

1 **PROVIDENCE CITY PLANNING COMMISSION MEETING**

2 **Providence City Office Building**

3 **15 South Main, Providence, UT**

4 **October 25, 2006**

5 **6:00 p.m.**

6 **Attendance:** Chair: Blaine Sorensen

7 Commissioners: B Bagley, J Beazer, L Campbell, J Mock

8
9 B Sorensen explained that the Planning Commission meetings will be held on Wednesdays. The
10 next one will be November 8, 2006. The November 23rd meeting will be held on November 29th
11 due to the Thanksgiving holiday.

12
13 **Action Items:**

14 **Minutes.** Will be presented at the next meeting.

15 **Disclosure of any conflict of interest on any of the agenda items. None**

16 **Disclosure of any ex parte communication on any of the agenda items. None**

17
18 **Public Hearings:**

19 No public hearings will be conducted.

20
21 **New Business:**

22 **Item No. 1.** The Providence City Planning Commission will discuss designating a Land Use
23 Authority and creating an Appeal Authority in connection with Utah Code Title 10 Chapter 9a
24 with Scott Wyatt.

- 25
- 26 • B Sorensen turned time to Scott Wyatt.
 - 27 • S Wyatt presented a document that disclosed that the City is a year and a half behind on
28 the land use ordinance. The appeal authority is one section that should be reviewed.
29 The land use code presents a new way to approach this item. Section 2, Title 1 Chapter
30 9 has been repealed. This takes out the administrative period. Section 3 consists of
31 technical corrections. Section 4 proposes to repeal the Board of Adjustment. They had
32 three responsibilities under the State law. 1) Hear appeals of land use decisions, 2)
33 decide on variances, and 3) grant special exemptions. The appeal authority hears all
34 appeals of land use decisions. It can be a board or anyone can be designated depending
35 upon what the Commission wants. This proposal endorses one individual to be the
36 appeal authority. Other municipalities are interested in creating an appeal authority
37 using an administrative law judge and sharing with other cities. It was recommended to
38 find someone who is interested in this position, multiple cities will appoint the same
39 person, and the person will become trained.
 - 40 • B Sorensen commented that the Title 1 section is repealed, and asked if Section 4 is
41 proposed.
 - 42 • S Wyatt stated that this is different than land use appeals. It is appealing some other type
43 of decision. He doesn't know when the last time the appeal authority was used. He
44 informed the Commission that the Mayor appoints and the City Council approves. It can
45 be an authority of three or five people.
 - 46 • J Beazer commented that he has mulled over both options, but once a year is average for
47 any type of appeal in Providence, and they usually are conditional use appeals. He
48 expressed that it is hard to get away from the bias if the appeal authority is someone in
49 town. The fact that several towns are involved makes it nice and that the person does it
often enough to know what they are doing.

- 1 • S Wyatt said it develops consistency. J Mock questioned that if things were involved
- 2 directly with the court, would the people involved be assessed a larger fee.
- 3 • S Wyatt stated that there is a \$155 filing fee. He commented that it would create an
- 4 intermediate, or professional.
- 5 • Mayor Simmons commented that Providence City charges \$100.
- 6 • B Bagley wondered that if something goes to District Court, do they become the appeal
- 7 authority. S Wyatt said government agencies have opportunities to choose appeal
- 8 authorities. For example, if the Mayor fires an employee, the employee has the right to
- 9 an administrative hearing. If the City didn't give them a right, it would go to District
- 10 Court. Every government entity has created appeal authorities to give people an
- 11 opportunity to have their case resolved with an appeal. Most people feel that if they
- 12 have one shot and were treated fairly, they will accept the decision. If someone thinks
- 13 the judge is biased, they are angry. He suggested that it is the same problem with Board
- 14 of Adjustment. If two members live in a neighborhood where some issue is being
- 15 appealed, then those involved are not sure an honest decision was made.
- 16 • J Beazer asked if other counties are using this system. Mayor Simmons stated that
- 17 Tooele has hired someone to hear appeals.
- 18 • S Wyatt suggested that someone like Wendell Morse be hired for the job. B Bagley said
- 19 to be careful that members aren't biased.
- 20 • S Wyatt stated that Mark Teuscher would be an ideal person. The third page of the
- 21 document gives a way to structure it. Subsection 1 states that the appeal must be filed in
- 22 writing in ten calendar days with a written decision. If you make a decision tonight, he
- 23 explained, the appeal doesn't start until the decision is written.
- 24 • J Beazer indicated that in the eyes of a citizen, the day should be more certain because
- 25 they don't know when the ten days start.
- 26 • S Wyatt stated that the posting can be longer than ten days, but not shorter. He likes the
- 27 idea of ten days because things need to be resolved quickly. The time for hearing an
- 28 appeal should be heard 15 to 30 days after it was filed. The reason that this time was
- 29 decided upon is in Section 3. In the written statement, the Code provides that if it is in
- 30 the ordinance, it can be specified that the person filing an appeal must raise all of his
- 31 issues in that appeal. If they fail, they are barred from going to First District Court. He
- 32 discussed the different steps involving appeals. An appellate authority would decide if
- 33 the matter is arbitrary, capricious, or illegal.
- 34 • B Bagley suggested that there may be many land use authorities. He inquired if the City
- 35 will be doing away with the Board of Adjustments and appointing one authority to hear
- 36 setbacks, subdivisions, and other items they have been dealt with previously.
- 37 • S Wyatt stated that the Board would be hearing variances and appeals to land use
- 38 ordinances.
- 39 • B Bagley asked who hears if someone's neighbor builds his fence too high.
- 40 • S Wyatt said that no one would. They can appeal if they want to see if the decision is
- 41 arbitrary, capricious, or illegal. They can say that the City was wrong on this one. If
- 42 someone wants to build their home bigger which makes it too close to the fence, he will
- 43 go to the appeal authority. State code specifies that the cities designate an appeal
- 44 authority to hear appeals and variances. Most cities have one authority to do both. It
- 45 can be divided out if desired.
- 46 • J Beazer asked S Bankhead how many variance applications the City receives. She
- 47 confirmed that there is usually one each year.
- 48 • S Wyatt gave an example of wanting to build a garage, which happens to be on top of an
- 49 Anasasi ruin. A variance must be obtained. This recommendation is to update variance
- 50 language to mean what it is from the State code.

