

ORDINANCE 2005-14

AN ORDINANCE ENACTING SECTIONS 4-5-8 AND 4-10-8 OF THE TOOELE COUNTY CODE, REGULATING CERTAIN EX PARTE CONTACT WITH PLANNING COMMISSIONS; ENACTING SECTIONS 4-5-9 AND 4-10-9 DESIGNATING PLANNING COMMISSIONS AS LAND USE AUTHORITIES; AND AMENDING SECTIONS 4-5-1 THROUGH 4-5-7, MAKING TECHNICAL CORRECTIONS THERETO.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF TOOELE COUNTY, UTAH AS FOLLOWS:

SECTION I - PURPOSE. The Board of County Commissioners of Tooele County, Utah desires to maintain appropriate access between appointed planning commission members and their constituents, but desires to clarify when ex parte contact, meaning contact with planning commissioners other than during a regularly scheduled planning commission meeting, becomes inappropriate. The Board of County Commissioners of Tooele County, Utah, has determined that ex parte contact with individuals is inappropriate when the contact involves an individual involved in litigation with Tooele County involving land use issues. The Board also finds that when a planning commission is acting in its quasi-judicial capacity, the decisions it makes must be based on information presented at a meeting open to the public.

The Board further desires to designate the county's various planning commissions as land use authorities, pursuant to the newly enacted land use law of the State.

The Board also finds technical corrections need to be made to the other sections of Title 4, Chapter 5.

SECTION II - SECTIONS ENACTED. Sections 4-5-8, 4-5-9, 4-10-8, and 4-10-9 of the Tooele County Code are hereby enacted to read as attached hereto, which attachment is, by this reference, made a part hereof.

SECTION III - SECTIONS AMENDED. Sections 4-5-1 through 4-5-7 of the Tooele County Code are hereby amended to read as attached hereto.

SECTION IV - REPEALER. Ordinances and resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION V - EFFECTIVE DATE. This ordinance shall become effective 15 days after its passage provided it has been published, or at such publication date if more than 15 days after passage.

IN WITNESS WHEREOF the Tooele County Commission, which is the legislative body of Tooele County, passed, approved and enacted this ordinance this 10th day of May 2005.

ATTEST:


DENNIS D. EWING, Clerk

Marilyn K. Gillette
Chief Deputy Clerk



APPROVED AS TO FORM:


DOUGLAS J. AHLSTROM
Tooele County Attorney

TOOELE COUNTY COMMISSION:


DENNIS ROCKWELL, Chairman

Commissioner Rockwell voted aye
Commissioner Lawrence voted aye
Commissioner Johnson voted aye

BOARDS AND COMMITTEES

CHAPTER 5

PLANNING COMMISSION

Section

- 4-5-1. **Planning commission established - Terms.**
- 4-5-2. **Vacancy - Removal.**
- 4-5-3. **Organization and procedures.**
- 4-5-4. **Use of state data.**
- 4-5-5. **Powers and duties.**
- 4-5-6. **Entrance upon land.**
- 4-5-7. **Compensation.**
- 4-5-8. **Ex parte contact.**
- 4-5-9. **Land use authority.**

4-5-1. Planning commission established - Terms.

There is hereby established a Tooele County Planning Commission. The Planning Commission shall consist of seven members appointed by the Board of County Commissioners. Members shall serve three-year terms and until their successors are appointed and qualified. Terms shall commence on January 1 of each year. In the event a term of a member shall expire without the member having been reappointed or a successor having been appointed, the member shall continue to serve until a successor is appointed, and the term of the successor shall terminate on the same day as though the successor was appointed in a timely manner. Terms of at least two members, and not more than three, shall expire each year.

4-5-2. Vacancy - Removal.

(1) Any vacancy occurring on the Planning Commission by reason of death, resignation, removal or disqualification shall be filled by the Board of County Commissioners for the unexpired term of such member.

(2) The Board of County Commissioners may remove a member of the Planning Commission for cause after filing written charges against the member. The member shall be provided with a hearing on the charges if requested.

4-5-3. Organization and procedures.

(1) The Planning Commission shall elect a chairperson from its members who shall serve a one-year term. The Planning Commission may create and fill any other necessary offices.

(2) (a) The Planning Commission may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Planning Commission.

(b) The Planning Commission's policies and procedures shall be approved by the County legislative body before taking effect.

4-5-4. Use of state data.

The Planning Commission may obtain access to and use any data and information held by the state or any of its agencies:

- (1) that is classified "public"; and
- (2) that is classified "protected" if the Planning Commission's use of the data is lawfully authorized or if the data will be used for a purpose similar to the purpose for which it was gathered.

