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## SALT LAKE CITY COUNCIL STAFF REPORT

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**DATE:** October 31, 2003

**SUBJECT:** Petition No. 400-00-14 – Request for a zoning text amendment to Section 21A.06.080(C) governing Decision-Making Bodies and Officials, specifically amending the section regarding the Land Use Appeals Board

**AFFECTED COUNCIL DISTRICTS:** If the ordinance is adopted, the amendment will be applicable citywide.

**STAFF REPORT BY:** Sylvia Jones, Policy Analyst and Janice Jardine, Land Use Policy Analyst

**ADMINISTRATIVE DEPT. AND CONTACT PERSON:** Community and Economic Development – Planning Division  
Janice Lew, Associate Planner

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### WORK SESSION SUMMARY/NEW INFORMATION:

1. The Council discussed the following items with the Administration during the October 7<sup>th</sup> Work Session:
  - A. Whether alternate members consistently attend Land Use Appeals and Advisory Board (LUAB) meetings.
  - B. Alternate members engage in the discussion but cannot vote. The Chair always votes.
  - C. Whether the ordinance should be removed from its current location in the Zoning Ordinance chapter and moved to another section of City Code.
  - D. Additional board members may encourage a broader discussion.
  - E. Whether other cities have an appeals board and whether board members are compensated.
  - F. The role of LUAB.
2. The Council Office received a response from the Administration addressing Council Members' questions and concerns discussed during the October 7<sup>th</sup> Work Session. (See attachment.) In summary:
  - A. Fifteen Utah cities were contacted. Ten of those cities handle appeals through the City Council and four cities send appeals to the Board of Adjustment. Logan City uses a Board of Appeals and does not compensate their appeals board members.
  - B. Reno, Boise, Las Vegas, Denver and Phoenix were also contacted. All of their appeals are heard by the City Council.
  - C. In addition, the Administration's paperwork notes all but two of the cities in Utah compensate planning commissioners ranging from \$75 to \$25 per meeting. Reno and Las Vegas pay their planning commissioners \$80.00 per meeting. Boise, Denver and Phoenix do not compensate their planning commissioners.
3. A new ordinance has been prepared that does the following:
  - A. Changes the compensation for LUAB members from \$75 per case to \$75 per meeting.
  - B. Changes the number of voting members from three to five.

- C. Moves the LUAB language from the Zoning Ordinance chapter to Chapter 2 in the City Code relating to Boards and Commissions.

## POTENTIAL MOTIONS:

1. ["I move that the Council"] Adopt the proposed ordinance amending the number of voting members on the Land Use Appeals Board, changing the compensation of LUAB members from \$75 per case to \$75 per meeting, and moving the Land Use Appeals Board language from the Zoning Ordinance chapter to Chapter 2 of the City Code relating to Boards and Commissions.
2. ["I move that the Council"] Not adopt the proposed ordinance amending the number of voting members on the Land Use Appeals Board, changing the compensation of LUAB members from \$75 per case to \$75 per meeting, and moving the Land Use Appeals Board language from the Zoning Ordinance chapter to Chapter 2 in the City Code relating to Boards and Commissions.

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**The following information was provided previously. It is provided again for your reference.**

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## KEY ELEMENTS:

1. On June 2, 1998, the City Council approved a Legislative Action item initiated by former Council Member Tom Rogan requesting that the Administration amend the Land Use Appeals Board (LUAB) Ordinance, specifically, the standard of review used by the Board, and the number of voting members serving on the Board.

The Planning Commission's recommendation addresses the portion of the Legislative Action item relating to the number of voting members. As part of their motion, the Planning Commission also directed staff to re-evaluate the zoning ordinance as it relates to the "standard of review" for the Land Use Appeals Board.

2. Currently, the Board is composed of three members and two alternates. Over the last two years, the number of appeals has increased significantly such that Board averages one case per month, as compared to averaging one case per year when the Board was first created. Increasing the number of voting members will allow the board more flexibility when attempting to convene a quorum.
  - A. The Legislative Action item is attached for the Council's review. In summary, the Standard of Review for Land Use Appeals Board Policies and Procedures states that LUAB review is limited to the record of the Planning Commission (PC) or the Historic Landmarks Commission (HLC), including the application or petition, staff report and other documents or evidence such as photos, tape recordings of the hearing, or minutes of the HLC or PC. LUAB will not consider other evidence unless the evidence was improperly excluded by the HLC or PC.

