

MEMORANDUM TO BOARD OF ADJUSTMENT REVIEW APPLICATION

RE: 12/05/2023 County Commission Hearing on Eden Crossing

SUMMARY: The County Commission hearing held on December 5, 2023, focused on two main issues: (1) Amendment of the Street Regulating Plan and (2) the Eden Crossing Rezone. Both matters, initiated by applicants, are now under review.

Requested outcome: Denial of both applications on the grounds that they are inconsistent with the General Plan and would thereby improperly ad hoc amendments to the General Plan leading to the very urban sprawl the General Plan was intended to limit.

I. Street Regulating Plan

a. The proposed Amendment to the Street Regulating Plan is inconsistent with the General Plan.

- i.** Under the current General Plan, the proposed Street Regulating Plan makes drastic changes to the County's infrastructure and public utilities. This includes proposing new roads, repurposing through upzoning or downzoning existing roads, and adding a privately financed sewer system to the network of utilities within the affected area. See General Plan pg. 39 and 40 showing anticipated streets and roads.
- ii.** Under the existing General Plan, there are two distinct areas of designated higher density planning within the greater Eden area: New Town Eden and Old Town Eden. General Plan pg. 31 Commercial Locations and Village areas. (Point out streets).
- iii.** The Planning Staff's report on the Rezone issues acknowledges that the General Plan has designated eight of these villages which include two distinct Eden villages.
- iv.** This is not an attempt to tweak or make modifications to an already existing plan. Instead, it is an attempt to create a new single, contiguous Eden Village eliminating the rural transitional corridor separating these two villages as adopted by the General Plan.
Comparison of General Plan maps to Application Maps. GP pg. 31 to Application pg. 2, 13, 14.
- v.** This request was properly rejected by the Ogden Valley Planning Commission which noted that it did not conform to the existing General Plan.
- vi.** Because the Street Regulating Plan specifically impacts the approval of infrastructure,

particularly roads, roundabouts, etc., this is uniquely problematic for the County.

b. The Street Regulating Plan is an attempt to amend the General Plan without complying with the Statutory Process.

- i.** The County is required to adopt and maintain a general plan. Utah Code 17-27a-401.
- ii.** A County may amend its general plan under CLUDMA through a statutorily prescribed process. Utah Code 17-27a-403 and 404.
- iii.** The County is not permitted to approve an amendment to its General Plan in violation of the process set forth in Section 403 of CLUDMA. This designates the Planning Commission as the proper and only authority by which an amendment to a General Plan may be initiated. Only after a General Plan amendment has been recommended by the Planning Commission may the County Commission consider amending the General Plan.
- iv.** Furthermore, the Street Regulating Plan approves streets, parks, public ways, and public utilities as a zoning tool that is inconsistent with the existing General Plan. It must be denied as approving public uses that do not conform to the general plan under Section 406 of CLUDMA.
- v.** It is our position that the Street Regulating Plan is being used to improperly make **ad hoc** amendments to the General Plan and is therefore illegal under CLUDMA. Rather than use the designated villages to regulate density, the Street Regulating Plan is a completely new and distinctive mechanism for regulating development and density not contemplated by the General Plan.

c. The County has not accounted for the most recent statutory changes.

- i.** CLUDMA was amended this year to address water use and preservation. All Counties are required to amend their General Plans no later than December 31st, 2025 to comply with these Statutory provisions. Utah Code 17-27a-403(9).
- ii.** The County's current General Plan is not in compliance with CLUDMA and the County is unable to approve new public infrastructure and utilities until it is in compliance with new water use and preservation requirements that have been imposed by the legislature. This process

starts with the Ogden Valley Planning Commission. Utah Code 17-27a-403.

- iii. These applications seek to have the County make approvals that will affect the public use through the designation of streets and public utilities that are inconsistent with the current version of CLUDMA.
- iv. Accordingly, we argued that the County should deny these applications and not take further action until it has properly amended and updated its General Plan.

