

CENTERVILLE CITY PLANNING COMMISSION AGENDA

ATTN: MARSHA

NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY PLANNING COMMISSION WILL HOLD ITS REGULAR PUBLIC MEETING AT 7:00 P.M. ON WEDNESDAY, MAY 27, 2015, AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Meetings of the City Council of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans with Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Blaine Lutz, Centerville Finance Director, at 801-295-3477, giving at least 24 hours notice prior to the meeting.

A notebook containing supporting materials for the business agenda items is available for public inspection and review at City Hall and will be available for review at the meeting. This agenda is also posted on the City's Website: www.centervilleut.net and on NovusAgenda at the following link: <http://centerville.novusagenda.com/agendapublic>

Tentative Time: (The times shown below are tentative and are subject to change during the meeting)

- 7:00 A. WELCOME AND ROLL CALL
 B. PLEDGE OF ALLEGIANCE
 C. PRAYER OR THOUGHT – Commissioner Logan Johnson
 D. MINUTES REVIEW AND ACCEPTANCE – May 13, 2015
 E. COMMISSION BUSINESS
- 7:10 1. TRAINING FOR COMMISSIONERS | LEGISLATIVE & ADMINISTRATIVE DECISIONS
 Planning Commission training regarding types of applications that come before the Planning Commission and the distinction between legislative and administrative decisions.
 Presentation by City Attorney
- 8:10 2. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT
 a. Upcoming Meetings
 • PC Meeting June 10, 2015: Code Text Amendment, Main Street Density Cap, Lot Types and PDO Acreage Change, Code Text Amendment, Allow Flag Lots in R-M Zone, Skinner Produce Stand CUP, 1-hr Public Comment for the South Main Street Corridor Zone
- 8:15 F. ADJOURNMENT

Posted May 21, 2015 by Community Development



PRELIMINARY DRAFT

PLANNING COMMISSION MINUTES OF MEETING

Wednesday, May 13, 2015

7:00 p.m.

A quorum being present at Centerville City Hall, 250 North Main Street, Centerville, Utah. The meeting of the Centerville City Planning Commission was called to order at 7:00 p.m.

MEMBERS PRESENT

David Hirschi, Chair

William Ince

Logan Johnson

Scott Kjar

Kevin Merrill

Debra Randall

MEMBERS ABSENT

Gina Hirst

STAFF PRESENT

Corvin Snyder, Community Development Director

Brandon Toponce, Assistant Planner

Lisa Romney, City Attorney

Kathy Streadbeck, Recording Secretary

VISITORS

Interested Citizens (see sign-in sheet)

PLEDGE OF ALLEGIANCE

OPENING COMMENT/LEGISLATIVE PRAYER

Chair Hirschi

MINUTES REVIEW AND APPROVAL

The minutes of the Planning Commission meeting held April 22, 2015 were reviewed and amended. Commissioner Ince made a **motion** to approve the minutes as amended. The motion was seconded by Commissioner Randall and passed by unanimous vote (6-0).

HAFOKA PROPERTY | 564 WEST PORTER LANE (400 S) - [Continuation from the April 22, 2015 Planning Commission Meeting] - Consider a Zone Map Amendment for the purpose of developing a multi-family project located at 564 West Porter Lane from

Residential-Medium (R-M) to Residential-High (R-H). Taylor Spendlove, Brighton Centerville LLC, Applicant.

The applicant asked to postpone this item until further notice.

MICKELSON MEADOWS SUBDIVISION | 696 EAST CENTER STREET - Consider a final subdivision plan for the Mickelson Meadows Subdivision, located on property at 696 East Center Street. Patrick Scott, Brighton Homes Utah LLC, Applicant

Brandon Toponce, Assistant Planner, reported the Planning Commission previously approved a preliminary subdivision for Mickelson Meadows. The proposed subdivision consists of four (4) lots, with one lot having an existing home that will remain. Each lot depicted has adequate frontage, buildable area, easements, and setbacks as required. The final paper plat has been submitted to the City and appears to meet all previous conditions for a final review by the Planning Commission. Mr. Toponce reviewed the conditions set during the preliminary subdivision process. The applicant has met a majority of the conditions including drainage and zoning requirements. The applicant will be required to pay all applicable fees, post all required bonds, and submit an appropriate title report. The applicant must receive final approvals for the subdivision from the City Council.

Lisa Romney, City Attorney, suggested an amendment to the proposed condition #2. She suggested separating the bonding requirements for infrastructure within the subdivision and infrastructure within the public right-of-way.

Chair Hirschi made a **motion** for the Planning Commission to accept the final subdivision plat and recommend approval to the City Council for the proposed Mickelson Meadows Subdivision, located at 696 East Center Street, subject to the following:

Conditions:

1. All professional service fees shall be paid.
2. A bond shall be posted for all public infrastructure and utility work to be conducted within the subdivision prior to the plat being recorded. Any public infrastructure or work in the public-right-of way shall require an excavation permit and bonding.
3. A current title report will need to be submitted and reviewed by City staff prior to the plat being recorded.
4. The final subdivision plat shall be reviewed and approved by the City Council and recorded at the Davis County Recorder's Office.

Reasons for the Action (Findings):

1. The final subdivision plat is in harmony with the General Plan [Section 12-480-52(1)(e)].
2. The new subdivision meets the objectives for development within a Residential-Low Zone [Section 12-30-020(b)(1)].
3. It appears all applicable development standards for development within an R-L Zone have been satisfied [Table 12-32-1].
4. It appears all general requirements for a subdivision have been satisfied [Chapter 15-5].
5. All applicable standards found in the Subdivision Ordinance pertaining to a final subdivision review have been satisfied [Chapter 15-4].
6. The final plat conforms to the preliminary plat [Section 15-4-106].