4-5-5. Powers and duties.

The Planning Commission shall:

- (1) prepare and recommend a general plan and amendments to the general plan to the legislative body;
- (2) recommend zoning ordinances and maps, and amendments to zoning ordinances and maps, to the legislative body;
- (3) administer provisions of the zoning ordinance, where specifically provided for in the zoning ordinance adopted by the legislative body;
- (4) recommend subdivision regulations and amendments to those regulations to the legislative body;
- (5) recommend approval or denial of subdivision applications;
- (6) advise the legislative body on matters as the legislative body directs;
- (7) hear or decide any matters that the legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits;
- (8) exercise any other powers:
 - (a) that are necessary to enable it to perform its function; or
 - (b) delegated to it by the legislative body.

4-5-6. Entrance upon land.

The Planning Commission or its authorized agents may enter upon any land at reasonable times to make examinations and surveys.

4-5-7. Compensation.

Members of the Planning Commission may receive per diem compensation based on necessary and reasonable expenses and on meetings actually attended.

4-5-8. Ex parte contact.

(1) Ex parte contact between planning commission members and opposing parties involved in litigation with Tooele County involving land use issues shall be

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prohibited. Planning commission members shall not participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Tooele County involving land use issues. This prohibition shall include plaintiffs who have filed suit against Tooele County, claimants who have served a Notice of Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.

(2) Planning commission members shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any individual or representative of a company or entity when such interaction involves a request for a conditional use permit, planned unit development, a request for approval of a subdivision, or for an exception to the Tooele County Land Use Ordinance. This restriction on ex parte contact applies to all conditional use permit approval requests, planned unit development or subdivision requests, after an application for such is filed with the Tooele County Engineering Department, while the application is under review by the planning commission, after a decision or recommendation on the application has been made by the planning commission, while the application is under review by the Tooele County Commission, or while the application is under appeal, if an appeal is filed. Planning commissioners shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a conditional use permit, planned unit development or a subdivision approval, or an exception to the Tooele County Land Use Ordinance.

(3) If ex parte contact as described in Subsections (1) or (2) occurs, it shall be disclosed at the next meeting of the planning commission and the planning commission member who had such contact shall neither participate in the discussion nor vote on the matter.

(4) Receipt of written information regarding an active request for a conditional use permit, planned unit development or a subdivision, or an exception to the Tooele County Land Use Ordinance shall be permitted, provided such written information is disclosed at the next meeting of the planning commission and submitted as a part of the record of that meeting.

designated as a land use authority for Tooele County, to act in its individual jurisdiction. (Reference UCA 17-27a-301)

4-5-9. Land use authority.

The Tooele County Planning Commission is hereby

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CHAPTER 10

TOWNSHIP PLANNING DISTRICT PLANNING COMMISSIONS

Section

- 4-10-1. **Appointment of township planning commission members.**
4-10-2. **Erda and Pine Canyon township planning commission members.**
4-10-3. **Overlapping township planning district petitions.**
4-10-4. **Jurisdiction.**
4-10-5. **Powers and duties.**
4-10-6. **Policies and procedures.**
4-10-7. **Vacancy on township planning commissions.**
4-10-8. Ex parte contact.
4-10-9. Land use authority.

4-10-1. **Appointment of township planning commission members.**

(1) Each township planning district created pursuant to Section 11-9-1 shall have a planning commission, which shall consist of seven members who, except as provided in Section 4-10-2, shall be appointed by the board of county commissioners.

(2) Except as provided in Section 4-10-2, the board of county commissioners shall appoint members of the first planning commissions so that the terms of at least one member and no more than two members expire each year. Thereafter members shall serve four-year terms and until their successors are appointed.

(3) Except as provided in Section 4-10-2, each member of a township planning commission shall be a registered voter residing within the township. (Ord. 99-1, 1-5-99)

4-10-2. **Erda and Pine Canyon township planning commission members.**

(1) In the Erda and Pine Canyon township planning districts, three of the seven planning commission members shall be elected. The election shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on an alternating even-numbered years.

(2) Notwithstanding Section 4-10-1(3), one member may be an appointed member who is a registered voter residing outside the township if that member:

(a) is an owner of real property located within the township; and

(b) resides within Tooele County.

(3) (a) Each appointee under Subsection (2) shall be chosen by the township planning commission from a list of three persons submitted by the Board of Tooele County Commissioners.

