

**CEDAR CITY PLANNING COMMISSION**

**MINUTES**

June 18, 2019

The Cedar City Planning Commission held a meeting on Tuesday June 18, 2019 at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: Craig Isom, Jill Peterson, Jennie Hendricks, Hunter Shaheen, Ray Gardner and Adam Hahn

Members absent: Mary Pearson-Chair

Staff in attendance: Kit Wareham-City Engineer, Don Boudreau-City Planner, Tyler Romeril-City Attorney, and Michal Adams

Others in attendance: Mitch Dettamanti, Chris Carter, Dallas Buckner

**Jennie moved to make Craig the Chair Pro-tem in the absence of Mary; seconded by Adam and the vote was unanimous.**

The meeting was called to order at 5:15 p.m.

**ITEM/REQUESTED MOTION      LOCATION/PROJECT      APPLICANT/PRESENTER**

**I.      Regular Items**

**1- Approval of Minutes (June 4, 2019)**

**(Approval)**

**Adam moved to approve the minutes of June 4, 2019, seconded by Ray and the vote was unanimous.**

**2-      PUBLIC HEARING**

**Parcel Modification**

**1972 N Mahogany Cir.**

**Tarrant/ GO Civil Eng.**

**(Approval)**

Jennie wanted to disclose that this person was a client of hers.

Dallas Buckner presented and said they started this process over a year ago. They thought it had been recorded. When Nichols was dealing with another portion of this remaining parcel they found out this was never recorded. They needed the City approval so they are now going through that process in order to have this recorded. Part of that process was a public notice. They give them a protest period, and they had 1 person protest this, that is why they are here. Dallas pointed out the different areas, the property that would be sold from Nichols to Tarrant, the lot that is currently owned by Tarrant, etc.

Adam said so they are just making their lot in Ashdown Forest larger. It is a mountain side. It is that one lot with a rock wall in front.

From the Nichols side, that is all land that will not be developed.

Craig stated this would allow them to not have any neighbors to the back of them. The only neighbor would be Nichols until some point when he decided to do something back there.

Kit said this lot is in a platted PUD and the parcel they want to add is not in any PUD. Ashdown Forest PUD boundary was pointed out. This other piece goes across 2 parcels. It will be deeded separately and just owned by the same person.

Dallas pointed out that in order for them to only have one parcel and make that part of their lot that would require them to amend that PUD and they don't want to do that.

Kit asked if they had run this through the HOA out there or if they needed to. Dallas said this happened so long ago, it was just recently they realized that it had never gone all the way through the process. They just need to make sure this time it is actually recorded. It is outside that HOA so they may not have any requirements regarding this. Dallas also said as far as legal goes, a year ago this was reviewed by the City surveyor, their surveyor, Brad reviewed this and the City Surveyor Clay has reviewed this again.

Craig opened the public Hearing.

Mitch Dettamanti said this is the exact situation he has been living with the last 10 years. His neighbor where he lives now did the same thing. He lives on a cul-de-sac currently in Highland Park, a neighbor annexed 5 acres to his lot and after met with all the neighbors around them promising them all he wanted was a single home. Later he tore that house down and marketed this as sub dividable property for the last 10 years. The people who bought that have no intention to subdivide, which is a good thing. He has a lot about the same relation to this one. If that is purchased as part of that lot, then they need to make that part of the subdivision or they should not be able to sell part of that to create something illegal. They may be making an illegal part of that subdivision as any lot needs to be a certain size, with restrictions, etc. His concern is that they can use that for more than simply an R-1 lot. The remaining parcel still says it is zoned R-3. That makes it multifamily use. His only concern is not with a larger lot, for privacy, his concern is that there would be more than 1 single family house on it. In looking at previous maps, there is a portion that is a continuing phase of Ashdown Forest they have been messing around with for several years. He does not want any connection from that area to this extended lot. It is very difficult due to the steepness of the terrain. He wants no through street to this next phase. Those are his concerns.

Jill asked exactly where his lot was? Mitch said it is about 2 lots down and is vacant now. He bought it because it is an R-1 lot.

