

**Minutes**  
**Special Town Council Meeting, Town of Castle Valley**  
**Thursday, February 23, 2006**  
**Castle Valley Community Center**

**Council Members Present:** Damian Bollermann, Bob Lippman, Ranna Bieschke, Jerry Bidinger, Jim Lindheim.

**Others Present:** Pam Hackley, Vicky Kress, Valli Smouse, Michael Peck, Marie Hawkins, Robert Soldat, Susan Ulery, Mark Webster, David Erley, Jennifer Mengel, Leta Vaughn, Jack Campbell.

**Clerk Recorder:** Rebecca Martin.

**Call to Order:** Meeting called to order at 6:32 PM. Damian Bollermann presiding.

Sydney Foncesbeck, of Utah League of Cities and Towns (“ULCT”), administered a training for members of the Town Council, Planning and Zoning Commission, Board of Adjustment, and Town employees focusing on Land Use and Development Act (“LUDMA”) changes and administrative, legislative and quasi-judicial governmental functions.

All city land use laws are governed by the State LUDMA law. Comprehensive changes were made in May, 2005. A few “clean ups” will be made in this legislature. Three categories of LUDMA changes were discussed: what to do if you want to keep doing things the way your Town does things, things that the Town must change, and what are optional changes. **The Town is obligated to bring itself into compliance with these law changes.**

**Things the Town must do immediately, with the recommendation by the Planning Commission:**

- **Designate a Land use Authority.**\* This would normally include/be the Town Council.
- **Designate an Appeal Authority.**\* Currently, in CV, the TC would hear an appeal of a conditional use, and the BoA would hear an appeal on zoning.

\*Sydney explained that the way to do this is to put it on the P&Z agenda, the P&Z votes on what they think the Land Use Authority should be, it goes on the TC agenda, the recommendation is passed to the TC, and the TC votes to pass it.

**The Town has these options:**

- If the Town wishes to keep doing things as they are, suggested wording to designate the Land Use Authority is: “The Land Use Authority of the Town of Castle Valley is going to be the (Town) Council with the advice of the Planning Commission as currently designated”. This pertains to all legislative Ordinances or issues.
- For all administrative issues, such as permits or requests, the Town may chose to give someone else/another entity the authority to deal with those.
- Examples of options (related to above paragraph): 1) To designate the Board of Adjustment as the appeal authority, or 2) to designate the BoA as the Appeal Authority except that in appeals of Conditional Uses the case would go to the TC, or 3) to do away with the BoA, and the Planning Commission would do variances and/or appeals would be heard by the Town attorney.
- The Town may give the variances to one body, and the appeals to another. The acting “body” must be well-trained and fully aware of when they are acting quasi-judicially, and when

administratively, etc.

- **Re: Giving public notice:** The Town may specify a longer public notification period (than the minimum listed in State law). It may also be written into an ordinance who specifically must be notified (anyone within 300 feet of the proposed project). You can “overdo” public notice even if it’s not in your ordinance(s).

**Effective changes in terms are:**

- “Planning Commission and Town Council” (the package) becomes “Land Use Authority”\*\*
- “Zoning Ordinance” becomes “Land Use Ordinance”\*\*
- We must now differentiate between a “non-conforming use” and a “non-compliant structure”\*\*

\*\*Sydney recommended making these changes in all of the Town documents at the time that the Zoning Ordinance is re-written.

Sydney provided a chart to help with differentiation between the Legislative, Administrative, and Quasi-Judicial functions of government. (handout included with these minutes).

You are acting **legislatively** when you are creating new law, e.g., writing or amending general plan, ordinances, annexation policy plan, etc. 99% of lawsuits are not over content, but over how the Town handled the process. The one area where Towns get in trouble (legislatively) is over “takings”. The TC and P&Z often act legislatively.

You are acting **administratively** when you are applying the law to a given request/situation, e.g., building and other permits, agents’/employees activities, etc. Administrative actions must actually meet/be based on the law: “almost” doesn’t stand up in court; you can’t make an exception/you may not manipulate the law at this level. The TC, P&Z and BoA all act administratively.

You are acting **quasi-judiciously** when you hear appeals, e.g., the TC hearing a Conditional Use Permit (“CUP”) appeal. CUP appeals are handled by different “bodies” in different towns. (The process of granting a CUP is an administrative function for everyone, with the TC acting on the recommendation of the P&Z.) The only question being asked in an appeal is whether the administrative officer/s acted in error. Any administrative decision can currently be heard by the appeal authority, whereas legislative appeals would go to court. The appeals process is extremely legalistic; it is not about liking/disliking the person/issue, or about “common sense”; you decide in favor of the law. For an administrative appeal, the law upon which the decision is based must be cited. For a variance, the decision is based on the appeal meeting all five of the variance criteria. The BoA and TC both act quasi-judicially (in CV).

**Re: Conditional Uses:** the Town may place conditions on either a variance or on a use. Conditions must be based upon ordinances or existing standards; they may not be arbitrary; the standards must exist before you impose the condition(s).

**Re: Non-Conforming Uses/Non-Compliant Structure:** A legal non-conforming use/non-compliant structure is something that was legal at the time it was constructed/or the use was created. In order to request to sell something with a non-conforming use in place (to sell their house as a daycare center), they must show evidence of the legality, and non-abandonment, of the non-conforming use. The Zoning Ordinance must include an abandonment clause with a time limit. It is possible to specify that the use will be abandoned when the building has “outlived its

value”, i.e., when it becomes monetarily worthless, or is destroyed, etc. It is possible to attach the use to the current owners. It is possible to limit growth to the current use/structure/size. The law is the standard if anything is questioned; the Town cannot approve something that doesn’t meet the law.

**Re: Interlocal Agreement/Enforcement Issues:** the Mayor and Town Council have what is called “police powers”. Sydney said that the county sheriff must enforce the Town ordinances if the ordinances specify the level of crime (misdemeanor, etc.) and requires a fine. If these are written into the ordinance, this makes it a criminal offense and the Sheriff must enforce. Small communities do develop Enforcement Plans. (Sydney has resource recommendations)

Sydney said the Town may sometimes have to follow the enforcement process through, get a court order to go in and do the clean-up, foot the bill for clean-up, then file a lien to try to recoup the costs. There is not a lot of success with recouping such costs.

The owner must receive the certified letter. The owner is the person who is/should be paying taxes on the property.

**Adjournment.**

**Jim moved and Ranna seconded to close the regular meeting of the Town Council. Motion passed unanimously. Meeting closed at 9:12 PM.**

**Attest:**

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**Clerk/Recorder**

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**Date**