The motion was seconded by Commissioner Merrill and passed by unanimous roll-call vote (6-0).

MILES MANOR SUBDIVISION | 580 EAST 100 SOUTH - Consider a final subdivision plan for the Miles Manor Subdivision, located on property at 580 East 100 South. Patrick Scott, Brighton Homes Utah LLC, Applicant

Brandon Toponce, Assistant Planner, reported the Planning Commission previously approved a preliminary subdivision for Miles Manor Subdivision. The proposed subdivision consists of three (3) lots. An existing home on the property will be demolished to make room for each new dwelling. Brighton Homes has been selected by the property owner to be the developer of the project. Each lot depicted has adequate frontage, buildable area, easements, and setbacks as required. Mr. Toponce reviewed the conditions set during the preliminary subdivision process. The applicant has met a majority of the conditions. The applicant will be required to pay any applicable fees, post all required bonds, and submit an appropriate title report. In addition, the applicant will be required to submit an adequate drainage plan and a remediation plan (lead contamination) to be reviewed and approved by the City Engineer. The applicant must receive final approvals for the subdivision from the City Council.

Lisa Romney, City Attorney, suggested an amendment to the proposed condition #3. She suggested separating the bonding requirements for infrastructure within the subdivision and infrastructure within the public right-of-way. She also suggested an additional condition addressing the City Engineer's review and acceptance of the drainage plan.

Patrick Scott, applicant, reported on the environmental study that has taken place on the property. He said the initial concern was that there was a 50 gallon drum buried on the property. No such drum was found; however, one of the soil samples taken from the site tested positive for

1 lead. Additional soil samples were taken on and around that area of the property (southern
2 portion of Lot 3), but none tested abnormally high for lead. It was determined the lead found in
3 the original soil sample was an anomaly and was thrown out. The Consultant believes the lead
4 levels within the soil are considered natural for this area and does not recommend any soil be
5 removed from the site. He said the City Engineer has received the study in full and the applicant
6 is awaiting his review.

7
8 Commissioner Ince made a **motion** for the Planning Commission to accept the final
9 subdivision plat and recommend approval to the City Council, for the proposed Miles Manor
10 Subdivision, located at 580 East 100 South, subject to the following:

11
12 ***Conditions:***

- 13 1. All professional service fees shall be paid.
- 14 2. Removal of the home shall take place or a bond shall be posted prior to recording the
15 plat, for the demolition of the existing building located on the property line of Lots 2
16 and 3.
- 17 3. A bond shall be posted for all public infrastructure and utility work to be conducted
18 within the subdivision prior to the plat being recorded. Any public infrastructure or
19 work in the public right-of-way shall require an excavation permit and bonding.
- 20 4. Remediation concerning the environmental assessment shall be determined by the
21 City Engineer and adhered to by the applicant prior to any building permit being
22 issued for the subdivision.
- 23 5. The applicant shall obtain a Davis County Development and Construction Permit,
24 with a copy being submitted to City staff.
- 25 6. A current title report shall be submitted as part of the final plat submittal to City staff.
- 26 7. The final subdivision plat shall be reviewed and approved by the City Council and
27 recorded at the Davis County Recorder's Office.
- 28 8. Subdivision drainage plan shall be reviewed and accepted by the City Engineer prior
29 to the recording of the plat.

30
31 ***Reasons for the Action (Findings):***

- 32 1. The final subdivision plat is in harmony with the General Plan [Section 12-480-
33 52(1)(e)].
- 34 2. The new subdivision meets the objectives for development within a Residential-Low
35 Zone [Section 12-30-020(b)(1)].
- 36 3. It appears all applicable development standards for development within an R-L Zone
37 have been satisfied [Table 12-32-1].
- 38 4. It appears all general requirements for a subdivision have been satisfied [Chapter 15-
39 5].

- 1 5. All applicable standards found in the Subdivision Ordinance pertaining to a final
2 subdivision review have been satisfied [Chapter 15-4].
3 6. The final plat conforms to the preliminary plat [Section 15-4-106]
4

5 The motion was seconded by Commissioner Kjar and passed by unanimous roll-call vote
6 (6-0).
7

8 **PUBLIC HEARING | WALTON VILLAGE | 395 SOUTH MAIN STREET -**
9 **Consider a proposed conceptual site plan for the Walton Village Development, on property**
10 **located at approximately 395 South Main Street. The project design and layout involves 15**
11 **live/work units, 35 multi-family units, using the residential permitted allowance of 3 units**
12 **per building. Taylor Spendlove, Brighton Centerville LLC, Applicant**
13

14 The applicant asked to postpone this item until further notice.
15

16 **PUBLIC HEARING | CODE TEXT AMENDMENT | SIGNS, SECTION 12-54-080-**
17 **SIGNS PERMITTED IN ALL ZONES - Consider proposed zoning code text amendments**
18 **for Chapter 12-54-Signs; which includes various changes to Section 12-54-080-Signs**
19 **Permitted in All Zones. Centerville City, Applicant**
20