He was told that the portion outside Ashdown Forest is all the area that Frank Nichols has zoned for his RDO master plan and it does say it is zoned R-3 on that land. Dallas felt as far as subdividing within any PUD you cannot access it to any private land. Alyson Tarrant's objective is only to make her lot larger, not do any sort of subdividing.

Mitch would be surprised, as all that is zoned R-3. He checked on this several years ago, and according to the hillside ordinance, and due to the steepness, it was not buildable. They previously called that or left it out as open space. He does not know when that zone changed.

Craig said it could have changed with that RDO. Kit said it was probably something like RA previously. Craig explained the RDO and how that works.

Mitch said that many things have changed over the years in the Fiddlers area. There were other spaces for things like parks and open space that are all now housing. He pointed out the roads that are to be Phase 8 and just wants to make sure this parcel is never accessed back into there. He feels that this is a reasonable request, as that is an R-1 lot. He stated how the County would not allow that to be subdivided. So, you should not be able to do that here. It has to be R-1.

Craig asked Kit and legal where we are at on this?

Tyler stated that you cannot access another subdivision through any PUD so that could not happen. Also, the Ashdown Forest HOA would come into play and they would not allow that.

Adam wondered if this were part of the HOA how that worked. If they just extend that lot, it can't be built on. Hunter wondered if they needed to modify that parcel that is currently zoned R-3 and have that all zoned R-1 and make this whole piece R-1 so they could not build any more than 1 single house. Tyler said if this land falls in the RDO, there is already an ordinance that governs that land. All the area that is unbuildable is left as open space. There is an ordinance that defines how that property can be used. He urged Mr. Dettamanti to come in and take a look at that ordinance.

Adam can understand the concerns; just because the engineering department says that they cannot build on that does not mean they won't.

Tyler talked about the legal rights of that PUD and there are documents very clear on not being able to add to that.

Mitch stated his concern again, that on the plat, it does not say this will all be R-1 but that other parcel says it is zoned R-3 and will continue to be R-3. Just because they can't build a home, does not mean they won't build something like a road, etc. He pointed out other roads in this area.

Craig would look to legal as it becomes attached to an existing parcel that it cannot be developed. Kit was not sure they could restrict them from putting some kind of improvements on there. They can put any private improvements. Adam said, if they wanted to put another home, that would not be allowed.

Dallas stated that they came to the City, told them what they wanted to do, this was the direction they were told to go. As far as legality, this is how it is being done. They are not modifying the existing parcel, they are simply carving out a piece of property that will be deeded to this owner. Tyler said to make sure this is right, table this to the next meeting, and he can research all the legalities.

Chris pointed out that lot 8 maintains itself. The piece back of it would just be an ownership adjustment. They have several in this same area where they have a portion from the Nichols property added to their existing lots.

**Adam made a motion to table this until the next Planning Commission meeting to allow Tyler time to look into the legalities of adding to a lot. Seconded by Ray and the vote was unanimous.**

## II Staff Items

### 1- Land Use Liability Training

Tyler R.

Tyler said about 1 month ago URMA had him do training on the Open meeting act and has asked that he also do some land use training as well. (see attachment)

First, the constitution gives land owners the right to use their property as they want, as long as it is not detrimental to others. You can use your land for your gain. They help all manage that along with restrictions that can be put on, they have the Land Use Development and Management Act or LUDMA. There are state laws also that tell Cities what they can and cannot do. They give some lee ways, and also define regulations.

There are Mandatory requirements on the state level. You are required to have a General Land Use plan. Each town in Utah is required to have that. It is projected out about 20 years or so with what we want the City to look like. There are assurances on how we expect to see the City grow. Not just for staff, but for property owners, and neighbors. You are required to have a Planning Commission that is trained, appointed, and make sure they are making good decisions based on laws, policies, and not public clamor. It is important that you make decisions based on facts.

Also, LUDMA gives the developers the assurance that things will be decided in a reasonable time. They apply, and if they feel the time is unreasonable, they give notice to the City.

We have land use tools. The General Plan which is flexible in some situations. Owners buy with the expectation that the City will allow you to develop according to that. If you change the game mid stride, that is when City's get into trouble. You also have zoning ordinances. That gives you lots of tools. Last, there are miscellaneous ordinances that help guide and give assurances of how we expect the land to develop.