(b) If the township planning commission has not notified the Board of Tooele County Commissioners of its choice under subsection (3)(a) within 60 days of the township planning commission's receipt of the list, the Board of Tooele County Commissioners may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

(4) Pursuant to the County Land Use Development and Management Act, 17-27-101, et. seq. Utah Code Annotated, hereinafter "the Act," election of Erda and Pine Canyon township planning commission members shall be conducted in accordance with the requirements of the Act, the Utah Election Code governing general and special elections and this chapter.

(5) Candidates shall file a declaration of candidacy with the county clerk on forms prepared by the clerk and shall pay a filing fee of ten dollars.

(6) All aspects of township elections not specifically addressed in this section shall be conducted in accordance with standard election procedures as established by the Utah Election Code, including but not limited to, voter registration and qualifications, election judges, ballots and polling procedures, canvass, and all other aspects and procedures of the electoral process. The county clerk shall determine the necessity and manner of consolidating voting precincts and appointing election judges, in accordance with state statute. (Ord. 99-1, 1-5-99)

4-10-3. **Overlapping township planning district petitions.**

Under circumstances in which two or more township planning district petitions are filed with overlapping boundaries, the petition which the board of county commissioners received first shall be given preference, although the board of county commissioners may give preference to a township petition which follows recognized but informal community boundaries and may also give consideration regarding priority based on the topography, natural boundaries and drainage basin of the proposed township planning district. (Ord. 97-10, 6/5/97)

4-10-4. **Jurisdiction.**

Upon the appointment of all members of a township planning district planning commission created after

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February 27, 1997 and the former township planning and zoning board members that continue to hold office as the members of the township planning district, the township planning districts shall immediately begin to exercise the powers and perform the duties as provided for in the Utah Code with respect to all matters then pending that had previously been under the jurisdiction of either the county-wide planning commission or the township planning and zoning board. (Ord. 97-10. 6/5/97)

4-10-5. Powers and duties.

After a township planning district is created, the duly elected and/or appointed township planning commission shall have all the powers and duties as provided for in the Utah Code and to advise the board of county commissioners on matters the board of county commissioners directs. (Ord. 97-10. 6/5/97)

4-10-6. Policies and procedures.

The board of county commissioners shall adopt such policies and procedures as it deems necessary to provide for:

- (1) the planning support staff;
- (2) the funding of necessary and reasonable expenses of township planning districts; and
- (3) any other purposes considered necessary to the functioning of township planning districts. (Ord. 97-10. 6/5/97)

4-10-7. Vacancy on township planning commissions.

Unless otherwise provided by law, any vacancy occurring on a township planning commission by reason of death, resignation, removal, disqualification or failure to file for election shall be filled by the board of county commissioners for the unexpired term of such member. The board of county commissioners may remove for cause a member of a township planning commission that the county commission has appointed upon the filing of written charges against the member and after a hearing on the charges if requested by the member. (Ord. 99-1. 1-5-99)

4-10-8. Ex parte contact.

(1) Ex parte contact between township planning commission members and opposing parties involved in litigation with Tooele County involving land use issues shall be prohibited. Township planning commission members shall not participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Tooele County involving land use issues. This prohibition shall include plaintiffs who have filed suit against Tooele County, claimants who have served a

Notice of Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.

(2) Township planning commission members shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any individual or representative of a company or entity when such interaction involves a request for a conditional use permit, planned unit development, a request for approval of a subdivision, or for an exception to the Tooele County Land Use Ordinance. This restriction on ex parte contact applies to all conditional use permit approval requests, planned unit development or subdivision requests, after an application for such is filed with the Tooele County Engineering Department, while the application is under review by the township planning commissions, after a decision or recommendation on the application has been made by the planning commissions, while the application is under review by the Tooele County Commission, or while the application is under appeal, if an appeal is filed. Township planning commissioners shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a conditional use permit, planned unit development or a subdivision approval, or an exception to the Tooele County Land Use Ordinance.

(3) If ex parte contact as described in Subsections (1) or (2) occurs, it shall be disclosed at the next meeting of the township planning commission and the planning commission member who had such contact shall neither participate in the discussion nor vote on the matter.

(4) Receipt of written information regarding an active request for a conditional use permit, planned unit development or a subdivision, or an exception to the Tooele County Land Use Ordinance shall be permitted, provided such written information is disclosed at the next meeting of the township planning commission and submitted as a part of the record of that meeting.

4-10-9. Land use authority.