21 Cory Snyder, Community Development Director, reported the City Council requested
22 staff draft an amendment to Section 12-54-080 of the Zoning Ordinance regarding temporary
23 sign allowances. The Council desires the provisions for political signage be more convenient for
24 those desiring to run for office. The Ordinance does not have a specific section for political
25 signs; therefore, they would fall under the category of "Signs Permitted by Right." This category
26 allows persons to place signs on a property, which includes lawful commercial or non-
27 commercial messages, without having to obtain a permit. Persons are still required to follow the
28 provisions of the ordinance in relation to location and size. Mr. Snyder explained that these types
29 of signs have been viewed to cause visual clutter throughout the city and he discussed the
30 confusion and frustration that has been associated with these types of political signs and
31 business/private signs in the past. He said staff has attempted to draft an ordinance that is simple
32 to understand and fair for all. He said the City Council suggested keeping a setback for "Signs
33 Permitted by Right" but staff is proposing, for simplicity of enforcement, no setback. He also
34 explained the proposed changes combine public facility, commercial, and multi-tenant in one
35 provision. Mr. Snyder said he suggests multi-tenant buildings be separated and allowed a
36 specific square footage per tenant.
37

38 Commissioner Randall said she is concerned with visual clutter. She is concerned these
39 temporary signs could become permanent fixtures. She asked if a time limit should be set for

1 political sign postings. She also asked what is considered "temporary?" She said some of these
2 flags and other signs along Parrish Lane seem permanent to her, as they never come down.

3
4 Mr. Snyder said "temporary" means any sign that is not cemented or otherwise secured to
5 the ground or building. He said flags would be a violation of the proposed amended ordinance
6 because they exceed the 5-foot high limit. However, if the height of the flag is lowered it is
7 possible they could remain in place indefinitely, as this is the "right" of the property owner. He
8 explained the proposed ordinance deals with both political and private signs equally. Setting a
9 time limit for political signs would not be fair, as this same provision would apply to private
10 signs, thus hindering a property owners "right." He explained that until the City chooses to be
11 more aggressive with violations, staff would prefer to keep the ordinance all inclusive, simple,
12 fair, and easy to understand.

13
14 Chair Hirschi opened the public hearing.

15
16 Tim Hawkes agreed all signs should be treated equal whether private or political. He also
17 said it is important not to be too restrictive. He does not believe the City should be going around
18 doing spot sweeps for signage. He said the rules should be simple, reasonable and fair.

19
20 Patty Hendrick said she would like to see the City install a functional sign system that
21 would inform the public of upcoming issues.

22
23 Chair Hirschi closed the public hearing.

24
25 Chair Hirschi agreed visual clutter can be significant especially during campaign season.
26 He said he does not like the visual clutter, but also hates the restriction of free speech. He agreed
27 property owners have a right to express their free speech on their own property. However, he
28 would prefer some type of a setback, perhaps three (3) feet, for signage. He does not want to see
29 signage hindering pedestrians. He said the wind in Centerville can be a problem and he would
30 like to keep signage setback off of sidewalks and streets. He said this is more of a concern along
31 commercial corridors (i.e., Parrish Lane, Main Street, etc.) and not so much for residential areas.
32 He said the City has gone to great lengths to ensure pedestrian friendly corridors and would not
33 want to hinder this by allowing signage with no setback. A majority of the Commission agreed.

34
35 Lisa Romney, City Attorney, suggested including a reference to Section 12-54-060 which
36 includes additional signage regulations (i.e., visual triangle, etc.)

37
38 Chair Hirschi made a **motion** for the Planning Commission to recommend to the City
39 Council, the amendments to Chapter 12-54-Signs as follows:

40

SECTION 12-54-080(b)(1)-(3)

(1) Agricultural or residential zones: Any type or number of signs provided:

- A. The total area of all signs is not more than sixteen (16) square feet;
- B. No sign is higher than five (5) feet; and
- C. Each sign is located on private property behind the sidewalk and is not within the public right-of-way or restricted sight triangles as more particularly set forth in Section 12-54-060.

(2) Public facility, commercial, and industrial zones: Any type or number of signs provided:

- A. Wall Sign: Any number of wall signs provided the total area of all wall signs on the overall property is not more than thirty-two (32) square feet.
- B. Free-standing sign: Any number of free-standing signs provided:
 - i. No sign is higher than five (5) feet;
 - ii. Each sign is located on private property setback at least three (3) feet behind the sidewalk and is not within the public right-of-way or sight triangle as more particularly set forth in Section 12-54-060; and
 - iii. The total for all free-standing signs does not exceed seventy-five (75) square feet.

(3) Multi-Tenant or Planned Centers: Any type or number of signs provided:

- A. Wall Sign: Any number of wall signs provided the total area of all wall signs on the overall property does not exceed more than thirty-two (32) square feet
- B. Free-standing sign: Each multi-tenant or planned center use shall be allowed any number of free-standing signs provided:
 - i. No sign is higher than five (5) feet;
 - ii. Each sign is located on private property setback at least three (3) feet behind the sidewalk and is not within the public right-of-way or sight triangle as more particularly set forth in Section 12-54-060; and
 - iii. The total area of each free-standing sign does not exceed sixteen (16) square feet per tenant.

Reasons for the Action (Findings):

- 1. The proposed amendment addresses the concerns expressed by the City Council.
- 2. The amendment helps to clarify and provide equal opportunity for all those who desire to place a sign by right on their property.
- 3. Maintaining restrictions on temporary signs is consistent with the overall goal of the General Plan for signs [12-430-2(3)].

The motion was seconded by Commissioner Johnson and passed by unanimous roll-call vote (6-0).

COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

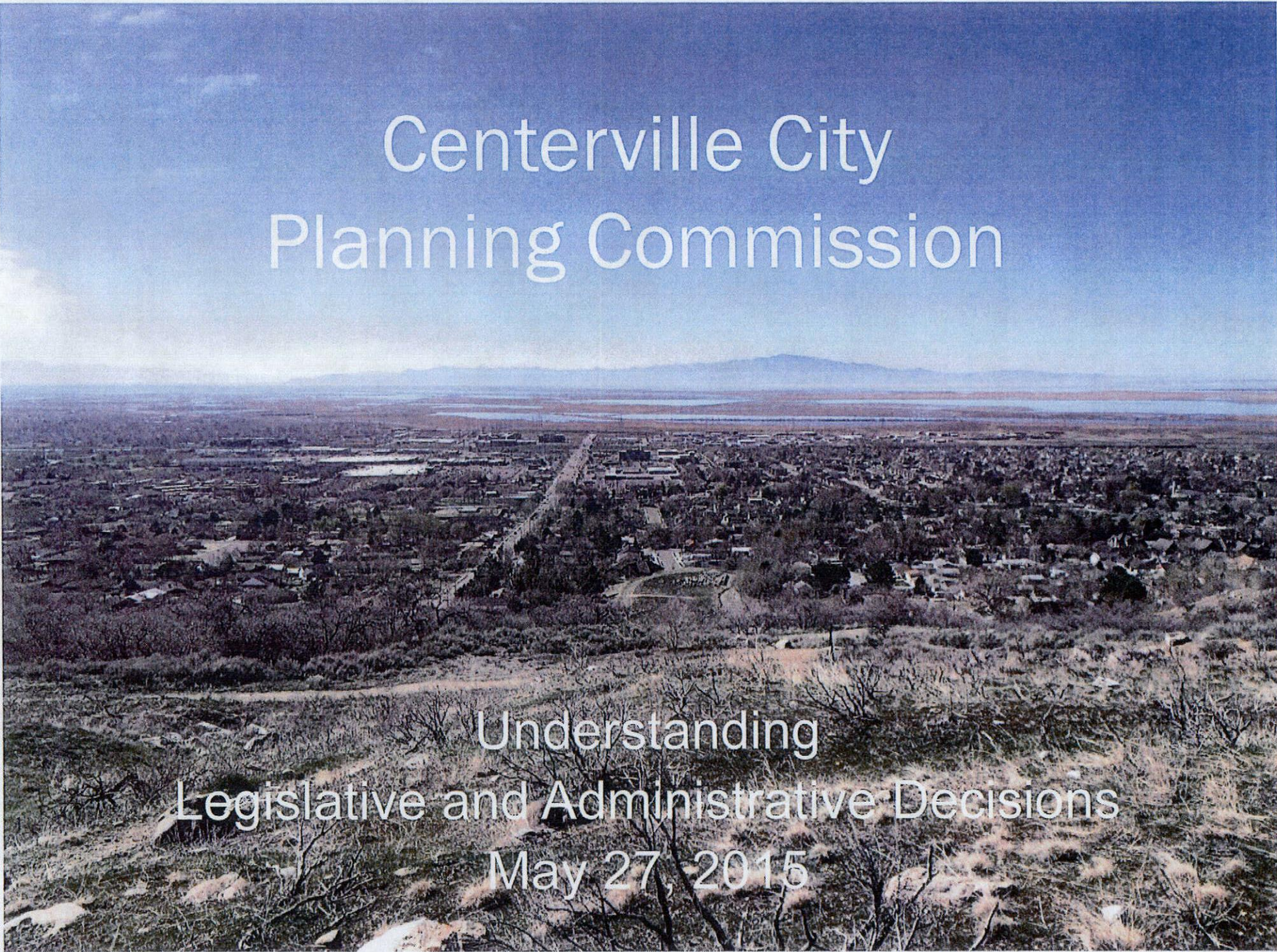
1. The next Planning Commission meeting will be Wednesday, May 27, 2015.
2. Upcoming Agenda Items
 - Commission Training

The meeting was adjourned at 8:40 p.m.

David Hirschi, Chair

Date Approved

Kathleen Streadbeck, Recording Secretary

An aerial photograph of Centerville City, showing a dense residential area with many houses and trees. A long, straight road or highway runs through the center of the city. In the background, there are mountains and a body of water under a clear blue sky. The foreground shows a dry, hilly landscape with sparse vegetation.

Centerville City Planning Commission

Understanding
Legislative and Administrative Decisions
May 27, 2015

Types of Applications and Decisions

General Plan
Enactment or
Amendment

Zoning
Ordinance
Enactment or
Amendment

Zoning Map
Amendment
(Rezone)

