



country first enacted the constitution, most were uneducated and did not read. As a result, there was fear about being ruled by the masses at that time. To address this, the founding fathers determined that there would be a structure to separate the powers of government. Separation of powers was a concept that was embedded in the constitution. There was Article I (Legislative Branch), Article II (Executive Branch), and Article III (Judicial Branch).

It was initially thought that the structural part of government would prevent there from being a concentration of power or abuse of power. However, there was not the same separation of powers in local government that there was with the Federal government. Ms. Hoffman explained the various positions in the Federal government as well as at the State level. There is a separation of power there. At a local level, there is the Mayor, City Council, and Planning Commission. The Planning Commission has a lot of roles because the Commission makes various types of recommendations to the Council and City Staff. Sometimes, the Commission acts as the Appeal Authority as well, because the Planning Commission has the authority to hear appeals related to decisions of the Community Development Director. The Commission has a lot of roles and this could create some confusion at both the Planning Commission and City Council levels.

Ms. Hoffman shared information about the Bill of Rights. For instance, the Due Process Clause and the Takings Clause. They state that private property cannot be taken for public use without just compensation. Additionally, someone could not be deprived of their life, liberty, or property without the due process of law and equal protection of the laws.

Chair Pechmann had a question related to eminent domain. Ms. Hoffman reiterated that the Takings Clause states that private property cannot be taken for public use without just compensation. Private property can be taken for public use as long as the property owner is paid. That is based on the appraised value and there are sometimes severance damages as well. She reported that there was a notable eminent domain case in Boston. In the Kelo case, private property was taken for redevelopment but then given to a private developer. The Supreme Court determined that did not meet the Takings Clause language. It is not possible to take private property for private use, regardless of whether someone is compensated well or not.

Chair Pechmann asked about the statute of limitations. Ms. Hoffman reported that in Utah, there are rules about property taken by eminent domain. If it is determined that public use is no longer necessary, the property must be offered back to the original owners at fair market value. It would be based on the fair market value at that time and not the fair market value when the property was sold. She thought it was a good idea but had not heard of a situation in Utah where someone took the property by eminent domain, decided they didn't need it anymore, and offered it back to the original owner. Eminent domain does not happen often in Utah because no elected body wants to take someone else's property. The only place it happens regularly that she was aware of was by the Utah Department of Transportation ("UDOT") for roads.

Ms. Hoffman explained that private property rights need to be protected. There are a few principles that are important such as due process, the regimen for takings, and the regimen for legal exactions. She clarified that taking is not the same as a legal exaction. The Planning Commission exacts things often. For instance, when there are subdivisions and a road needs to be dedicated. That

exaction, according to the law, has to be proportionate to the impact of the development. Whether it is a park strip, road, or utility corridor, there is a constitutional process of exacting land property in exchange for new density and the ability to develop further. That can be difficult at times, so City Staff assists the Commission and Council.

Ms. Hoffman reported that she had a hand in writing the Land Use, Development, and Management Act. At the core, it is an enabling piece of Legislation. It allows cities to plan and zone as desired. In recent years, especially in the last four years, there has been a lot of change at the Legislative level. For example, the Legislature stated that a city can regulate an Accessory Dwelling Unit (“ADU”) but cannot regulate an ADU inside a home. The Land Use, Development, and Management Act authorizes community planning and protects private property rights. There was some discretion in being able to plan and zone as desired. That is important because every community is different and has different needs. The Land Use, Development, and Management Act codified the constitutional principles.

According to Ms. Hoffman, South Salt Lake has the only completely compliant conditional use system in the State. It is now being used as a template for other places. It used to be that conditional uses could be approved, denied, or approved with conditions. However, case law and State law now specify that a conditional use is an allowed use subject to certain conditions to substantially mitigate the off-site impacts of the use. When someone submits a conditional use application it is important to remember that the use is allowed in the zone. The identified off-site impacts need to be considered as well as the standards in the Code for that use.

For due process, there needs to be notice provided as well as an opportunity to be heard. That could be a challenge with zoning because it is difficult to notify residents about a potential text amendment that would impact virtually every zone in the City. In those instances, general public notice works instead. There had been a strong push at the Legislature to give individualized notice to individual property owners. That might be something that needs to be built into the City Code in the next few years, but right now, the requirements are a courtesy notice and notice via the Utah Public Notice website process. Ms. Hoffman explained that it is different for an application because an application is an executive branch rather than the legislative branch. When a city is legislating, there is a lot of broad discretion. When a city is serving as the executive, there is less discretion. In the judicial phase, there is no discretion whatsoever.

The Land Use, Development, and Management Act codified the Federal and State principles. It also set out a State-wide legislative policy on things like homeless shelters and affordable housing. The list of policies that the State Legislature was willing to assert itself in as far as land use was growing longer and longer. Ms. Hoffman reported that State Legislative policy requires certain elements to be in the General Plan. In her opinion, those requirements are beneficial and include a Transportation Element and Affordable Housing Element. She explained that there is often a need to make annual updates made to City Code and those were brought forward by City Staff.

There are three basic themes to the Land Use, Development, and Management Act including protecting private property rights, drafting clear ordinances, and following the ordinances. Ms. Hoffman referenced the Vested Rights Doctrine. When someone applies for a particular land

use that is allowed in the Code, that application is allowed to move forward. What was in the Code at the time of the application submittal would be carried through. Utah was the earliest vesting state in the nation. Ms. Hoffman explained that the Land Use, Development, and Management Act also explains that applications need to be moved forward.