- 1 • J Beazer commented that variances are better when given by someone who will adhere
- 2 with the law than previously when given the go ahead illegally.
- 3 • S Wyatt discussed more changes which appear in the State code.
- 4 • J Beazer commented that land use is married to the property. He asked if it is being
- 5 separated.
- 6 • S Wyatt stated that the Code now specifies that if person abandons his use, the use is
- 7 gone. The State code has changed and has become more technical. Three ways are
- 8 considered for abandonment. Section 5, page 2, has new language. It specifies that the
- 9 City designate a Land Use Board. It can be an individual, group, commission, board, or
- 10 whatever the Commission deems best. The Land Use Board applies the ordinances.
- 11 They give the conditional use permit. The Planning Commission sets parameters which
- 12 apply. The City Council passes an ordinance which states all of the conditions. The
- 13 process for receiving a permit is mechanical—it is either yes or no. A land use authority
- 14 will be created which shall consist of three members; an administrator, a member from
- 15 public works, and an engineer. Their duties will be to respond to land use applications.
- 16 Scott Wyatt’s recommendation is that the land use authority be administrative. Scattered
- 17 throughout the book are little amendments which affect that. He stated that every time
- 18 he reads it, he sees something else in the concept. In the City Council meeting, he heard
- 19 comments like we don’t like what you are doing, but that is what the ordinance states.
- 20 • Sharrel Eames asked Scott Wyatt what he meant when he said this works well with one
- 21 person, but works really good with three or four.
- 22 • S Wyatt said he recommends one person, although it would work with three. He
- 23 believes in a standard format nationwide for an administrative hearing before going on to
- 24 district court.
- 25 • B Sorensen indicated that he heard that one person could be shared with several
- 26 communities so that person could be more experienced or efficient to do the work
- 27 instead of having to re-educate themselves.
- 28 • J Beazer agreed with one person idea. He asked if other cities are looking into hiring the
- 29 same person.
- 30 • S Wyatt said he would send out an ad to known persons in area and see what comes
- 31 back. Cities who want to do it together could send one RFP. He is sure that North
- 32 Logan will consider working together. They are interested in talking with Smithfield
- 33 and other communities.
- 34 • J Mock wondered if there should be different authorities for different areas who are more
- 35 specialized.
- 36 • S Wyatt wanted to make it clear how much latitude the Council has. He suggested that
- 37 someone should be hired who understands land use and is comfortable with due process
- 38 rights.
- 39 • B Bagley said in 10-9-a, he read from the State law that different boards are needed.
- 40 • S Wyatt admonished the Commission to not create a body that meets once a year.
- 41 • S Bankhead explained that if someone comes in and wants a different type of fence than
- 42 specified in the code, we show them the code. We tell them that if you would like
- 43 something different, you need to apply for a code amendment. If they feel strongly
- 44 enough, they would go through Planning Commission and the City Council to change
- 45 the code.
- 46 • B Bagley asked who would hear appeal.
- 47 • Mark Teuscher said it is a Legislative decision.
- 48 • B Bagley asked what Brigham City would do.
- 49 • Mark Teuscher replied that their appeal authority is the Board of Adjustments. Their
- 50 land use is the City Council and staff. Whatever the ordinance defines will be dictated

1 by the land use code. Tooele County has an appeal judge who hears variances and
2 appeals. He functions well, and the city likes the way it is run. They have one person.