Other resources is the Land Use Academy of Utah (LUAU). This contains training materials you can look up.

There are a few liability issues: Immunity; keeps you from being sued. As long as all are acting accordingly, you are fine. Planning Commission members get into trouble when they act outside of their capacity, don't disclose things, or have things that are based on personal or political gain. You need to govern yourselves. If there are any ethical questions, don't make them yourself, come to him and let Tyler make them for you.

Next, Planning Commission members can be putting more weight on public clamor than facts. Your decisions should not be made on fear or any other public clamor that may come up.

Then you have condemnation issues. Taking private land for public use. This happens when the government takes private land for the public's good. According to the 5<sup>th</sup> amendment, you have to give that person just compensation for the land.

Inverse Condemnation is initiated by a property owner. When the regulations go so far that it makes

the land unusable or deprives the property owner of the market value. Gave an example of Provo and the universities there. An investor bought up homes to rent them out and make money. They made that impossible for him to rent them and due to that, it took value from him. In cases like that, where the City initiates this, the City pays them just compensation for that.

Jill stated when they put the whole SHD zone area in place, they were told that they all had to come in and ask for it. Now you are saying there is no choice. Tyler stated if the General Plan says this is what you can use that for, and you don't let them, that is when you get into trouble. Sometimes the public acts as a pressure valve, they yell, voice opinions, and this commission is bound to follow that General Plan. On the flip side, there are more requests to change that.

Adam talked about the type of liability, like the one out west and if they allowed that, it would be surrounding all sorts of residential with Industrial. Would they have recourse against the City on that? Tyler said they will always be able to sue. As long as the City can say that they did everything according to the guidelines, then we are fine.

Last is vested rights. An applicant comes in, the way they want to use their land is OK, then after applying, the council changes the General Plan or the zoning requirements. That person is vested at the time he applied and can develop according to what the rules were when he made application.

You can't change the rules in the middle.

Jennie wondered if condemnations come before the Planning Commission, and Tyler said they are dealt with on the Council level.

Tyler said if things come up that you don't know or understand, just ask him.

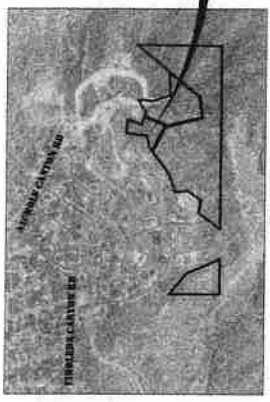
The meeting adjourned at 5:55 p.m.

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Michal Adams, Executive Assistant

# PARCEL MODIFICATION FOR FRANK NICHOLS / ALYSEN TARRANT

LOCATED IN THE E1/2 OF SECTION 36, T35S, R11W, S188N



OWNER	ACREAGE	ADJACENT PROPERTY
CHRYD	15.50	SECTION 35
CHRYD	15.50	SECTION 36
CHRYD	15.50	SECTION 37
CHRYD	15.50	SECTION 38

SECTION 36, T35S, R11W, S188N  
 SECTION 35, T35S, R11W, S188N  
 SECTION 37, T35S, R11W, S188N  
 SECTION 38, T35S, R11W, S188N



GO CIVIL  
 ENGINEERING LLC  
 200 N. 2ND ST., SUITE 100  
 DENVER, CO 80202  
 WWW.GO-CIVIL.COM

FRANK NICHOLS / ALYSEN TARRANT  
 PARCEL MODIFICATION  
 LOCATION: E1/2 OF SECTION 36, T35S, R11W, S188N

DATE: 11/15/2011  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 SCALE: AS SHOWN  
 SHEET NO. 1 OF 1

**UTILITY COMPANY APPROVAL**  
 THE UNDERSIGNED HAS REVIEWED THE PLAN AND APPROVES THE PROPOSED UTILITY LOCATIONS AND DEPTHS FOR THE PROPOSED PARCEL MODIFICATION. THIS APPROVAL IS SUBJECT TO THE UTILITY COMPANY'S STANDARD CONDITIONS OF SERVICE AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

**PLANNING COMMISSION APPROVAL**  
 THE PLANNING COMMISSION HAS REVIEWED THE PLAN AND APPROVES THE PROPOSED PARCEL MODIFICATION. THIS APPROVAL IS SUBJECT TO THE COMMISSION'S STANDARD CONDITIONS OF SERVICE AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

