

Part II. The Responsibilities of the Planning Commission

1. The Planning Commission's role

The Planning Commission is the body that helps the council make policy decisions on land use. They are the "local experts" that help craft a consensus on land use issues. They may take final action on land use application if the council has so delegated the power to them. It is not uncommon for members of a planning commission to be at odds with the city or town council. This is understandable since the primary purpose of the planning commission is to act as an advisory body that makes reasoned recommendations to the council about the general plan and the land use ordinances, but the city or town council is under no obligation to take the recommendations of the Planning Commission.

It is not a rare occurrence for members of a Planning Commission to become invested in their recommendations. These recommendations are the product of long public processes and hard decision making. It can appear disrespectful to the process and the efforts of the Planning Commission when the council ignores the recommendations of the planning commission and goes off on its own. Open communication and meeting annually with the Council to set priorities and goals may help alleviate any tensions. It may not. Planning Commissioners can always run for office if they feel there needs to be a change.

Decisions regarding the general plan and the adoption of land use ordinances are legislative acts that are intended to be made by elected policy makers and not by appointed commissioners. Council members must always respect the recommendation of the Planning Commissions, but in the end they need to vote for their own constituents according to their own consciences and the city and town code.

It is also not uncommon for city and town councils to become frustrated with their own Planning Commissions. This is generally not because of any recommendation made by the Planning Commission as an advisory body, but when the commission is acting as a land use authority and granting or denying permits and approvals.

The principle source of this frustration is a Planning Commission's attempt to exercise discretion in granting or denying these permits. Utah law is very clear that a landowner is entitled to approval of a land use application if the application complies with the city or town's ordinance. (Utah Code section 10-9a-509(1)(a))

It is also specifically stated in Utah law that a land use authority cannot impose any requirement on an applicant for a land use permit that is not specifically expressed in either state law or local ordinances. (Utah Code section 10-9a-509(1)(i))

In addition, the law states that if a proposed subdivision, with limited exceptions, complies with the city or town ordinances, it must be approved. (Utah Code section 10-9a-603(2)(a)) What all this means is that the Planning Commission, when acting as a land use authority, has very little discretion on whether or not to grant or deny the

permit. If the land owner's application complies with the ordinances the commission must approve it, and if it does not comply then the Planning Commission must deny the application. This is regardless of whether or not the planning commission, or the public, thinks that the application is a good or bad idea.

When a Planning Commission ignores the law and approves (or denies) a land use application in violation of the city or town ordinances it just makes trouble for the city or town council. This type of trouble can lead to resentment.

The following points are some basic rules for members of a Planning Commission to follow that will help the planning process and avoid conflict between the Planning Commissions and the city or town councils.

Legislative and Administrative

Planning Commissioners must understand and appreciate the dual role that they may play. When they are making a recommendation on a general plan or on a land use ordinance they are a part of the political, legislative process. They have broad discretion in what their recommendation can be. They can listen to the public even if it is just uneducated clamor.

When the Planning Commission is acting as a land use authority it has little discretion. They are acting in an administrative capacity. The land owner's application either complies with the ordinances or it does not. An individual Planning Commissioner's opinion of the merits of a proposed land use application is not relevant to the process. Any individual Commissioner's opinion, and any of the public's comments and concerns, are relevant only to the extent that they speak to issue of compliance with the existing law.

Advisory Body

Planning Commissioners must understand that the Planning Commission is intended to shape policy not make policy. It is not a representative body and has no constituency. Commissioners do not represent neighborhoods and are not gate keepers. Their role is to be experts in planning and the local ordinances. They are to make reasoned recommendations and apply the ordinances as written.

If a Planning Commissioner wants to be a policy maker they just need to put their names on a ballot and win an election. Until they do so they should not attempt to make policy. They should be content with just shaping policy.

Due Process

Planning commissioners should respect the public process and the due process rights of the land owners. As previously discussed all meetings of the Planning Commission must comply with the Utah Open and Public Meetings Act. This means that both decisions and deliberations of a planning commission must be public.