The Erda Township Planning Commission and Pine Canyon Township Planning Commission are hereby designated as land use authorities for Tooele County, to act in their respective jurisdictions. (Reference UCA 17-27a-301)

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- 4-5-2. Vacancy - Removal.
- 4-5-3. Organization and procedures.
- 4-5-4. Use of state data.
- 4-5-5. Powers and duties.
- 4-5-6. Entrance upon land.
- 4-5-7. Compensation.
- 4-5-8. Ex parte contact.
- 4-5-9. Land use authority.

4-5-1. Planning commission established - Terms.

There is hereby established a Tooele County Planning Commission. The planning commission shall consist of seven members appointed by the Board of County Commissioners. Members shall serve three-year terms and until their successors are appointed and qualified. Terms shall commence on January 1 of each year. In the event a term of a member shall expire without the member having been reappointed or a successor having been appointed, the member shall continue to serve until a successor is appointed, and the term of the successor shall terminate on the same day as though the successor was appointed in a timely manner. Terms of at least two members, and not more than three, shall expire each year.

4-5-2. Vacancy - Removal.

(1) Any vacancy occurring on the planning commission by reason of death, resignation, removal or disqualification shall be filled by the Board of County Commissioners for the unexpired term of such member.

(2) The Board of County Commissioners may remove a member of the planning commission for cause after filing written charges against the member. The member shall be provided with a hearing on the charges if requested.

4-5-3. Organization and procedures.

(1) The planning commission shall elect a chairperson from its members who shall serve a one-year term. The planning commission may create and fill any other necessary offices.

(2) (a) The planning commission may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the planning commission.

(b) The planning commission's policies and

procedures shall be approved by the County legislative body before taking effect.

4-5-4. Use of state data.

The planning commission may obtain access to and use any data and information held by the state or any of its agencies:

(1) that is classified "public"; and

(2) that is classified "protected" if the planning commission's use of the data is lawfully authorized or if the data will be used for a purpose similar to the purpose for which it was gathered.

4-5-5. Powers and duties.

The planning commission shall:

(1) prepare and recommend a general plan and amendments to the general plan to the legislative body;

(2) recommend zoning ordinances and maps, and amendments to zoning ordinances and maps, to the legislative body;

(3) administer provisions of the zoning ordinance, where specifically provided for in the zoning ordinance adopted by the legislative body;

(4) recommend subdivision regulations and amendments to those regulations to the legislative body;

(5) recommend approval or denial of subdivision applications;

(6) advise the legislative body on matters as the legislative body directs;

(7) hear or decide any matters that the legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits;

(8) exercise any other powers:

(a) that are necessary to enable it to perform its function; or

(b) delegated to it by the legislative body.

4-5-6. Entrance upon land.

The planning commission or its authorized agents may enter upon any land at reasonable times to make examinations and surveys.

4-5-7. Compensation.

Members of the planning commission may receive per diem compensation based on necessary and reasonable expenses and on meetings actually attended.

4-5-8. Ex parte contact.

(1) Ex parte contact between planning commission members and opposing parties involved in litigation with Tooele County involving land use issues shall be prohibited. Planning commission members shall not

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participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Tooele County involving land use issues. This prohibition shall include plaintiffs who have filed suit against Tooele County, claimants who have served a Notice of Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.

(2) Planning commission members shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any individual or representative of a company or entity when such interaction involves a request for a conditional use permit, planned unit development, a request for approval of a subdivision, or for an exception to the Tooele County Land Use Ordinance. This restriction on ex parte contact applies to all conditional use permit approval requests, planned unit development or subdivision requests, after an application for such is filed with the Tooele County Engineering Department, while the application is under review by the planning commission, after a decision or recommendation on the application has been made by the planning commission, while the application is under review by the Tooele County Commission, or while the application is under appeal, if an appeal is filed. Planning commissioners shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a conditional use permit, planned unit development or a subdivision approval, or an exception to the Tooele County Land Use Ordinance.

(3) If ex parte contact as described in Subsections (1) or (2) occurs, it shall be disclosed at the next meeting of the planning commission and the planning commission member who had such contact shall neither participate in the discussion nor vote on the matter.

(4) Receipt of written information regarding an active request for a conditional use permit, planned unit development or a subdivision, or an exception to the Tooele County Land Use Ordinance shall be permitted, provided such written information is disclosed at the next meeting of the planning commission and submitted as a part of the record of that meeting.

act in its individual jurisdiction. (Reference UCA 17-27a-301)

4-5-9. Land use authority.

