



118 Lion Blvd • PO Box 187 • Springdale, UT 84767 • (435) 772-3434

## SPRINGDALE APPEAL AUTHORITY NOTICE AND AGENDA

THE TOWN OF SPRINGDALE ADMINISTRATIVE HEARING OFFICER HAS ISSUED A WRITTEN DECISION CONCERNING THE ITEM BELOW.

THIS DECISION WILL BE ANNOUNCED IN A PUBLIC MEETING

ON TUESDAY, NOVEMBER 22, 2022 AT 2:30 PM

AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH

**A. Issuance of Written Decision:**

1. Zion West Properties, LLC, represented by Darren Nielson, appeals the Planning Commission's denial of a Design/Development Review application (2021APP-DDR01) for a building located at the rear of parcel S-102-B-4-A (358 Zion Park Blvd).

**B. Adjourn**

This notice was posted at the Springdale Town Hall on Nov. 17, 2022 at approximately 1:30 am/pm by D Carlson.

*NOTICE: In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting should contact Town Clerk Darci Carlson at 435.772.3434 at least 48 hours before the meeting.*

The official written decision for this item will be available after November 22, 2022, on the Town's website at: <http://www.springdaletown.com/AgendaCenter>



**MINUTES OF THE SPRINGDALE APPEAL AUTHORITY  
TUESDAY, NOVEMBER 22, 2023  
AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH**

The Meeting convened at 2:30 pm.

**PRESENT:** Bryan Pattison, Town of Springdale Administrative Hearing Officer

**ALSO PRESENT:** Director of Community Development Tom Dansie, and Town Clerk Darci Carlson recording. See attached list for those in attendance.

**A. Issuance of Written Decision**

**1. Zion West Properties, LLC, represented by Darren Nielson, appeals the Planning Commission's denial of a Design/Development Review application (2021APP-DDR01) for a building located at the rear of parcel S-102-B-4-A (358 Zion Park Blvd):** Mr. Pattison opened by stating a hearing on this matter was held September 27, 2022. The issuance of the decision was announced in a public meeting based on Springdale Town Code 10-6-4(F) which states *'if consideration of the appeal is adjourned, the appeal authority's decision shall be issued at a public meeting no later than 60 days following the closing of the appeal hearing.'*

Following this meeting, a copy of the written decision would be distributed to the parties directly by email and posted to the Town's website.

The appellant for the appeal was Zion West Properties, LLC. The respondent was the Springdale Planning Commission.

Mr. Pattison summarized the standards of review.

- Starting with land use review, municipal land use decisions were reviewed under the arbitrary and capricious legal standard. A decision was arbitrary and capricious if there was no substantial evidence in the record to support it. Under this standard, the appeal authority did not reweigh the evidence but considered all evidence in the record either favorable or contrary, and determined if a reasonable mind could reach the same conclusion. A decision was illegal if it violated a law, statute, or ordinance in effect at the time the decision was made or if the statute or ordinance was unconstitutional. Whether a decision was illegal depended upon a proper interpretation and application of the law.
- Consistent with these standards by ordinance, the appeal authority deferred to the factual findings of the Planning Commission as the Town's land use authority, unless they were clearly erroneous. Questions of law were reviewed for correctness.
- In conducting the review, Mr. Pattison did not amend or modify the terms of the ordinance but determined whether an error was made applying the ordinance. The burden was on Zion West Properties to establish that the Planning Commission's decision was arbitrary, capricious, or illegal.

Applying these standards to the issues raised in the appeal it was the decision of the appeal authority that:

- 1) The Planning Commission correctly interpreted the Town's geologic hazard ordinance to permit it to evaluate the applicant's geologic report and not simply defer it to the applicant's report. The Planning Commission had the authority to retain its own expert Terracon to assist in the evaluation.
- 2) Based on this interpretation, there was substantial evidence in the record to support the Planning Commission's denial of the application on the grounds the proposed land use presents an unreasonable risk to the health, safety, and welfare of persons or property and that the risk could not be mitigated to an acceptable or reasonable level.

The ruling was that the Planning Commission's decision to deny Zion West Properties Design Development Review application was affirmed.