The Legislature is sensitive to delays. As a result, there is a time clock on residential building permits and how quickly those needed to be turned around. That was something Staff deals with regularly. This year, the Legislature determined that for the subdivision process, there only needs to be one public hearing. Ms. Hoffman clarified that even though only one public hearing is required it is still possible to hold other meetings and take additional public comments if desired. It means that there only needs to be one official public hearing.

Ms. Hoffman shared information about the Planning Commission's powers and duties. She explained that land use laws could not be used by the Commission to hurt someone but outside of that, the Commission has wide discretion. As for the General Plan, it used to be that the Code required consistency between Ordinances and the General Plan. While that was always a good thing, it was difficult because every time the City does something that did not technically comply with a provision in the General Plan there needs to be a General Plan amendment. It is not currently required that the Ordinances be consistent with the General Plan. She noted that it is good to create a vision and aspire to that vision, but there were often variations between the present and future. The only thing State Law said needs to comply with is the Streets Master Plan.

Ms. Hoffman explained that things like the General Plan are related to the legislative part of the Planning Commission's duties. The administrative part is the bulk of the Planning Commission's work. Once the General Plan is done, the Commission is unlikely to engage in long-range planning much for a while. It was noted that South Salt Lake updates the General Plan every 10 years or so. As a result, administrative work is largely handled by the Commission. There is almost no discretion there. The Code is applied to an application and the Commission determines whether it complies with that Code. It does not matter if a Commissioner likes an application. Instead, it comes down to whether the application complies with the Code requirements. The administrative side of things included subdivisions, Conditional Use Permits, design review on commercial projects, and Historic and Landmark District Building Permits.

Ms. Hoffman questioned whether anyone present had gone through an appeal process. Commissioner Carter reported that there was an appeal for a billboard on 2100 South. He had been part of that process. Ms. Hoffman explained that the appeals process is a bit different. When the Planning Commission handles legislative elements, it is possible to receive input from anyone at any time. That was not the case for administrative items or appeals. The Planning Commission needs to be objective and unbiased in those matters.

Information was shared about ex parte communication. Ms. Hoffman explained that it had to do with single-party communication. For example, if someone approaches a Commissioner and wants to talk about a specific application or appeal. In those instances, she suggested that the Commissioner inform them that their fellow Commissioners needed to hear the comments as well. The Commissioner could ask that person to attend the relevant Planning Commission Meeting and

share the comments on the record. Ms. Hoffman clarified that if someone shares comments outside of a meeting, that ex-parte communication could be disclosed on the record.

In quasi-judicial situations, there is an appellant and an appellee. Both need to be treated the same. The appellant should be able to take as long as they needed to share information and so should the appellee. Community Development Director, Jonathan Weidenhamer, asked if that rule applies to the public hearing component of the appeal process. Ms. Hoffman clarified that members of the public who want to speak do not necessarily need to be allowed to do so in a quasi-judicial hearing. In her opinion, it would be best to allow the appellant to call whatever witnesses they wanted to call. That could include members of the public or experts. The appellee should be given the same opportunity.

Ms. Hoffman explained that it is important for the Planning Commission to be respectful of the participants during quasi-judicial situations. The Commission also needs to issue written Findings of Fact and Conclusions of Law. That was not true only for quasi-judicial hearings, but even in administrative actions. The reason for that in the case of an administrative action was in case there is an appeal. The Commission would be given the benefit of the doubt for the decision on appeal as long as there are written Findings of Fact and Conclusions of Law. If there are no written Findings of Fact and Conclusions of Law, it is considered an arbitrary and capricious decision, because the court did not have clear reasoning for the decision made.

During an appeal, it is possible to go into Closed Session to deliberate if there is confusion about how to interpret the law or apply the law to the facts of the case. Legal Counsel could be asked to share advice during the Closed Session. Ms. Hoffman explained that the Commission could do that at any time. It is always possible for the Planning Commission to go into a Closed Session to receive legal advice from Legal Counsel. There were certain technicalities associated with that, such as a two-thirds vote to move into Closed Session. It was also something that should be on the Meeting Agenda as a possibility during every Planning Commission Meeting.

Ms. Hoffman discussed the Appearance of the Fairness Doctrine. With the government, the process needs to be fair in terms of form and objectivity. It also needs to appear fair to the audience. There are a lot of components to the Appearance of Fairness Doctrine. In court, everyone knows what the evidence is before the court date. The evidence has to be shared and there are no surprises in those instances. When appeals and administrative actions take place, that is also a good rule of thumb. If the Commission does not have the information they feel is needed to make a decision, additional information can be requested from City Staff.

The Appearance of the Fairness Doctrine was further discussed. Ms. Hoffman explained that there cannot be any internal conflicts of interest with an applicant. If a Commissioner has a conflict, they should recuse themselves from the discussion and vote. Also part of the Appearance of the Fairness Doctrine is the fact that there needs to be adequate notice, all of the evidence needs to be shared, and there needs to be an opportunity to be heard in a meaningful manner. That was why the three-minute rule does not apply during appeals. The appellant and appellee both need to be able to explain their position fully and completely. The Commission needs to be impartial, and in