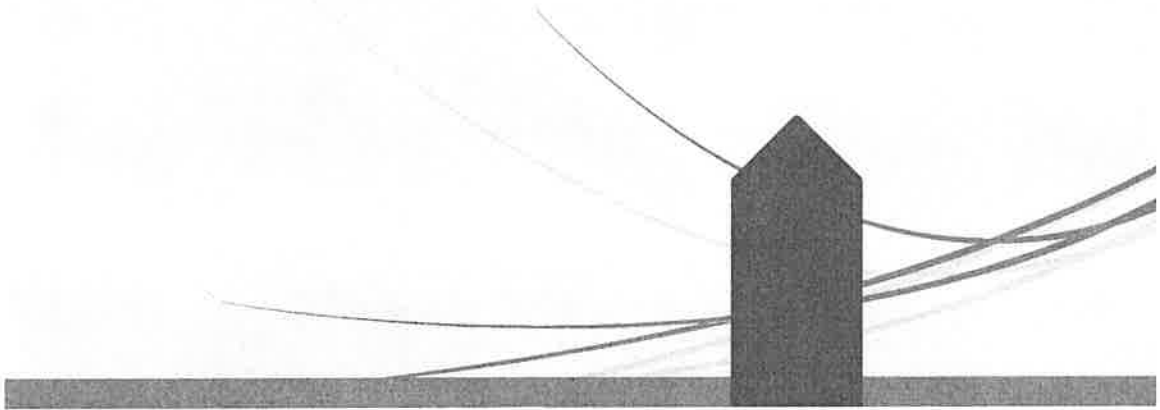
**MARRIETTE**  
 THIS PARCEL MODIFICATION WAS REVIEWED BY MARRIETTE CITY ENGINEERS AND ARCHITECTS. THE CITY ENGINEERS AND ARCHITECTS HAVE REVIEWED THE PLAN AND APPROVE THE PROPOSED PARCEL MODIFICATION. THIS APPROVAL IS SUBJECT TO THE CITY ENGINEERS AND ARCHITECTS' STANDARD CONDITIONS OF SERVICE AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON.


**PARCEL MODIFICATION APPROVAL**  
 I, FRANK NICHOLS, PROFESSIONAL CIVIL ENGINEER, NO. 1000, HOLD A LICENSE TO PRACTICE AS A PROFESSIONAL CIVIL ENGINEER IN THE STATE OF COLORADO AND AM THE REGISTERED ENGINEER OF RECORD FOR THIS PARCEL MODIFICATION. I HAVE REVIEWED THE PLAN AND APPROVE THE PROPOSED PARCEL MODIFICATION. THIS APPROVAL IS SUBJECT TO THE ENGINEER'S STANDARD CONDITIONS OF SERVICE AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

DATE: 11/15/2011  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 SCALE: AS SHOWN  
 SHEET NO. 1 OF 1

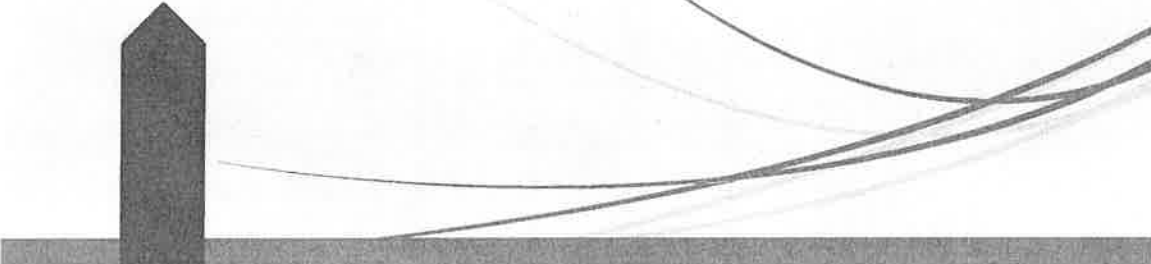
# Land Use Training

June 2019



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- ▶ The right to use and enjoy property is a fundamental right declared by the U.S. Constitution.
  - ▶ One of the most important rights associated with property ownership is the ability to adapt or develop it for some profitable or desirable use.
  - ▶ Development and use of property supports economic growth and contributes to the public welfare.
  - ▶ To help ensure that property rights are not violated Utah has adopted the Land Use Development, and Management Act (LUDMA), found in 10-9a of the Utah Code.





