



## Planning and Zoning Commission Agenda

Wednesday, December 1, 2021

Salem City Council Chambers 30 West 100 South Salem, Utah 84653

Planning and Zoning will also be held electronically, using the Zoom program. If you would like to participate, please call the city offices (801-423-2770) or email (salemcity@salemcity.org) **before 5:00 p.m. on Wednesday December 1<sup>st</sup> to request the link.**

### **6:00 P.M. Work Session (No Official Business Conducted)**

1. Planning and Zoning Commission Training – Legal Counsel
2. Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)

### **7:00 P.M. Planning and Zoning Commission**

3. Planning and Zoning Commission meeting minutes from October 13, 2021

#### **Public Hearing**

4. Motion To Enter Public Hearing
5. Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)
6. Motion To Close Public Hearing

#### **Motion**

7. Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)
8. (Draft) New Salem Area Plan Presentation – Sunrise Engineering
9. Adjourn

**Planning and Zoning Commission Attendance:** Paul Taylor, Kelly Peterson, Dave Stringfellow, Jim Simons

**Salem City Staff Attendance:** Vaughn Pickell, Bruce Ward, Cody Young

**Public Attendance:** Brad Robbins (Sunrise Engineering), William Burk, Shannon Ellsworth, Rob Worlee (Sunrise Engineering), Glade Lewis, Karen Lewis

**6:00 P.M. Work Session (No Official Business Conducted)**

**Planning and Zoning Commission Training – Legal Counsel**

Vaughn Pickell presented the “Utah Open and Public Meetings Act” and “Powers and Duties of DRC and Planning & Zoning Commission” trainings.

**Utah Open and Public Meetings Act**

**Public Body**

A “public body,” as defined by the Act, is “any administrative, advisory, executive, or legislative body . . . that: is created by the Utah Constitution, statute, rule, ordinance, or resolution; consists of two or more persons; expends, disburses, or is supported in whole or in part by tax revenue; and is vested with the authority to make decisions regarding the public's business.

**Meetings**

A “meeting,” as defined by the Act, is the convening of a quorum of members to discuss or act on a matter over which the public body has control. This includes workshop/executive sessions. Unintentional, random, or chance meetings do not violate the Act, BUT social meetings and electronic communications between members should be kept to a minimum and may not be used to circumvent the purposes of the Act.

**Meeting Notice/Agenda**

24-Hour advance notice required for all meetings. Post at public body’s principal office or, if no such office exists, at the building where the meeting will be held. Post on the Utah Public Notice Website. Deliver to a local newspaper or media correspondent. Meeting Notice must include an agenda of discussion/action items. State the date, time and place of the meeting.

**Electronic Meetings**

A meeting can be electronic, such as a phone call or internet web conference. Electronic meetings may only be held if first authorized by resolution, rule or ordinance of the public body. The requirements of the Act apply equally to electronic meetings, plus the public body must provide a physical site, and 24-hour notice at that site, where members of the public can attend in person.

#### No anchor location needed if Chair

Makes written determination that an anchor location “presents a substantial risk to the health and safety of those who may be present at the anchor location”. States facts upon which the determination is based. Includes statement in public notice and reads at beginning of the meeting, and includes directions to the public on how to view or make comments. Governor’s order suspending OPMA rescinded.

#### Open Meeting Minutes

Written minutes and audio recording required for all open meetings. Audio Recording Exception: Audio recording NOT required for site visits, traveling tours, or other similar events as long as no vote or other official action is taken.

#### Open Meeting Minutes

Minutes and audio recording must include: The date, time and place, members present/absent, substance of matters proposed, discussed or decided, Voting record, the name of each person who provided comments and a brief summary of those comments, other information requested by a member of the meeting, written minutes are the official record of meetings. Public body must establish a procedure for approval of the written minutes of each meeting (best to approve at the next meeting). Written minutes must be available to public within a reasonable time. An audio recording must be made available to the public within three business days.