II. Eden Crossing Rezone Application

a. **Procedural Issues:** This Application relies upon the outcome of the Street Regulation Plan application. At the time of the application, the Street Regulation Plan had not yet been amended. We asserted at the hearing that the County should not stack these two issues on top of one another. Rather, it should allow for time to evaluate the outcome of the amendment to the Street Regulation Plan.

b. Legal Issues

i. **Spot Zoning:** Spot Zoning occurs when an authority grants special privileges or imposes restrictions on a particular property that are not otherwise granted or imposed on surrounding properties in the larger area and "without regard to a unified plan." *Marshall v. Salt Lake City*, 105 Utah 111, 126-127, 141 P.2d 704, 711 (Utah 1943). Spot zoning is permissible when it is merely modifying zoning requirements as part of a general or comprehensive plan. *Tolman v. Logan City*, 2007 UT App 260, ¶ 14, 167 P.3d 489 (quoting *Crestview-Holladay Homeowners Ass'n, Inc. v. Engh Floral Co.*, 545 P.2d 1150, 1152 (Utah 1976)) (alterations to original omitted).

1. This appears to be spot zoning affording this particular applicant privileges that are not permitted by the General Plan to other properties.
2. This appears to be spot zoning because it is inconsistent with the General Plan's provisions limiting high density and commercial development to Villages and this property is not within any of the designated Villages. *Maps Pg. 31 of the General Plan compare to pgs. 2, 13 and 14 of the Application.* Circle is deceptively larger on

page 14 of the Application. (Show proposed Road in GP map compared to location in application)

ii. The Eden Crossing Rezone Denial: In their deliberations leading up to the recommendation to deny the application, the Planning Commission noted repeatedly that this rezone request does not conform to the General Plan. Further, they noted that if the request was consistent with the current Street Regulating Plan they would have been more favorable towards it. Some noteworthy points:

1. **This property is not located within the Village Areas as designated by the general plan.**
2. **The property that was recently rezoned to the FB zone was also not in the Old Town Eden Village area as identified in the general plan.**
3. **There was uncertainty about the effectiveness of the TDR ordinance and a desire to see issues with that ordinance resolved first.**
4. **There were questions about whether the TDR ordinance is consistent with the General Plan.**
5. **The new Street Regulation Plan was not in place at the time of the Rezone application and should not be based upon the approval of a new Street Regulation Plan.**

iii. Even the Planning Staff's own analysis addressed both the current and the proposed street plans:

The Planning Staff's own recommendations acknowledged that the rezone will be affected by the Street Regulation Plan. As noted earlier, it is our position that the Street Regulation Plan was not properly voted upon, has not been properly implemented, and is void. Furthermore, even if it were enforceable, it is inconsistent with the General Plan. This proposed amendment will also be inconsistent with the General Plan.

1. The Applicant has not demonstrated that the rezone is merited.

- a. As noted by the Planning Report to the Planning Commission, there are six criteria that an applicant must demonstrate to show that a rezone is

merited. The Application is insufficient and the Planning Department incorrectly analyzed the criteria without sufficient evidence to support their analysis.

- b.** In the Planning Department's own words, the outcome of the rezone is heavily dependent upon the status of the Street Regulating Plan. This makes it very difficult to assess the six criteria given the uncertainty suggesting denial for the time being is appropriate to allow the Department to take into account the WCC's decision on that application.
- c.** The Planning Department agrees that the property in question should be what is referred to as a "transect" area to transition from commercial and high density to rural. The Rezone would accomplish just the opposite and would in fact add to the high density sprawl that the General Plan sought to limit to defined areas. In this case, New Town Eden and Old Town Eden.
- d.** The Planning Department agrees that the Rezone is inconsistent with the General Plan by creating what their own report calls the creation of an "urban center" that is clearly outside of the two Eden Village areas. This is a significant departure from the General Plan and will effectively eliminate the distinction between New Town Eden and Old Town Eden. Approval will be distinctly in conflict with the General Plan and create the very type of high density and commercial sprawl that the Plan limited to the designated villages. See Commercial Development Goal 3 of the General Plan.
- e.** This should be treated as an attempt to make **ad hoc** amendments the General Plan through zoning. The Planning Department advocates this new urban center, approving public use, infrastructure and utilities, while ignoring the

general plan. The report specifically identifies the approval of a sewer for New Town Eden.

