

WORK SESSION-Thursday, April 21, 2021, 6:00 p.m.

Minutes of the Huntsville Town Council Work Session, held at the Ogden Valley Library, 131 South 7400 East, Thursday, April 21, 2021, at 6:00 p.m. regarding amendments to the Planning Commission Ordinance, Subdivision Application and road discussion for Bill & Michaelene Wangsgard and Independence Day Celebration.

Attending: Mayor Richard Sorensen, TC Member Artie Powell, TC Member Kevin Anderson, TC Member Bruce Ahlstrom, Bill & Michaelene Wangsgard, Beckki Endicott - Clerk

Mayor Sorensen welcomed those in attendance. (Attachment #1) Beckki explained she added the discussion of the Planning Commission ordinance to the work session agenda because at the last meeting, the Town Council wanted more discussion on some of the changes. She also explained this ordinance would go to the Planning Commission for their input as well as input from the public by way of a public hearing. After the Planning Commission is done, the Town Council will vote on the changes.

Mayor Sorensen cited the section under terms, paragraph three (3). The TC wanted the terms staggered and then be able to reappoint members. In paragraph five (5) a PC member could be removed for lack of attendance or by a vote of three Town Council Members. In paragraph seven (7), the requirements for the presiding officer serving for a year and then the requirement to rotate chairs, was deleted completely.

There was a question about needing more oversight in section 2, Land Use Authority. The Planning Commission is a recommending body, but it also acting as the Land Use Authority. Many of the decisions the Planning Commission makes are not independent of the Town Council. Land Use Permits are approved by the Planning Commission. The Town Council has the authority, and the PC has duties different and delegated to that committee from the Town Council. TCM Anderson described the role of the PC as making the hard decisions based on the existing code. The TC addresses policy making decisions. A strong PC is an asset to the Town Council.

There was a discussion about whether the term for the Planning Commission should be 2 years or less. TCM Powell wanted longer terms. TCM Anderson could see the merit in having less time.

TCM Ahlstrom recommended adding "Variances" to the "Appeals and Variance" title. He stated he was leaning towards a five-member appeal authority versus one-member. He likes that five members on the appeals committee gives a lot of perspective, more ideas and input to solutions. He is in favor of a single appeals board authority not being a resident of the Town and would take that requirement out of the ordinance. TCM Ahlstrom like extending the appeals term to 30 days because it would be easier on residents.

Mayor Sorensen is leaning toward the solution of a one-member appeals board because the person doesn't have to be from Town, and they will be unbiased in making decisions. TCM Powell stated there are problems with having a five-member board. TCM Powell stated that

the five-member board has a difficult time following the State Code with regards to variances. The State Code is very strict and most of time, Huntsville board members have a hard time applying that code. He sees that the familiarity of residents makes it hard when applying the variance code.

TCM Anderson concurred with all points expressed. He stated a one-member appeals board would be a more consistent long-term application of the code. TCM Anderson pointed out that the draft ordinance states that an appeal authority "may" be appointed by the mayor with advice and consent of the Town Council. He suggested revising paragraph one to be more direct about what the approach would be, whatever the choice in the number of appeal board members.

Mayor Sorensen suggested passing this ordinance on to the Planning Commission. Beckki stated she would make the changes on the second page and incorporate TCM Ahlstrom's suggested edits for the Appeals and Variance Board. There was still some question about the scope of decision making for the Planning Commission. TCM Anderson would like to see the PC recommend actions with the Town Council voting to approve or deny those recommendations. If the Planning Commission is going to make decisions, he would like to see appeal rights to the Town Council instead of directly to the appeal authority. He feels the TC is giving away responsibility that they might otherwise have. Mayor Sorensen concurs with this view. If the decision making is limited to the Land Use Permit for the Planning Commission, the Town Council members approve of that role. The Town Council would like to continue to have the decision-making power for subdivisions and conditional use.

Beckki will make the notes that allow the Land Use Authority to make decisions regarding Land Use Permits but limit the decisions to recommendations on subdivisions and conditional use.