Subdivision
Ordinance
Enactment or
Amendment

Conditional Use
Permits

Site Plans

Subdivision
Plats

Special
Exceptions

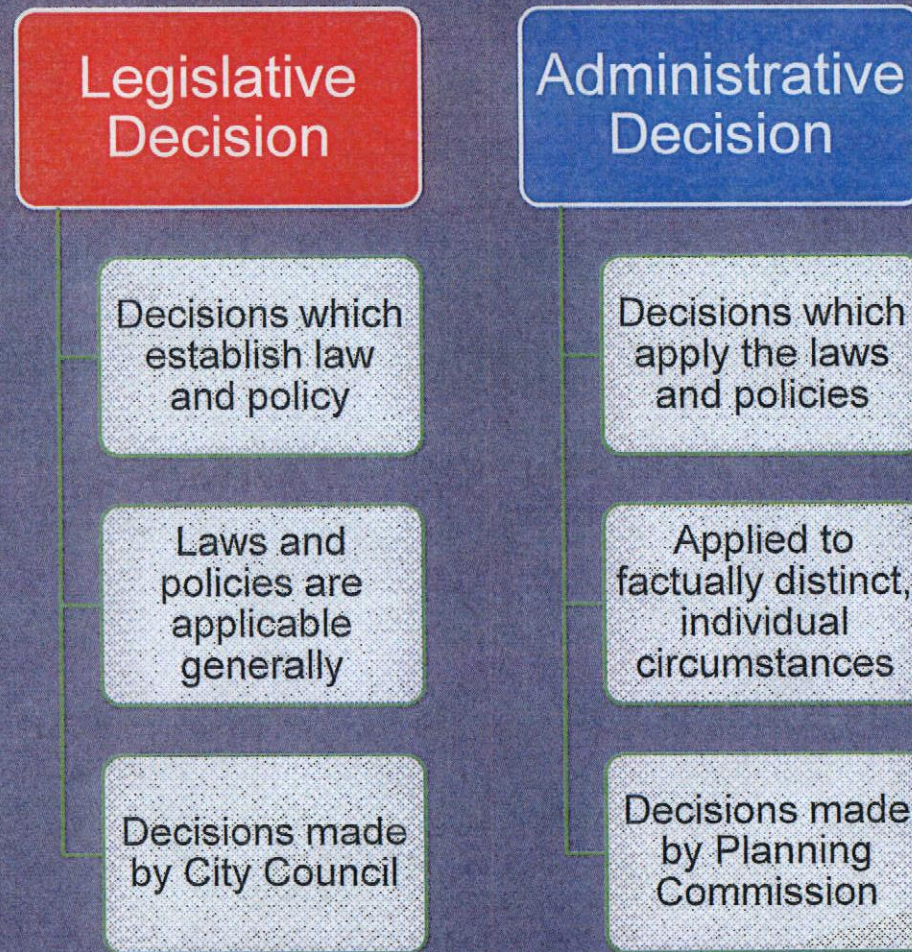
Planning Commission Decisions

- For some applications, the Planning Commission makes the final decision
- For other applications, the Planning Commission makes a recommendation to the City Council
- In either case, Planning Commission decisions and recommendations should be supported by findings

General Standard of Review of Land Use Decisions

- Municipal land use decisions are presumed valid unless they are arbitrary, capricious or illegal
- Whether a particular land use decision is arbitrary or capricious, however, depends on whether the decision is a legislative or administrative decision

Classification of Land Use Decisions



Legislative Decisions

General Plan
Enactments
and
Amendments

Zoning
Ordinance
Enactments
and
Amendments

Zoning Map
Enactments
and
Amendments
(Rezoning)

Subdivision
Ordinance
Enactments
and
Amendments

Standard of Review for Legislative Decisions

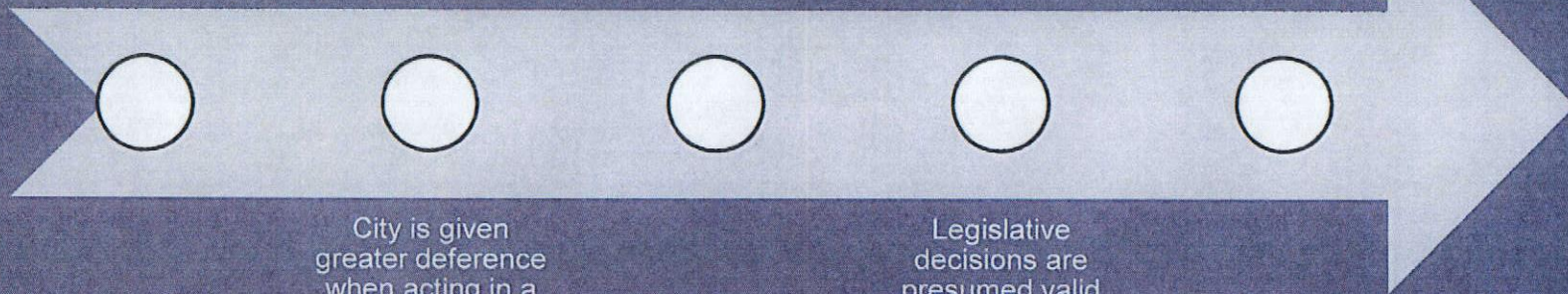
Reasonably
Debatable
Standard

Legislative act will
be upheld if it
could promote the
general welfare or
even if it is
reasonable
debatable that it is
in the interest of
the general
welfare

Public clamor and
comment may be
considered in
legislative
decision-making

City is given
greater deference
when acting in a
legislative
capacity

Legislative
decisions are
presumed valid
and upheld unless
there is no
reasonable basis
for the decision



Findings for Legislative Decision

- Look to the General Plan and Zoning
- Consider existing uses and development
- Any adverse impact on adjacent property
- Transportation plan and traffic conditions
- Population and housing projections
- Orderly development of the City
- Capacity of utilities, facilities and services
- Public comment

Administrative Decisions

Conditional
Use
Permits

Site Plans

- Conceptual
- Final

Subdivision
Plats

- Conceptual
- Preliminary
- Final

Standard of Review for Administrative Decisions

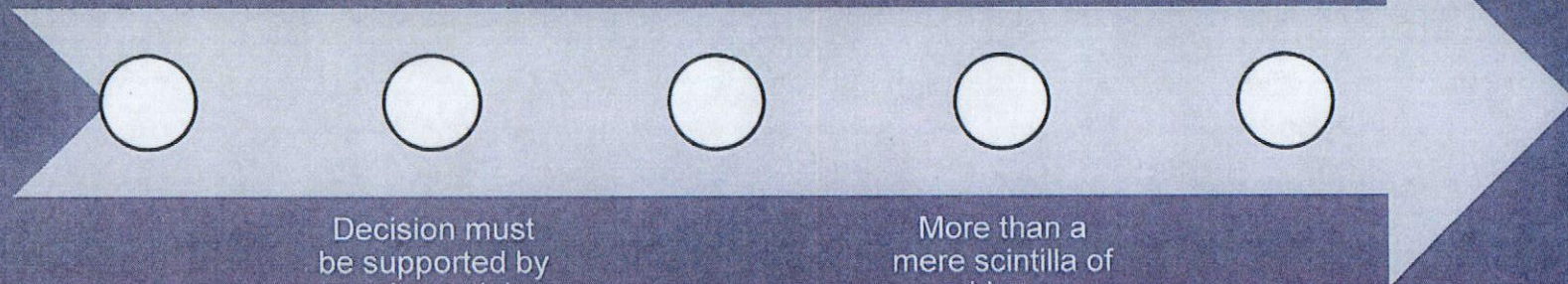
Substantial
Evidence
Standard

That quantum
and quality of
evidence that is
adequate to
convince a
reasonable
mind to support
a conclusion