# What does LUDMA mean for Cedar City?

- ▶ LUDMA authorizes and governs land use and zoning regulation by cities and counties, and establishes mandatory requirements that local governments must follow.
- ▶ LUDMA establishes the legal framework for each locality to make zoning decisions, enact ordinances, and implement plans.
- ▶ Although local governments have fairly broad discretion to make land use decisions, LUDMA is ultimately the controlling authority. Local governments must comply with its requirements, and with the zoning ordinances adopted under LUDMA authority.



## What are some of LUDMA's Mandatory Requirements?

- ▶ A local government must adopt a "**general plan**," which is a general guideline for future developments. In addition, local governments must establish planning commissions and appeal authorities. LUDMA also has mandatory notice requirements when planning and zoning decisions are made.
- ▶ LUDMA also requires that a development application be processed within a reasonable time, and provides that an applicant may request that a final decision be made within 45 days, if a reasonable amount of time has passed. LUDMA establishes legal standards for review of warranty work, and fees charged for development applications.



# What Land Use Tools Are Available to the City

- General Plan
  - A General Plan establishes general guidelines for future development and growth. LUDMA requires each city to adopt a general plan. A plan not only helps guide future development, but also provides for orderly expansion of utilities and public services. General Plans are usually considered advisory, but compliance may be made mandatory by a local government.
- Zoning Ordinances
  - Zoning is a tool that most cities use to control the physical development of land and the kinds of allowed "uses" (ex. residential, commercial, or industrial).
  - Zoning laws may also regulate dimensional requirements for lots and buildings on the property, the density, and whether you can have chickens, sheep or horses.
- Miscellaneous Ordinances that regulate
  - Subdivisions
  - Residential Development Overlay (RDO)



# Land Use Academy of Utah LUAU

<https://luau.utah.gov/>

- Free resource
- Contains training videos and materials on every land use topic you can dream of.



# Various Land Use Liability Topics

- ▶ Immunity
- ▶ Facts vs Public Clamor
- ▶ Condemnation / Inverse Condemnation
- ▶ Vested Rights



# Immunity

- ▶ Applies to Public Officials, Employees, Board Members when we're acting in our official capacities and in accordance with established law.
- ▶ Does not apply when we're acting outside the scope of our employment, commit fraud, willful misconduct, act in bad faith, our intentions are the primary furtherance of personal gain instead of public interest.
- ▶ Does not apply when one influences land use decisions for personal or political gain.
- ▶ Don't decide ethic questions on your own, get a legal opinion.

# Facts vs Public Clamor

- Our decision making cannot be “arbitrary and capricious”.
- Meaning our decisions must be based upon the consideration of relevant facts.
- Avoid statements against neutrality (ex. Won't vote against public).
- When making decisions you should “analyze and deliberate upon questions of fact, upon the application of law, and upon considerations of policy, which bear upon the problems with which they are confronted.”  
Common Cause of Utah vs. Public Serv. Comm'n, 598 P.2d 1312, 1315 (Utah 1979)



# Condemnation / Inverse Condemnation

## ► **Condemnation**

- Initiated by the government
- Happens when the government takes private property for the public good
- 5<sup>th</sup> amendment requires that just compensation be paid

## ► **Inverse Condemnation**

- Initiated by the property owner
- Often happens when land use regulations go too far and deprive the property owner of the property's value, use or marketability
- Commonly referred to as a regulatory taking
- 5<sup>th</sup> amendment requires that just compensation be paid





# Vested Rights

- ▶ The “**Vested Rights Rule**” means that an applicant for a land use or a development is entitled to consideration and approval if the application is complete, and if it complies with all zoning requirements in place at the time of the application. Put another way, the right to develop “vests” when a complete application that complies with zoning ordinances is submitted.
- ▶ We cannot deviate from ordinances and our general plan; we are obligated to follow what we say is binding.
- ▶ We can't change the rules in the middle of the game on property owners.