#### Closed Meetings

Quorum of members must be present at a properly-noticed open meeting. Two-thirds of the members present must vote to approve closing the meeting. The open meeting minutes must specify: the reason for the closed meeting. The location of the closed meeting. A record of votes for or against holding the closed meeting. Can only be held to discuss (no official action allowed) any of the following: A person’s character/professional competence/health, collective bargaining strategies, pending or imminent litigation, strategies regarding real property, security issues, investigation of allegations of criminal misconduct.

#### Closed Meeting Minutes

Audio recording required, unless closed exclusively for discussion of: Character, professional competence, or physical or mental health of an individual, or security personnel, devices, or systems. Minutes are optional, but not required.

#### Violations

Court can void any actions taken at an illegal meeting. Members who knowingly or intentionally violate the closed meeting provisions of the Act may be found guilty of a Class B Misdemeanor.

97 Duties and Role of DRC & Planning Commission

98 State law requires a planning commission to review and recommend general plan and  
99 land use regulations. Act as Land Use Authority for certain administrative applications,  
100 conditional use permits, site plans and subdivisions.

101 Public Hearings

102 Required for: General plan adoption or amendment. Land Use Regulation adoption or  
103 amendment. Land Use Regulation: zoning ordinance, zoning map, standards and annexation  
104 ordinance.

105 Recommendations

106 May be adopted, modified, or rejected by City Council, because City Council is the  
107 elected legislative body. Planning & Zoning Commission is an advisory body only for legislative  
108 decisions.

109 Development Review Committee

110 Not required by State law. Most cities have them. They may be formal or informal  
111 groupings of staff. A public body if it makes formal decisions. If a formal public body, then they  
112 comply with OPMA

113 DRC Members

114 Public Works Director (Chair), City Engineer, Building Official, Electric Department  
115 Supervisor, Public Safety Director, City Attorney and Mayor or Councilmember (may not vote  
116 on items that come before Council)

117 DRC

118 Recommendations: zone changes, zoning text amendments, general plan amendments  
119 and preliminary plats

121 **Powers and Duties of DRC and Planning and Zoning Commission**

123 Public Clamor

124 Clamor: "A loud and confused noise, especially that of people shouting vehemently."  
125 Public comment ≠ public clamor. "Public hearing" means a hearing at which members of the  
126 public are provided a reasonable opportunity to comment on the subject of the hearing. Utah  
127 Code Ann. § 10-9a-103(53). To be considered, reasons offered by public must have factual basis  
128 in the record. Davis County v. Clearfield City, 756 P.2d 704, 712 (Utah Ct. App. 1988).

129 Public Clamor: Administrative

130 "The decision to deny an application for a conditional use permit may not be based solely  
131 on adverse public comment." Wadsworth v. West Jordan City, 2000 UT App 49, ¶ 17, citing  
132 Davis County v. Clearfield City, 756 P.2d 704, 711-12 (Utah Ct. App. 1988). Inquiry is limited

to whether the land use application complies with adopted law and regulations. A personal opinion of a staff member, planning commissioner, or city council member is not relevant to whether the land use application complies with the law. The opinions voiced by the public at a public hearing are only relevant to the extent they relate to whether the land use application complies with the law. Review for correctness.

#### Public Clamor: Legislative

All viewpoints encouraged. Goal is to determine policy, many voices needed. “Public clamor doctrine has no application when a legislative body acts in a legislative capacity.” *Harmon City, Inc. v. Draper City*, 2000 UT App 31, ¶ 27, 997 P.2d 321, 328. Review for reasonably debatable rational basis.