The written decision was signed November 17<sup>th</sup>; however, the issuance date was today's date for further appeal purposes.

The meeting adjourned at 2:35 pm.

*Darci Carlson*

Darci Carlson, Town Clerk

DATE: 11/28/22



**A recording of the public meeting is available by contacting the Town Clerk's Office. Please call 435-772-3434 or email [springdale@springdale.utah.gov](mailto:springdale@springdale.utah.gov) for more information.**



PO Box 187 118 Lion Blvd Springdale UT 84767

### ATTENDANCE RECORD

Please print your name below

Meeting APPEAL AUTHORITY MEETING Date 11/22/22

**IN PERSON ATTENDEES:**

**REMOTE ATTENDEES:**  
(Clerk will complete)

BARBARA BRUNO  
Name (please print)

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Name (please print)

Lindsey LeQuig  
Name (please print)

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Name (please print)

Tyler Miller  
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Suzanne Elger  
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BEFORE THE APPEAL AUTHORITY  
TOWN OF SPRINGDALE, UTAH

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ZION WEST PROPERTIES LLC,

Appellant,

v.

TOWN OF SPRINGDALE PLANNING  
COMMISSION,

Respondent.

RULING ON APPEAL

DDR Application #: 2021APP-DDR01

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This matter is before the Town of Springdale Administrative Hearing Officer (AHO), acting as the Town’s Appeal Authority, on appeal from a decision of the Springdale Planning Commission to deny a design/development review application submitted by Zion West Properties LLC. A hearing on the appeal was held on September 27, 2022. Zion West was represented at the hearing by Darren Neilson. The Planning Commission was represented by J. Gregory Hardman. The AHO has considered the parties’ written and oral arguments and has reviewed the administrative record. Based thereon, the AHO finds and rules as follows.

**BACKGROUND**

**A. Springdale’s Geologic Hazard Ordinances**

In 1992, an earthquake caused a major landslide in the Town of Springdale, known as the Balanced Rock Landslide (“1992 Landslide”). The Town has since adopted various ordinances to help protect against such hazards. *See, e.g.*, Springdale Town Code § 10-1-2(C) (stating that a general purpose of the Springdale Land Use Code is to “secure safety from flood, geologic hazards, and other dangers”).

Most recently, the Springdale Town Council adopted Springdale Town Ordinance No. 2021-05 (adopted May 2021), now codified in Title 10, Chapter 15F of the Springdale Town Code. In adopting this geologic hazard ordinance, the Town Council found that “geologic hazard events have occurred repeatedly during documented history in the Town of Springdale ... and have led to destruction of homes and other structures, damage and destruction of infrastructure, and loss of life.” Ord. No. 2021-05. The geologic hazard ordinance aimed to address these issues and generally “promote and protect the health, safety, and welfare of the citizens of Springdale, protect the infrastructure and financial health of Springdale, and minimize adverse effects of geologic hazards to public health, safety, and property by encouraging wise land use and development.” Springdale Town Code § 10-15F-1.

Under the geologic hazard ordinance, a proposed land use must not present an unreasonable risk to the health, safety, and welfare of persons and property. *Id.* § 10-15F-9(E)(3)(b). To the extent possible, any such risks must be mitigated to an “acceptable and reasonable level ...” *Id.* § 10-15F-9(E)(3)(c). A developer bears the burden of developing its property in a manner that safeguards against the unreasonable risk of harm or injury from landslides. *Id.* § 10-11B-12(A).<sup>1</sup>

## **B. Zion West’s application and geologic reports.**

On January 12, 2022, Zion West applied for design/development approval to build a two-unit, two-story vacation rental home upon a small hill located on Parcel No. S-102- B-4-A (“Property”).<sup>2</sup> The proposed building (“Site”) is at the top of a small hill on the Property. The Property itself is already developed with a paid-parking area and a small commercial building that includes a coffee shop and a vacation rental located at the bottom of the hill.

The Site is also adjacent to the 1992 Landslide and within a Geologic Hazard Study Area. In brief, this means that the area presents significant geologic risks without mitigation. *See* Springdale Town Code § 10-15F-4(A).