The Tooele County Planning Commission is hereby designated as a land use authority for Tooele County, to

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- 4-10-1. Appointment of township planning commission members.
- 4-10-2. Erda and Pine Canyon township planning commission members.
- 4-10-3. Overlapping township planning district petitions.
- 4-10-4. Jurisdiction.
- 4-10-5. Powers and duties.
- 4-10-6. Policies and procedures.
- 4-10-7. Vacancy on township planning commissions.
- 4-10-8. Ex parte contact.
- 4-10-9. Land use authority.

4-10-1. Appointment of township planning commission members.

(1) Each township planning district created pursuant to Section 11-9-1 shall have a planning commission, which shall consist of seven members who, except as provided in Section 4-10-2, shall be appointed by the board of county commissioners.

(2) Except as provided in Section 4-10-2, the board of county commissioners shall appoint members of the first planning commissions so that the terms of at least one member and no more than two members expire each year. Thereafter members shall serve four-year terms and until their successors are appointed.

(3) Except as provided in Section 4-10-2, each member of a township planning commission shall be a registered voter residing within the township. (Ord. 99-1, 1-5-99)

4-10-2. Erda and Pine Canyon township planning commission members.

(1) In the Erda and Pine Canyon township planning districts, three of the seven planning commission members shall be elected. The election shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on an alternating even-numbered years.

(2) Notwithstanding Section 4-10-1(3), one member may be an appointed member who is a registered voter residing outside the township if that member:

(a) is an owner of real property located within the township; and

(b) resides within Tooele County.

(3) (a) Each appointee under Subsection (2) shall be chosen by the township planning commission from a list of three persons submitted by the Board of Tooele County Commissioners.

(b) If the township planning commission has not notified the Board of Tooele County Commissioners of its choice under subsection (3)(a) within 60 days of the township planning commission's receipt of the list, the Board of Tooele County Commissioners may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

(4) Pursuant to the County Land Use Development and Management Act, 17-27-101, et. seq. Utah Code Annotated, hereinafter "the Act," election of Erda and Pine Canyon township planning commission members shall be conducted in accordance with the requirements of the Act, the Utah Election Code governing general and special elections and this chapter.

(5) Candidates shall file a declaration of candidacy with the county clerk on forms prepared by the clerk and shall pay a filing fee of ten dollars.

(6) All aspects of township elections not specifically addressed in this section shall be conducted in accordance with standard election procedures as established by the Utah Election Code, including but not limited to, voter registration and qualifications, election judges, ballots and polling procedures, canvass, and all other aspects and procedures of the electoral process. The county clerk shall determine the necessity and manner of consolidating voting precincts and appointing election judges, in accordance with state statute. (Ord. 99-1, 1-5-99)

4-10-3. Overlapping township planning district petitions.

Under circumstances in which two or more township planning district petitions are filed with overlapping boundaries, the petition which the board of county commissioners received first shall be given preference, although the board of county commissioners may give preference to a township petition which follows recognized but informal community boundaries and may also give consideration regarding priority based on the topography, natural boundaries and drainage basin of the proposed township planning district. (Ord. 97-10, 6/5/97)

4-10-4. Jurisdiction.

Upon the appointment of all members of a township planning district planning commission created after

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February 27, 1997 and the former township planning and zoning board members that continue to hold office as the members of the township planning district, the township planning districts shall immediately begin to exercise the powers and perform the duties as provided for in the Utah Code with respect to all matters then pending that had previously been under the jurisdiction of either the county-wide planning commission or the township planning and zoning board. (Ord. 97-10. 6/5/97)

4-10-5. Powers and duties.

After a township planning district is created, the duly elected and/or appointed township planning commission shall have all the powers and duties as provided for in the Utah Code and to advise the board of county commissioners on matters the board of county commissioners directs. (Ord. 97-10. 6/5/97)

4-10-6. Policies and procedures.

The board of county commissioners shall adopt such policies and procedures as it deems necessary to provide for:

- (1) the planning support staff;
- (2) the funding of necessary and reasonable expenses of township planning districts; and
- (3) any other purposes considered necessary to the functioning of township planning districts. (Ord. 97-10. 6/5/97)

4-10-7. Vacancy on township planning commissions.

Unless otherwise provided by law, any vacancy occurring on a township planning commission by reason of death, resignation, removal, disqualification or failure to file for election shall be filled by the board of county commissioners for the unexpired term of such member. The board of county commissioners may remove for cause a member of a township planning commission that the county commission has appointed upon the filing of written charges against the member and after a hearing on the charges if requested by the member. (Ord. 99-1. 1-5-99)

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4-10-9. Land use authority.

The Erda Township Planning Commission and Pine Canyon Township Planning Commission are hereby designated as land use authorities for Tooele County, to act in their respective jurisdictions. (Reference UCA 17-27a-301)