#### Schools (public, including school district and charter schools)

Charter schools are permitted uses in all zones schools are subject to local land use ordinances except: landscaping, fencing, aesthetics, construction methods or materials, building inspections, city building codes, building use, placement of temporary facilities (relocatables), No participation in cost of road or sidewalk (with a few exceptions), Fees, except impact fees, regulations on location (except unreasonable risks to health and safety) City may regulate (only to the extent the City has these regulations): height, bulk and mass (i.e., lot coverage), off-site parking, curb cuts, traffic circulation and construction staging. Standards must be objective, not subjective. Must be adopted in ordinance

#### Group Homes

Utah statutes have changed: “A municipality may only regulate a residential facility for persons with a disability to the extent allowed by . . . the Fair Housing Amendments Act of 1988 . . . and applicable jurisprudence . . .” Utah Code Ann. § 10-9a-516 (2013). Furthermore, “The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with . . . the Department of Human Services.” Utah Code Ann. § 10-9a-520 (2013). The Act requires a “reasonable accommodation” from otherwise applicable local regulations: Definition of family as a number of unrelated individuals. Operating a business in a residential zone. These are administrative decisions made by the City staff because residential facilities for persons with a disability is a “permitted use” in all zones where dwellings are allowed.

#### Development Review Committee

Not required by State law. Most cities have them. They may be formal or informal groupings of staff. If it makes formal decisions, it is a “public body”. If a formal public body, then the DRC must comply with OPMA

#### DRC Members

Public Works Director (Chair, SCMC § 2-15-040), City Engineer, Building Official, Electric Department Supervisor, Public Safety Director, City Attorney and Mayor or Councilmember (may not vote on items that come before Council) SCMC § 2-15-020.

#### Future DRC Members

City Manager, Fiber Department Director, City Planner, Public Works Director (Chair), City Engineer, Building Official, Electric Department Supervisor, Public Safety Director, City Attorney and Mayor or Councilmember (may not vote on items that come before Council) SCMC § 2-15-020.

#### DRC

Recommendations: zone changes, zoning text amendments, general plan amendments, preliminary plats and capital facilities plans. Land use authority: final plats, minor final plats, site plans, SCMC § 2-15-010(B) and adequacy of public facilities, SCMC § 13-2-030(D).

#### Duties and Role a Planning Commission

State law (UCA § 10-9a-302) requires a planning commission to: review and recommend, general plan, UCA § 10-9a-404, land use regulations, UCA § 10-9a-502, subdivision ordinance and amendments, UCA § 10-9a-602. May act as Land Use Authority for certain administrative applications: conditional use permits, UCA § 10-9a-507, site plans, UCA § 10-9a-103(29) - (31) and subdivisions, UCA § 10-9a-103(29) - (31).

#### Duties and Role of Salem Planning and Zoning Commission

Salem ordinance requires a planning commission to: review and recommend (legislative) general plan (state law), land use regulations (state law). Review and recommend (administrative), preliminary plats, SCMC § 13-2-030(G). Act as Land Use Authority for certain administrative applications, conditional use permits, clear for gravel pits (SCMC § 14-24-050), but unclear otherwise

#### Public Hearings

Required for: general plan adoption or amendment, UCA § 10-9a-404, land Use Regulation adoption or amendment, UCA § 10-9a-502 and land Use Regulation, UCA § 10-9a-103(33): zoning ordinance, zoning map, standards and annexation ordinance.

#### Recommendations of Legislative Actions

May be adopted, modified, or rejected by City Council because City Council is the elected legislative body. Planning & Zoning Commission is an advisory body only for legislative decisions. Utah Code Ann. § 10-9a-302(1). "The Planning and Zoning Commission of Salem City shall be an advisory body to the City Council, which is not bound by the Commission's recommendations." SCMC § 14-2-030.