Recognizing this, Zion West submitted with its application a geotechnical report conducted by Western Geologic & Environmental. This report summarized the hazards present at the Site, concluding that the Site poses a significant risk of earthquakes and ground shaking, landslides, slope failures, and problem soils, including expansive grey soils. It also concluded that the Site poses an equivocal risk (may be either high or low in certain conditions or areas) of earthquakes and rock fall. As a result, Western Geologic concluded that these hazards require further study or mitigation techniques.

As to the risks of slopes and landslides, Western Geologic concluded:

- The slopes bordering the hilltop Site are “steep” and the “east-facing slope bordering the hilltop shows an overall gradient of 62.3%.”
- “We rate the risk from landsliding at the Project as high.”
- Recommending as a mitigation a “deep foundation” and that “no mitigation may be feasible to reduce risk to the proposed development should the historical landslide reactive and advance into the proposed development area.”

Based on these conclusions and significant site-specific risks of geologic hazards, Springdale Town Code § 10-15F-5(D) required Zion West to submit a Geologic Hazard

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<sup>1</sup> The Property is located within the Village Commercial (VC) Zone and thus the special regulations applicable to this zoning apply. *See* Springdale Town Code, Title 10, Chapter 11, Article B.

<sup>2</sup> Springdale Town Code § 10-15-3 requires an application for approval under the Town’s design/development review process as a precondition to the issuance of a building permit.

Investigation Report. Zion West retained Landmark Testing and Engineers to prepare this Geologic Hazard Investigation Report.

Landmark's investigation included a slope stability study with additional testing to determine the soils stability and potential of mitigation of the risks that Western Geologic identified. At the conclusion of the slope stability study, Landmark concluded that the "slopes currently appear to be stable" but there are "two major potential slope failure axes" that exist.

As for the high risk of slope stability, Landmark's report concluded as follows:

- Industry standards recommend a "Factor of Safety (FS) for slope stability" of 1.4 to 1.5 for static conditions, and for seismic conditions, industry standard recommends at least a 1.0 to 1.1.
- Both slopes are within the industry standards safety recommendation, without any interruption or disruption with the structure. The West to East Slope has a FS of 1.62 and the North to South Slope has a 2.24.
- However, "a failure may be forced to occur in the saturated gray clay layer" if the entire layer were to become "sufficiently wetted."
- "Landslides typically... have circular sliding or failure surface. Clays in particular tend to have a circular failure surface."
- The model used by Landmark produced a failure for both slopes if the thick bands of clay become "fully saturated."

Landmark proposed to mitigate these hazards with drilled micropiles dug 50 feet into the clay thereby creating stability for the structure, sidewalks, patios, and porches. Landmark also proposed complete grading to prevent water from flowing across the east portion of the building and to conduct landscaping and drainage to prevent the collection of water. Landmark's proposed mitigation measures did not directly address the landslide risk created by the Site's proximity to the 1992 Landslide and it is unclear from the record which, if any, of the factors identified by Landmark might impact that 1992 Landslide.

To assist in its evaluation of the Landmark report, the Planning Commission retained a third-party reviewer, Terracon Consulting, Inc. The parties dispute the permitted scope of Terracon's involvement. But in any event, Terracon reviewed the geologic reports that Zion West submitted.

Following this review, Terracon determined that the Site came with "inherent risks including expansive soils, steep slopes, rock fall, and proximity to a known landslide." Terracon further concluded that the "mitigation measures presented in the reports provide a reasonable approach to expansive soils and steep slopes at the site. However, the risk associated with proximity to a known landslide and its potential affects, should it reactivate, as has occurred in the past, cannot

reasonably be completely removed at this site.” Terracon further found that “[f]ull mitigation and risk elimination are likely cost prohibitive.”<sup>3</sup>

Landmark responded and addressed some of Terracon’s concerns, but reiterated that the Site does not “pose[] an undo [sic] risk to public safety when compared to other recently developed sites in the Town of Springdale.” Landmark concluded that “the [S]ite poses a similar risk to other developed sites within the Town of Springdale.”<sup>4</sup>

In response to concerns about the Site’s proximity to the 1992 Landslide, Landmark stated only that the Site is “not located on the [1992] Landslide” and that “Western Geologic did not believe that the [S]ite moved during the” 1992 Landslide. Landmark did not propose additional mitigation measures in relation to the 1992 Landslide or clarify whether its proposed mitigation measures would address the potential impacts should the 1992 Landslide reactivate, as Terracon warned might occur in the future.