Cannot be
based solely on
public clamor

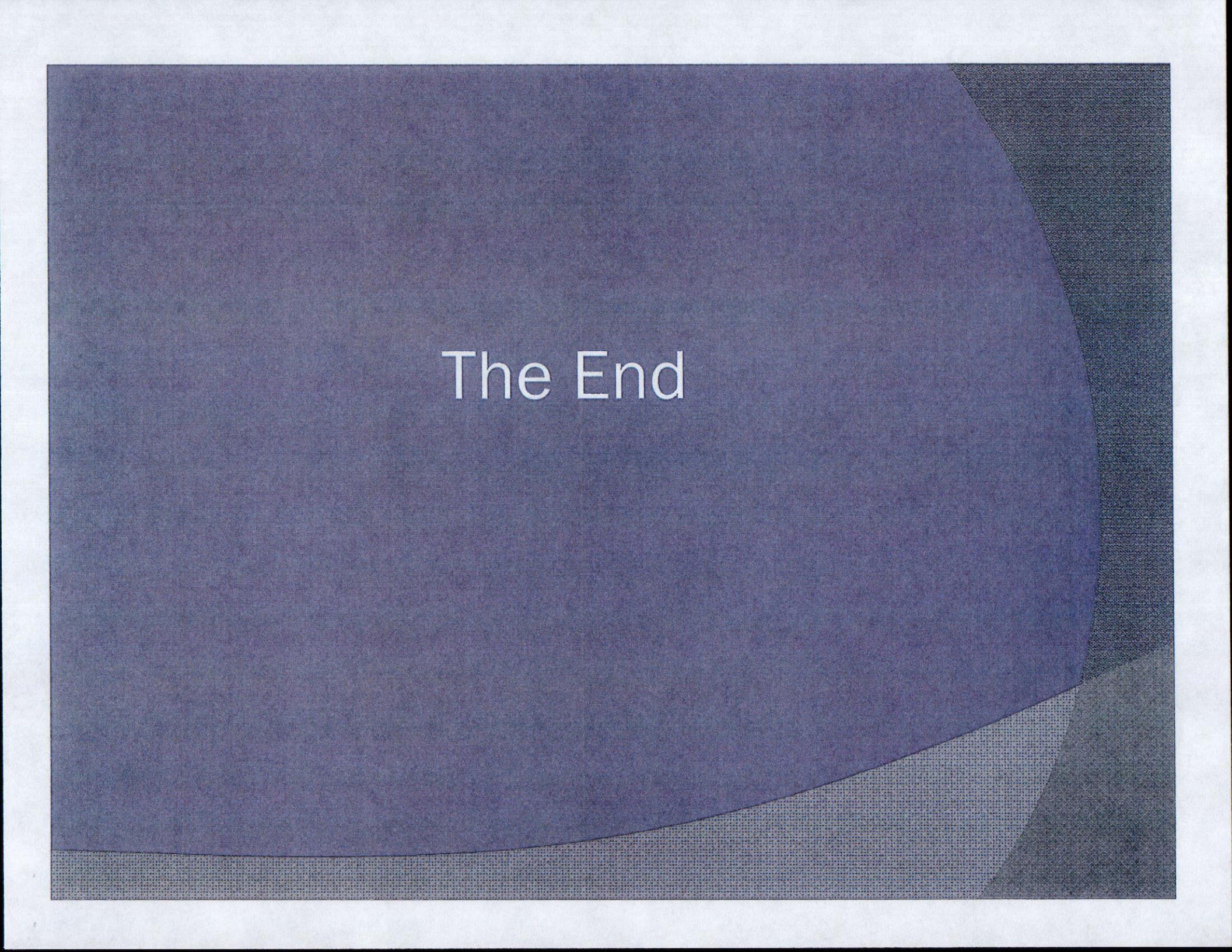
Decision must
be supported by
substantial
evidence in the
record

More than a
mere scintilla of
evidence,
though
something less
than the weight
of the evidence

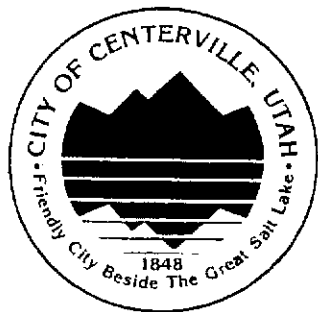


Findings for Administrative Decisions

- Look first to Ordinance requirements
- Does application meet requirements
- What evidence is in the record
- Cannot consider public clamor