Meeting adjourned at 8:03 p.m.



Beckki Endicott, Recorder

**HUNTSVILLE TOWN
ORDINANCE NO. _____**

LAND USE ADMINISTRATIVE AMENDMENTS

AN ORDINANCE OF HUNTSVILLE TOWN, REPEALING, RE-ENACTING AND AMENDING THE LAND USE AUTHORITY AND PLANNING COMMISSION ADMINISTRATIVE STRUCTURE; LAND USE DUTIES AND POWERS; LAND USE APPEALS; SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, Huntsville Town (hereafter "Town") is a municipal corporation, duly organized and existing under the laws of the State of Utah;

WHEREAS, *Utah Code Annotated* §§ 10-8-84 and 10-8-60 allow municipalities in the State of Utah to exercise certain police powers and nuisance abatement powers, including but not limited to providing for safety and preservation of health, promotion of prosperity, improve community well-being, peace and good order for the inhabitants of the Town;

WHEREAS, Title 10, Chapter 9a, of the *Utah Code Annotated*, 1953, as amended, enables municipalities to regulate land use and development;

WHEREAS, the Town finds it necessary to update its land use ordinances in order to meet the challenges presented by development and to protect public health, safety, and welfare;

WHEREAS, after publication of the required notice the Planning Commission held its public hearing on _____, to take public comment on the proposed Ordinance, after which the Planning Commission gave its recommendation to _____ this Ordinance;

WHEREAS, the Town Council received the recommendation from the Planning Commission and held its public meeting on _____;

NOW, THEREFORE, be it ordained by the Town Council of Huntsville Town as follows:

Section 1: **Repealer.** Section 15.3.4 of the *Huntsville Municipal Code* entitled "Planning Commission" is repealed. Chapter 15.5 of the *Huntsville Municipal Code* entitled "Appeal Authority" is repealed and re-enacted as Land Use Authorities and Appeals. Any other ordinance or portion of the *Huntsville Municipal Code* inconsistent with this Ordinance is hereby repealed and any reference thereto is hereby vacated.

Section 2: Administrative Actions. The *Huntsville Municipal Code* is amended to repeal all instances requiring administrative action, or non-legislative action, on a land use application by the Town Council, excepting subdivisions over ten (10) lots.

Section 3: Adoption. The following portions of the *Huntsville Municipal Code* are hereby adopted to read as follows:

15.5.010 Planning Commission.

1. Establishment. In accordance with Utah Code Annotated §10-9a-301, Town hereby establishes the Planning Commission subject to this Section.
2. Membership. The Planning Commission is composed of five (5) members who shall be residents, and registered voters, of the Town duly appointed by the Mayor, subject to the advice and consent of the Town Council.
3. Term. Each member of the Planning Commission shall serve a term of two (2) years. Terms may be staggered.
4. Vacancy. Any vacancy in the Planning Commission is filled for a two (2) year term by appointment of the Mayor, subject to the advice and consent of the Town Council.
5. Removal. A member may be removed for missing sixty (60) percent of the meeting in a during a calendar year, or by majority vote of the Town Council.
6. Powers and Duties. The Planning Commission shall only exercise the powers and duties set forth in Utah Code §10-9a-302, and as follows:
 - a. Recommendation. Review and make a recommendation to the legislative body for:
 - i. A general plan and amendments to the general plan.
 - ii. Land use regulations, including:
 1. Ordinances regarding the subdivision of land.
 2. Amendments to existing land use regulations;
 - b. Decision. The Planning Commission shall hear and decide all land use applications, subject to review by the Town Council.
 - c. Review. The Mayor or any member of the Town Council may request to review a decision by the Planning Commission by filing a written request with the Town Clerk within ten (10) days of any decision. The Town Council by majority vote may amend, modify, approve, or deny a land use application under review by the Town Council.
7. Presiding Officer. The Planning Commission shall, at its first meeting each year, elect a Chair and Vice-chair from its membership. Each member shall rotate serving as chair for a period of one year commencing the first meeting of each year.
8. Quorum. A quorum of the Planning Commission consists of three (3) members present at a public meeting. A decision of the Planning Commission based upon the majority vote of the quorum present and voting at a public meeting. Each member present at a meeting shall vote on an issue, yea or nay, except when a member declares a conflict of interest. A tie vote fails, or is deemed to be a negative recommendation, as the case may be.
9. Rules. The Planning Commission shall follow the Rules of Procedure and Order adopted by the Town Council.

10. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.

15.5.020 Land Use Authority.

1. Appointment. In accordance with Utah Code §10-9a-302(1)(c), the Mayor, subject to the advice and consent of the Town Council may appoint an Administrative Hearing Officer as the Land Use Authority to review and approve routine and uncontested land use applications, including:
 - a. Land Use Permits (including site plans).
 - b. Conditional Use Permits.
 - c. Subdivisions of three (3) lots or less in accordance with Utah Code §10-9a-605, notwithstanding a plat and compliance with Chapter 15.25 is required.
2. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
3. Applicability. The Administrative Hearing Officer shall serve until removed by the Town Council or a successor is appointed. In the event that an Administrative Hearing Officer is not appointed, or in the event an application is contested, the Planning Commission is hereby designated as the Land Use Authority.
4. Standard. A land use decision is an administrative act and shall be made in accordance with Utah Code §10-9a-306.
5. Contested. A land use application is only deemed contested if an adversely affected party files a written contest with the Town Clerk on a complete land use application duly filed with the Town regarding a land use application under this Section prior to action by the Administrative Hearing Officer or within ten (10) days of decision by the Administrative Hearing Officer.
6. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.

15.5.030 Appeal Authority.

1. Establishment. In accordance with Utah Code §10-9a-701, the Mayor, subject to the advice and consent of the Town Council may appoint an Appeal Authority to hear and decide the appeal of any land use applications decided by the Planning Commission or Town Council.
2. Appointment. The Mayor shall appoint an individual, including alternates, as the Appeal Authority subject to the advice and consent of the Town Council.
3. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
4. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.
5. Authority. The Appeal Authority is quasi-judicial and serves as the final arbiter of issues involving the interpretation or application of the municipal code in the course of hearing and deciding all appeals, including:
 - a. Appeals set forth in Utah Code 10-9a-701(1)(b).
 - b. Variances in accordance with Utah Code §10-9a-702.

- c. Appeals regarding geological hazards shall be administered in accordance with Utah Code §10-9a-703.
 - d. Any other appeal specified in the municipal code.
6. Time. In accordance with Utah Code §10-9a-704, a written appeal of any land use decision shall be filed with the Town Clerk within ten (10) calendar days of the decision issued by the land use authority. An applicant present at a meeting where a decision is made is presumed to have actual notice of the decision which shall be deemed as the commencement of the ten (10) calendar day appeal period.
7. Burden. In accordance with Utah Code §10-9a-705, the appellant has the burden of proving error.
8. Due Process. Due process is afforded in accordance with Utah Code §10-9a-706.
9. Scope. Subject to the scope set forth in Utah Code §10-9a-707, the standard of review for the appeal authority is as follows:
- a. For factual matters, the Appeal Authority may review the matter de novo.
 - b. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application.
 - c. An appeal may be made where a Land Use Authority has applied a land use regulation to a particular application, person, or parcel.
 - d. All other standards for making a shall be based upon the preponderance of the evidence.
 - e. The appealing party is limited in raising claims only to those claims that were initially raised at the time the decision was made upon the land use application.
10. Final Decision. The Appeal Authority shall issue a final decision in accordance with Utah Code §10-9a-708.
11. District Court. No person may challenge in district court any land use decision of the Town until that person has complied with Utah Code §10-9a-801, and otherwise exhausted all administrative remedies and in accordance with Utah Code §10-9a-701(2). The following limitations apply:
- a. No adversely affected parties shall present a theory of relief in district court that was not first presented to the appeal authority.
 - b. Adversely affected parties are precluded from pursuing duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.
 - c. The Appeal Authority may provide that a matter be appealed directly to the district court.