- 3 • Mark Teuscher said most Board of Adjustments want to rehear an item, but that is not
4 what the appeal is for. The appeal asks if they were given due process, did they follow
5 ordinances, and was there reason for denial. Five criteria have to be met. If they are not
6 met, they are denied. If the board is discretionary, you get in trouble. It is irrelevant
7 how many people are on the committee. It is always referred to the administrative court
8 if it is appealed. He believes it is a waste of time to have two boards. Appeals are only
9 made when acted on arbitrarily.
- 10 • B Sorensen said everyone wants time to look at the plan to digest it. He asked what time
11 frame is amenable.
- 12 • Mayor Simmons stated that Jody Hoffman gave an excellent presentation and may be
13 available to come on November 8th or November 29th if the Commission would like to
14 hear what she has to say. A public hearing must be held on this issue.
- 15 • J Beazer commented that November 29th would be the best for a public hearing and
16 have her come on November 8th to give her presentation.
- 17 • S Wyatt said suggested having her at the public hearing—Nov 8, if she is available.
- 18 • Mayor Simmons stated that Neil Evercumb is gathering information concerning the
19 homeowners associations and PUDS.
- 20 • B Sorensen suggested having the presentation on November 8th and vote on November
21 29th.
- 22 •

23 **Item No. 2. The Providence City Planning Commission will hold a discussion with Mark**
24 **Teuscher concerning the current policy on Inner Block Development.**

- 25 • Mark Teuscher commented that he has looked at the general plan and zoning code. Scott
26 Wyatt is redoing it and is proposing innovative directions for Providence City. There are
27 good things being proposed on the whole package.
- 28 • J Mock asked if he is aware of the City code on inner block development. Mark
29 Teuscher said no.
- 30 • Mark Teuscher stated that there are three areas he has been going over. The current code
31 has no discussion of residential development. He suggested that the residential section be
32 developed first. The City is divided into three residential components: historical city
33 (natural grid created in 1800s), newer residential area including benches, and the newer
34 area by the commercial area. There are also areas planned to bring into the City and how
35 to deal with them. They should to be dealt with independently. He said to not create
36 more work or you may create a problem of nonconforming uses. His first
37 recommendation is to develop a residential plan for development. The plan should be
38 written in standard format. He will develop a set of criteria the City may want to follow
39 and recommend to the City Council. If you choose not to follow that standard, an overlay
40 zone would have to be created.
- 41 • B Bagley asked about applications from inside the City.
- 42 • Mark Teuscher suggested that the Commission look at vacant land and make the zone
43 apply to that. Do not create takings. Everything will have to be looked at.
- 44 • J Beazer asked how zones are changed in a taking.
- 45 • Mark commented that it cannot happen.
- 46 • J Beazer asked if takings are a legal view to bring property to zero.
- 47 • Mark Teuscher said that 90 percent are not really takings. He counseled to be careful as
48 you change zones. Look at what has done on the past on that piece. Evaluate everything
49 case by case.