The LUAB will presume the decision of the HLC or PC is valid. However, decisions made by the HLC and PC may be rebutted if the LUAB determines that the decision was illegal, arbitrary or capricious or not supported by substantial evidence. (The Legislative Action item defines the terms *illegal*, *arbitrary*, *capricious* and *substantial evidence* in further detail. See attached.)

3. Public process:

- A. The City Council adopted a Legislative Action Item June 2, 1998 which asked the Administration to amend the current Land Use Appeals Board ordinance regarding the standard of review and the number of voting members serving on the Board.
- B. Community Council Chairs were notified of the proposed zoning ordinance amendments in a letter dated May 22, 2002. The Planning Division did not receive feedback from Community Councils.
- C. On October 3, 2002, the Planning Commission voted to recommend that the City Council increase the number of voting members serving on the Land Use Appeals Board. The Planning Commission's motion directed staff to reevaluate the zoning ordinance regarding the portion relating to the "standard of review" for LUAB. The following issues were discussed at the Planning Commission's public hearing:
  - i. The need to change the number of voting members from three to five since the Board meets more frequently.
  - ii. The purpose of a review or appeals board in terms of reviewing evidence versus questioning whether a particular board followed procedure.
  - iii. Whether the petition was properly advertised and who has the authority to file a petition.
  - iv. Proposed text revisions to the standard of review are difficult to understand and may need to be clarified by the Attorney's Office.

## **MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:**

1. The Council may wish to request an update from the Administration as to the timeframe and scope of the issues being considered relating to the standard of review portion of the Legislative Action item.
2. The Council may wish to consider whether the Planning Commission should be recommending changes to the appeals process for its own decisions. The Land Use Appeals Board ordinance currently appears in the portion of the City Code relating to planning and zoning and, as such, requires Planning Commission review for ordinance changes. Might this be construed as a conflict of interest?
3. The Council may wish to consider removing the LUAB section from the Zoning Ordinance and including it as a separate chapter of the City Code. (For example, the Transportation Advisory Board (TAB), the Business Advisory Board (BAB), and the Housing Advisory and Appeals Board (HAAB) are listed in a separate chapter of the City Code that creates each board and the criteria governing it.)
4. The Council may wish to discuss the possibility of mandatory training for new members of the Board of Adjustment, Planning Commission and Historic Landmarks Commission. As discussed earlier, the number of appeals has increased. Training may reduce the number of appeals, which would support Council policies relating to efficient government. LUAB is one of the few paid City boards. Board members currently receive \$75.00 per case, so if three cases are heard in one meeting, the board members receive \$225.00. As the number of appeals increase, the direct costs as well as indirect costs to City government will also increase. Attached is a spreadsheet itemizing the LUAB appeals over the last six years.
5. The Council may wish to ask the Administration for a review of "best practices" as used by other cities in their appeals process.
6. The Council may wish to solicit feedback from citizens regarding their experience with the LUAB appeals process.
7. The Council may wish to inquire as to whether the members of the LUAB have had an opportunity to review the Planning Staff's recommendations for the ordinance changes and provide feedback as to whether these recommendations satisfy LUAB's intentions.

## **CHRONOLOGY:**

The Administration's transmittal provides a chronology of events relating to the proposed Zoning Ordinance text amendment. Key dates are listed below. Please refer to the Administration's chronology for details.

- April 1998 Legislative Action Item adopted by the City Council.
- May 2002 Community Council Chairs received a letter notifying them of the proposed Ordinance changes
- October 3, 2002 Planning Commission hearing

cc: Dave Nimkin, Rocky Fluhart, Ed Rutan, Lynn Pace, Alison Weyher, David Dobbins, Louis Zunguze, Brent Wilde, Doug Wheelwright, Janice Jardine, Cheri Coffey, Elizabeth Giraud, and Janice Lew

File Location: Community and Economic Development Dept., Planning Division, Zoning Text Amendment, Land Use Appeals Board