f. The General Plan Does not Reference a New Town Eden Sewer System. Land Use Principle 1.5 of the General Plan directs the County to encourage new development to locate in areas where water and sewer services could be provided. These applications are premised upon a "Spot Zoning" sewer system that primarily benefits an entirely new Village while neglecting the two approved Eden Villages.

iv. This is a legislative act: As a legislative act, both the Planning Commission and the WCC have broad latitude to deny or approve; however, that latitude and discretion is still limited by due process and the law. This law includes the County Ordinances as well as CLUDMA which is the statute authorizing this proposed action.

1. Limits on legislative acts: Under Section 406 of CLUDMA, even a legislative body may not approve public uses such as streets and utilities that are inconsistent with the General Plan. This rezone will effectively approve public uses that are inconsistent with the General Plan.

2. The County appears to be intentionally attempting to make **ad hoc** amendments to the General Plan by promoting the very type of urban sprawl that was limited to specific village areas in the General Plan. This is illegal.

III. Final Thoughts

a. This is not a question of property rights. Suggesting that the County must approve these applications because there is something sacred about property rights is a strawman. It is a strawman because the County does not truly believe or act consistent with that belief and because it is not at issue today. I, nor any other person in this room, could just as soon go out to our property and operate a nuclear waste facility or even build a humble home for our family without first complying with the County's entitlement process. It is the compliance with that entitlement process that brings the applicant and the community to

this meeting and it is that process by which the Commission must abide.

- b.** Opposing these applications is not a rejection of the County's efforts. The General Plan was approved with broad support. It was a hard-fought compromise of important values, values including property rights.
- c.** Opposing these applications is not a rejection of the applicant's rights nor of the applicant's desire and efforts to develop within the guidance of the General Plan. The Applicant has a history of development within the Ogden Valley. While there may be mixed opinions, it cannot be denied that these projects have had a lasting impact upon the community. In the most generous of assessments, the projects have often added great value to the community. The Applicant has certainly played a prominent role in shaping the future of Ogden Valley and often in positive ways. However, this is a product of collaboration with a County that advocates for the community using the tools at its disposal. Those challenging these applications sincerely believe that the County has failed them by neglecting its role in this process. Great things can be accomplished when a developer such as the applicant and a diligent County each do their parts and properly abide by their roles. We argued at the hearing that the County needs to go through the proper processes which will allow the community to have confidence that the General Plan is what the County professes it to be and that the processes will not be bent to the urgency of a special interest.
- d.** By properly amending the general plan through the planning commission process, we advocated that the County would reassure the community that it takes its role seriously. It would communicate that special interests can have a seat at the table but will also play by the rules. It could eliminate questions of conflicts of interest that exist when stakeholders in the community also act as crucial decision makers. Most importantly, it would result in a legacy of development where applicants such as the one here and the community are able to build a sense of engagement where a win-win is achievable.
- e.** Finally, pressing ahead with these applications has serious legal implications. With the discretion the County has following the hearing, it may deny both applications and direct the applicant to work with the planning commission to amend the general plan in a way

that incorporates the Street Regulating Plan. This was proposed as an alternative to the current path of advancing urban sprawl through **ad hoc** amendments of the General Plan through rezoning and the Street Regulation Plan. There is no reason to rush decisions which will have long term implications on our community when these same outcomes can be achieved through following the proper processes that will facilitate community collaboration.