#### Areas outside planning and zoning review

Budgets - City Council legislative decision, Utah Code Ann. § 10-6-118, staffing - Mayor, City Council, and City Manager administrative decisions, SCMC §§ 2-3-010, 2-3a-040, public safety - Mayor/Council, SCMC § 2-6-010, utilities - City Council, SCMC, Title 11, adequacy of public facilities - DRC, SCMC § 13-2-030(D) and appeals - City Council, SCMC § 14-1-210

#### Recommendation

Adopt table specifying recommending body and land use authority. Refer to table in sections dealing with that type of land use application

### **Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)**

The Lewis property is located at 1509 North 1750 West Salem, UT. The property owners are requesting an A-1 to C-1 zone change. Bruce Ward stated that the Lewis property is located in the commercial area in the draft land use plan for the New Salem area. Bruce Ward mentioned that the current property owners are interested in rezoning the property and then selling the property. Bruce Ward mentioned that there is a trailer dealership interested in the property. Bruce Ward stated that the property would be a tough property to improve for a business because of the lack of infrastructure in the area. Dave Stringfellow asked what the tunnel going under the freeway on 1750 west is used for. Kelly Peterson stated that the tunnel is not being used for a lot of things currently but was used for agriculture in the past. Bruce Ward stated that the draft future land use plan shows the tunnel being widened in the future. Bruce Ward asked the Sunrise Engineering representatives if the proposed zone change was appropriate or not for the area. Shannon Ellsworth stated that the property is zoned commercial in the draft land use plan. Shannon Ellsworth believes there is no reason to not zone the property C-1. Vaughn Pickell stated that the owner of the property needs to understand that the property is not ready for a business immediately after the zone change because of the lack of infrastructure. Bruce Ward stated that the potential buyers of the property talked to him about opening the trailer sales business and connecting to Salem City utilities when they become available in the area. Bruce Ward and Vaughn Pickell mentioned that they are against the concept of connecting to utilities after a business is started because it goes against Salem City code. Kelly Peterson stated that the proposed zone change is in line with the draft land use plan for the New Salem area. Bruce Ward mentioned that DRC came to the conclusion that the proposed zone change fits the draft land use plan for the New Salem area. Kelly Peterson asked the Sunrise Engineering representatives if the City should wait to approve the zone change after the draft land use plan for the New Salem area is approved by the City Council. Shannon Ellsworth stated that she believes that there will not be any significant changes in regards to zoning from now to when the land use plan is approved.

### **7:00 P.M. Planning and Zoning Commission**

#### **Planning and Zoning Commission meeting minutes from October 13, 2021**

Jim Simons made a motion to approve the minutes from the October 13, 2021 Planning and Zoning Commission meeting. Dave Stringfellow seconded the motion. All members of the commission voted in favor. 4-0

### **Public Hearing**

250

251 Paul Taylor made a motion to enter the public hearing. Jim Simons seconded the motion. All  
252 members of the commission voted in favor. 4-0

253

254 **Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)**

255

256 Bruce Ward stated that the Lewis property is located at 1509 North 1750 West. The  
257 property owners are requesting a A-1 to C-1 zone change. Bruce Ward mentioned that Salem  
258 City is working with Sunrise Engineering to create a future land use plan for the area where the  
259 Lewis property is located. Bruce Ward stated that the proposed zone change complies with the  
260 draft future land use plan for the area. Bruce Ward finished up by stating that the DRC  
261 recommended approval of the proposed zone change.

262

263 No public comment was made in regards to the proposed zone change.

264

265 Jim Simons made a motion to close the public hearing. Paul Taylor seconded the motion. All  
266 members of the commission voted in favor. 4-0

267

268 **Motion**

269

270 **Zone Change – Lewis Property A-1 to C-1 (1509 N 1750 W Salem, UT)**

271

272 Paul Taylor made a motion to recommend approval of the A-1 to C-1 Lewis property  
273 zone change. Jim Simons voted in favor. All members of the commission voted in favor. 4-0

