be helpful and transparent. Haviken asked a clarifying question about the "primary structure" definition in the ordinance.

**6. Planning and Zoning By-Laws, ie, the number and role of advisors** - The Commission is looking for approval from the Town Council at their next meeting. Burak will circulate PDF.

**7. Priority List of Ordinances** - This could be discussed at a later date.

**8. Special Event Permits for Parking** - The Commission is not in agreement about whether to require special event permits. McAnany said a lot of towns struggle with this. Larger towns have staff to administer and review permits. For tourist towns, it is reasonable to have a permit

system to consider business licenses, health, and safety. For example, Moab has different classes of permits and a full-time staffer. Leppanen said this is a discussion that has arisen with the Town Council. The Town is not equipped with staffing and insurance to take on that liability and control so has decided to revisit the issue next year. This will be discussed at the next Commission meeting, given the Town's response.

**9. Other** - Burak requested McAnany's input on things the Commission should be working on or that might be missing. He suggested the Town revisit the business license ordinance and the fiscal procedures ordinance. It would be wise to think about a trails master plan and a utility master plan. The water study is an important first step. Burak requested he email the Commission if he has other ideas.

Amer Tumeh asked about the subdivisions ordinance. He said some of the lots in the Cottonwood subdivision would be rendered useless because of their size. There are some commercial lots with the same issue, where a lot is long and narrow and the setbacks are prohibitive. McAnany suggested a variance process or a nonconforming use process. McAnany suggested that a lot that wasn't developed could be considered a nonconforming use. The Commission could also consider a rule that makes allowances for small lots. McAnany said small lots just may not be able to support a septic system. Cantrell believes the commercial 50' set back is too much. Some municipalities do it 50' from the center of the highway. McAnany said that if the setback is not working, it should be reviewed.

**Comment [2]:** I think it would be good to ask for sample language on this.

Leppanen wants the bylaws passed off in a more official format with a sheet. Hook requested a PDF. The Council will make the bylaw revision a priority.

Haviken motions to adjourn the meeting. Cantrell seconds motion to adjourn. Motion passes unanimously, meeting adjourned at 8:47 pm.