The End



CENTERVILLE CITY ATTORNEY'S OFFICE

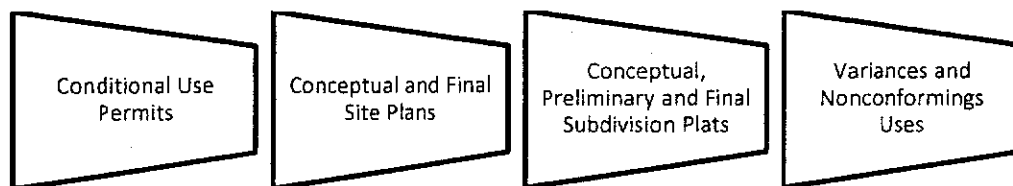
250 North Main Street
Centerville, Utah 84014
801.335.8842

ADMINISTRATIVE LAND USE DECISIONS

It is important for the various decision-making bodies of the City, such as the City Council, Planning Commission and Board of Adjustment, to understand the types of decisions they make and whether such decisions are legislative or administrative. All decisions of such bodies regarding land use applications or ordinances are presumed to be valid and will be overturned on appeal to the courts only if such decisions or ordinances are arbitrary, capricious or illegal. The deference given to determine whether a land uses decision is arbitrary or capricious is dependent upon whether the decision is legislative or administrative.

Administrative Decisions

Administrative decisions are those decisions that implement law or policy. Administrative decisions apply laws and ordinances to specific applications. Administrative decisions may be made by the City Council, Planning Commission or Board of Adjustment as determined by ordinance. Such administrative decisions are distinct from legislative decisions that adopt legislative policies. Most administrative land use decisions are made by the Planning Commission, including decisions regarding conditional use permits, conceptual and final site plans, and conceptual, preliminary and final subdivision plats. Administrative land use decisions of the City Council include decisions regarding final subdivision plats. Administrative land use decisions of the Board of Adjustment include decisions regarding variances, nonconforming uses and special exceptions.



Appeal to Board of Adjustment or District Court

Prior to judicial review, any person adversely affected by a final decision of the Planning Commission regarding an administrative land use decision must file an appeal with the Board of Adjustment in accordance with Section 12-21-200 of the Centerville Municipal Code and *Utah Code Ann.* § 10-9a-701. Such appeal to the Board of Adjustment must be filed within fourteen (14) days of the final decision of the Planning Commission. Any person adversely affected by a final decision of the City Council or Board of Adjustment regarding an administrative land use decision may file a petition for review of the decision with the district court in accordance with *Utah Code Ann.* § 10-9a-801. Any appeal to district court must be filed within thirty (30) days after the City Council or Board of Adjustment land use decision is final. Any petition for review that is not filed within the required time frame is barred.

Review of the Record

If an appeal is filed with the district court, the City must transmit to the court the record of the City Council or Board of Adjustment proceedings, including the minutes, findings, order, and, if available, a true and correct transcript of its proceedings. A transcript of the digital recordings of the public meetings is sufficient to constitute the required transcript of proceedings. So long as there is a sufficient record of the proceedings before the City Council or Board of Adjustment, the reviewing court will limit its review to the record provided by the City. This is a significant benefit for the City, as the reviewing court limited to a review of the record will not accept or consider any evidence outside the record. However, if the record on appeal is not sufficient or the decision lacks findings or reasons, the reviewing court may call witnesses and take evidence to determine the facts.

Arbitrary, Capricious or Illegal

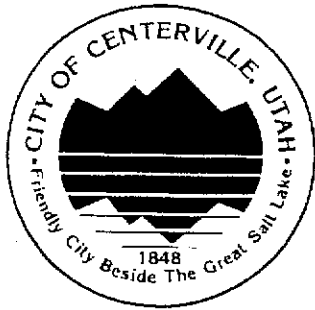
Any court reviewing a land use decision will presume the decision or ordinance is valid and will review the legislative decision to determine only whether or not the decision is arbitrary, capricious, or illegal. While all land use decisions in Utah are reviewed under the arbitrary and capricious standard, the specific meaning of that standard is dependent upon the nature of the land use decision at issue. If the land use decision is a legislative decision, the decision will be reviewed under the highly deferential *reasonably debatable standard*. If the land use decision is an administrative decision, however, the decision will be reviewed under the less deferential *substantial evidence standard*. A determination of illegality requires a determination of the court that the Council's decision or ordinance violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance was adopted.

Substantial Evidence Standard

Administrative land use decisions will be reviewed under the less deferential substantial evidence standard. Under the substantial evidence standard, the administrative decision will be upheld if it is supported by substantial evidence in the record. Substantial evidence has been described as that quantum and quality of evidence that is adequate to convince a reasonable mind to support a conclusion. Mere concerns regarding a particular development's impact on traffic, property values, or crime rates, without further evidence in the record regarding actual impact, is insufficient to support denial in an administrative decision. Substantial evidence has also been described as constituting more than a merely scintilla, though something less than the weight of the evidence. Thus, there must at least be evidence in the record to support the findings. In *Davis County v. Clearfield City*, 756 P.2d 704 (1988), the court noted that the Planning Commission's failure to provide findings for its decision to deny a conditional use permit for a substance abuse center suggested there was no rational basis for the Planning Commission's decision. The court also noted that even if legitimate reasons were suggested as a basis for the denial of a conditional use permit, such decision will be overturned as arbitrary when the reasons are not supported by substantial evidence in the record. The decision-making body must provide legitimate findings for the basis of an administrative decision and there must be sufficient evidence in the record to support such findings.

Public Clamor

In an administrative land use decision, the decision-making body cannot base its decision solely on public clamor. In *Davis County*, the court noted that an administrative decision based solely on public clamor is not a legally sufficient basis for denying a conditional use permit. Administrative decisions must be based on facts and ordinance requirements not merely upon emotion or local opinion. Citing other cases, the court also noted that the consent of neighboring land owners may not be made a criterion for the issuance or denial of a conditional use permit and that the opposition of neighbors is not one of the considerations to be taken into account when determining whether to issue an administrative development permit.