274

275 **(Draft) New Salem Area Plan Presentation – Sunrise Engineering**

276

277 Shannon Ellsworth stated that she was the consultant from Sunrise Engineering that  
278 worked on the New Salem Area Plan. Shannon Ellsworth stated that she is a professional planner  
279 and has been on the Planning and Zoning Commission in the City she currently lives in. Salem  
280 City was awarded a grant from UDOT to perform a future land/traffic use plan for the New  
281 Salem area. Shannon Ellsworth mentioned that the New Salem area is the North West section of  
282 Salem City. Shannon Ellsworth mentioned that the road structure is based off of existing roads  
283 and additional concept/preliminary roads. There will be pedestrian safety infrastructure installed  
284 next to the Arrowhead Springs Park. Shannon Ellsworth also mentioned that they plan on a



school or church to be built on the property north of the Arrowhead Springs Park. The school or church will provide additional parking for events at the Arrowhead Springs Park. Shannon Ellsworth stated that the intersection of 1260 West and SR-164 is proposed to be a right in and right out intersection. The intersection of Salem Parkway (extension of Elk Ridge Drive) and SR-164 will have a signal. There will be two left lane turns going from Salem Parkway onto SR-164 at the signal. Shannon Ellsworth also mentioned that the underpass on 1750 west is planned to be widened and connect to future Payson. Shannon Ellsworth mentioned that there will be three round 'abouts proposed in the land use plan. Round 'abouts slow traffic down and continues flow on busy streets. There will be high design standard for the round 'abouts in this area. Kelly Peterson asked what the status was for the Salem Parkway (Elk Ridge Drive extension) construction timing. Bruce Ward stated that the County has reached an agreement with a major property owner for easements where the Salem Parkway (Elk Ridge Drive extension) road will be constructed. The County hopes that this agreement will create a domino effect with other property owners to setup easement agreements with the County. Shannon Ellsworth showed and explained the different zoning areas in the future land use plan. Shannon Ellsworth stated that Salem City gave feedback to her that they want as much commercial retail possible. Industry standards to support a grocery store is six thousand residential units in the area. Shannon Ellsworth stated that with the highest residential density in the New Salem area, there will be two thousand six hundred units. Shannon Ellsworth stated that they believe the residential zoning density is too low to support the commercial in the area. Bruce Ward mentioned that the developer of the New Salem area told him that the City Council told Sunrise Engineering to increase the residential density in the future land use plan. Shannon Ellsworth stated that the residential density was increased a little bit after the direction from the City Council was given. Paul Taylor asked if it would be better for the commercial to go along the Salem Parkway (Elk Ridge Drive extension). Shannon Ellsworth stated that commercial retailers don't like the concept of commercial going along Salem Parkway (Elk Ridge Drive extension). Bruce Ward stated that it is okay to zone a lot of the area commercial because rezoning property from commercial to residential will bring little to no resistance. Bruce Ward finished up by stating that it is harder to zone residential property to commercial property. Paul Taylor stated that he wants to see more commercial zoning along Salem Parkway (Elk Ridge Drive extension). Kelly Peterson stated that the New Salem area needs to be zoned commercial as much as possible. Kelly Peterson agrees with the statement that the commercial property can be rezoned to residential if needed. Dave Stringfellow asked what housing product is in a nine to fourteen units per acre subdivision. Bruce Ward stated that the housing products for nine to fourteen units per acre is townhomes and condos. Shannon Ellsworth mentioned that there is high design standards for the housing product in the area. The Commission stressed concerns about parking in the high density residential areas. Kelly Peterson stated that the visitor parking areas in subdivisions will be used by the home owners for storage of various items. Shannon Ellsworth stated that the land use plan for New Salem recommends spacious parking for the area. Paul Taylor requested that the property on the North West corner of 460 West and Arrowhead Trail be rezoned to commercial. Bruce Ward stated that he will present the Commissions suggested adjustments for the future land use plan of New Salem to the City Council on December 8, 2021.

Paul Taylor made a motion to adjourn. Jim Simons seconded the motion. All members of the Commission voted in favor. 4-0