- 1 • J Beazer commented that some people may want to change to a zone that doesn't allow
- 2 anything and asked if that is a taking. He asked what would happen if it were changed to
- 3 a different use and what makes it a taking.
- 4 • Mark Teuscher said to look at the property when it is annexed or when taken into the City
- 5 and make sure that no commitments were made that will hurt the City. He stated that this
- 6 is a vesting issue.
- 7 • J Mock stated that if when land is annexed, it comes in as agricultural.
- 8 • Mark Teuscher counseled the Commission to evaluate everything case by case. Two
- 9 things should be done. The first step is to have the general plan amended. The City
- 10 should do a major update every five years and rewrite it every ten years.
- 11 • S Bankhead said it took almost a year to pass the existing Code. The design review
- 12 element took time.
- 13 • Mark Teuscher commented to take affordable housing in the general plan. State code
- 14 states that three specific areas must be part of plan; land use, transportation, and moderate
- 15 income housing. He suggested migrating to the residential development section. He
- 16 stated that this must be part of the plan. Even though you have adopted the section, State
- 17 code requires it to be in the general plan. He advised to put the whole section in the
- 18 general plan.
- 19 • B Bagley asked if this is a separate document.
- 20 • Mark Teuscher said no. He advised the Commission to make sure that a sexual business
- 21 ordinance is included. He counseled that that these types of businesses know the tricks of
- 22 the trade. He said you must allow them, but you can set parameters where they can be.
- 23 You can choose not to, but if you don't designate an area designated, the business could
- 24 force its way in.
- 25 • J Beazer said if we do not specify place, they can go wherever you want.
- 26 • M Teuscher said the court stated that it would be in commercial area. You designate the
- 27 zone; you don't have to zone it. The city can be petitioned to zone it.
- 28 • M Teuscher said as long as it is in the general plan, it is a designated plan. If he complies
- 29 with general plan, you don't have much recourse. This is the First Amendment right,
- 30 which is freedom of speech. He will get a draft by the 8th of November meeting. He
- 31 counseled the Commission to put it as discussion item on the agenda. As we move
- 32 forward and get comfortable, he said, we will put it as a public hearing.
- 33 • B Bagley asked if some verbiage can be specified or tightened up.
- 34 • M Teuscher said the code needs to be specific. He said the biggest change in the State
- 35 Code was that the court said if you are complying with it, it cannot be denied.
- 36 Subdivisions are the same. If they meet every condition of the code, expectation is that it
- 37 will be approved. The trouble comes when the code is vague. You would be maintaining
- 38 the general plan. Land use approval would be out of your hands with Scott Wyatt's
- 39 proposal, but parameters would be set. He said to never deviate from the Codes and you
- 40 will never go to court.
- 41 • J Beazer commented that interpretation always falls in favor of the applicant in arbitrary
- 42 decisions.
- 43 • B Bagley declared that health, welfare, and safety of the citizens should be the biggest
- 44 issue.
- 45 • Mark Teuscher feels that the biggest role is to educate the citizens. They want things
- 46 denied because health, safety, and welfare. You need to make them aware that if they
- 47 meet the code, you are obligated to approve the request.
- 48 • B Bagley asked how this can be addressed.
- 49 • Mark Teuscher gave example of a car dealership at the mouth of the canyon in Brigham
- 50 City. The city determined that there was nothing they could do. They were obligated to

- 1 approve it, but in the end no real decision was made. Denying it isn't an option, so plans
 2 were considered to make it better. He said that you may not fix every health and safety
 3 issue. You get as much input as you can and then make a decision. Safety solutions in
 4 this example generated more unsafe conditions.
- 5 • B Sorensen asked if he would come on November 8th. Mark Teuscher replied that he
 6 would come to every Planning Commission meeting unless he doesn't have an agenda
 7 item.
 - 8 • K Baker asked if the discussion on appeal authority will be on November 8th. Mark said
 9 yes. B Sorensen said Mark Teuscher's subject will be a discussion item. S Bankhead
 10 asked B Sorensen when he wants to hold a public hearing; now or later, on inner block
 11 development.
 - 12 • B Bagley commented that inner block needs to be discussed now.
 - 13 • S Bankhead stated that the recommended change would be to require a 95-foot frontage
 14 on the existing City street.
 - 15 • M Teuscher replied that it is fine, but the general plan ought to be amended.
 - 16 • J Beazer stated that the cross hatched section is overlay zone.
 - 17 • Mark Teuscher said to proceed with it. Changes can be made and then amended. He said
 18 to run with what you have, hold your public hearing, and make the changes. It can be
 19 tweaked or adjusted. That section will probably be amended.
 - 20 • B Bagley stated that the City is trying to get away from the overlay zone.
 - 21 • Mark Teuscher said it will be tweaked and changes made.
 - 22 • J Beazer commented that other committees may be involved.
 - 23 • B Sorensen asked about electronic communication. He will be gone on 29th of November
 24 and would like an opportunity to vote.
 - 25 • Mayor Simmons asked if the City Council should approve the by laws. He asked if it can
 26 be dealt with in City Council on November 14th. The Council felt that the language was
 27 plain. S Bankhead is checking on different types of communications. J Beazer suggested
 28 using speaker phones.
 - 29 • Mayor Simmons explained that Steve Allan was voted in as a Planning Commission
 30 alternate and Harry Ames as second alternate, and he assume that they will be attending
 31 the Commission meetings. He explained that two alternates were chosen so that when B
 32 Sorensen leaves, one can move up on to the Commission and the other will be part of the
 33 Commission instead of bringing someone in out of the cold.
 - 34 • B Bagley asked if S Allan was removed from the Board of Adjustments, and if the Board
 35 of Adjustment has an alternate. S Bankhead said she believes so.

36 Meeting adjourned at 8:48.
 37 Minutes taken and prepared by Becky Turley.

43 Blaine Sorensen, Chair

43 Becky Turley, Office Specialist