CENTERVILLE CITY ATTORNEY'S OFFICE

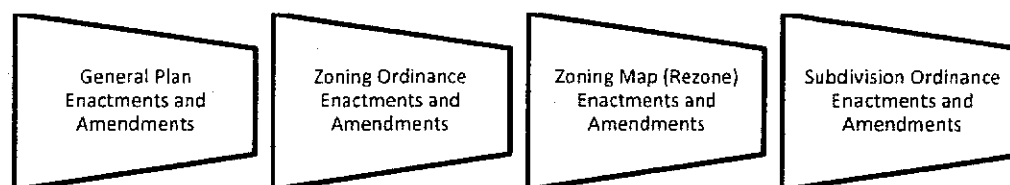
250 North Main Street
Centerville, Utah 84014
801.335.8842

LEGISLATIVE LAND USE DECISIONS

It is important for the various decision-making bodies of the City, such as the City Council, Planning Commission and Board of Adjustment, to understand the types of decisions they make and whether such decisions are legislative or administrative. All decisions of such bodies regarding land use applications or ordinances are presumed to be valid and will be overturned on appeal to the courts only if such decisions or ordinances are arbitrary, capricious or illegal. The deference given to determine whether a land uses decision is arbitrary or capricious is dependent upon whether the decision is legislative or administrative.

Legislative Decisions

Legislative decisions are those decisions that establish law or policy. Legislative decisions are usually of general applicability. Only the City Council, as the legislative body of the City, is authorized to make legislative decisions. As described in *Bradley v. Payson City*, 70 P.3d 47 (2003), legislative land use decisions involve the determination and enactment of zoning policies and cannot be delegated to other governmental bodies. Such legislative decisions are distinct from administrative decisions that merely implement legislative policies. Legislative decisions of the City Council include adoption of ordinances that enact or amend the City's General Plan, Zoning Ordinance or Subdivision Ordinance. Amendments to the Zoning Map (also known as rezones) are also considered legislative decisions. By law, the Planning Commission is tasked with reviewing these legislative land use applications and ordinances and providing a recommendation to the City Council. After consideration of the Planning Commission's recommendation, the City Council is the final decision maker regarding such legislative actions.



Appeal to District Court

Any person adversely affected by a final decision of the City Council regarding a legislative land use matter may file a petition for review of the decision with the district court (some exceptions apply). Legislative land use decisions of the City Council do not go to the Board of Adjustment but are appealed directly to district court pursuant to *Utah Code Ann.* § 10-9a-801. Any such appeal must be filed within thirty (30) days after the City Council land use decision is final. Any petition for review that is not filed within the required time frame is barred.

Review of the Record

If an appeal is filed with the district court, the City must transmit to the court the record of the City Council proceedings, including the minutes, findings, order, and, if available, a true and correct transcript of its proceedings. A transcript of the digital recordings of the public meetings is sufficient to constitute the required transcript of proceedings. So long as there is a sufficient record of the proceedings before the City Council, the reviewing court will limit its review to the record provided by the City. This is a significant benefit for the City, as the reviewing court limited to a review of the record will not accept or consider any evidence outside the record. However, if the record on appeal is not sufficient or the City Council's decision lacks findings or reasons, the reviewing court may call witnesses and take evidence to determine the facts.

Arbitrary, Capricious or Illegal

Any court reviewing a land use decision will presume the decision or ordinance is valid and will review the legislative decision to determine only whether or not the decision is arbitrary, capricious, or illegal. While all land use decisions in Utah are reviewed under the arbitrary and capricious standard, the specific meaning of that standard is dependent upon the nature of the land use decision at issue. If the land use decision is a legislative decision, the decision will be reviewed under the highly deferential *reasonably debatable standard*. If the land use decision is an administrative decision, however, the decision will be reviewed under the less deferential *substantial evidence standard*. A determination of illegality requires a determination of the court that the Council's decision or ordinance violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance was adopted.

Reasonably Debatable Standard

Legislative land use decisions by the City Council will be reviewed under the highly deferential reasonably debatable standard. Under the reasonably debatable standard, the City Council's decision or ordinance will be upheld if it is shown to promote the general welfare or even if it is reasonably debatable that the Council's decision is in the interest of the general welfare. Utah courts have noted that the wisdom of the zoning plan, its necessity, and the nature of boundaries of districts to be zoned, are matters which lie solely within the discretion of the legislative body. As such, it is the stated policy of Utah courts to avoid substituting the court's judgment for that of the legislative body of the municipality. This deference is, in part, based on the political nature of the decision-making process underlying municipal zoning which demands that the power to make such decisions be vested in persons who are publically accountable for their choices. Elected officials provide such needed accountability for balancing competing interests in zoning decisions. In *Bradley v. Payson City*, the court upheld the denial of a rezoning requests under the reasonably debatable standard noting a city council has the right to deny a zoning change if it has reasonable basis to believe that it will conserve the values of other properties and encourage the most appropriate use of land and that a city council is not required to receive advice from experts before making a legislative zoning decision.

Public Clamor

In a legislative land use decision, the City Council may consider public comments and clamor as part of the decision-making process. In *Bradley v. Payson City*, the Utah Supreme Court noted it is beyond question that "public hearings and citizen comments are a legitimate source of information for city council members to consider in making legislative decisions." See also, *Harmon v. Draper City*, 997 P.2d 321 (2000), noting that a city may rely on concerns of interested citizens when performing legislative functions and that a city council's ultimate decision reflects legislative preferences that are entitled to a presumption of validity.