Terracon responded to Landmark that both appeared to be “arriving at a similar conclusion. The [S]ite comes with risk that cannot be fully mitigated within the scope of development. You [Landmark] refer to it as similar risk to other developed sites in Springdale. I [Terracon] refer to it as above average risk for a residential structure.”<sup>5</sup>

### **C. The Planning Commission’s Decision**

The Planning Commission held a hearing on the application where its members debated and discussed the application and the reports.

Commissioner Kenaston observed that the engineers and consultants “conducted a thorough analysis of the risks associated with the geology. However, something that could not be controlled is the risk of landslides.” Commissioner Kenaston noted that the structure was proposed to be “built near the toe of the landslide.”

Referring to the portion of the slope that Western Geologic noted was a serious concern, Commissioner Kenaston further noted, “It was not on the landslide but was near it, so there was some landslide risk associated with the building in that particular location.”

Chair Rioux pointed out that the Terracon’s review stated that the “site comes with risk that cannot be fully mitigated within the scope of the development.”

Commissioner Kenaston moved to deny the Application because it did not meet the ordinance as related to building structures on unstable soils under Sections 10-15F-9(E)(3)(B) and 10-11B-12(A) of the Springdale Town Code. The motion carried.

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<sup>3</sup> R. 25-27.

<sup>4</sup> R. 24.

<sup>5</sup> R. 21.



Among other things, the Planning Commission found that “the mitigation measures as proposed by the applicant’s consultants are unable to reduce the risk to life and property to a reasonable and acceptable level.” This is so, the Planning Commission concluded, “[b]ecause the building would be placed at a location at or near the toe of the Springdale Landslide close to where the structures were destroyed in 1992 by a moderate seismic event.”

The Planning Commission further found it significant that (in Terracon’s opinion) the 1992 earthquake is not an “isolated event and a recurrence could likely damage property and cause injury to the Town’s residents and visitors” and that the “proposed development will place people and property at ‘unreasonable risk’ of natural hazards.”

Zion West appeals.

### **ISSUES AND STANDARD OF REVIEW**

Municipal land use decisions are reviewed under the arbitrary, capricious, or illegal standard. *See Bradley v. Payson City*, 2003 UT 16, ¶ 10, 70 P.3d 47. A decision is arbitrary and capricious if there is not substantial evidence in the record to support it. *See Mike’s Smoke, Cigar & Gifts v. St. George City*, 2015 UT App 158, ¶ 14, 353 P.3d 626. Under this standard, the appeal authority does not “reweigh the evidence,” but “considers all the evidence in the record, both favorable and contrary, and determines whether a reasonable mind could reach the same conclusion as the city.” *Id.* (cleaned up).

A decision “‘is illegal if it violates a law, statute, or ordinance in effect at the time the decision was made,’” *Hodgson v. Farmington City*, 2014 UT App 188, ¶ 7, 334 P.3d 484 (quoting *Fox v. Park City*, 2008 UT 85, ¶ 11, 200 P.3d 182), or if the statute or ordinance at issue is unconstitutional, *see Gillmor v. Summit Cnty.*, 2010 UT 69, ¶ 29, 246 P.3d 102. “Whether a decision is illegal depends on a proper interpretation and application of the law,” *Staker v. Town of Springdale*, 2020 UT App 174, ¶ 45, 481 P.3d 1044 (cleaned up), and is thus reviewed for correctness, *Fox*, 2018 UT 85, ¶ 11.

Consistent with these standards, by ordinance, the AHO “must defer to the factual findings of the land use authority” unless they are clearly erroneous. Springdale Code § 10-6-4(C)(1). Questions of law, including mixed questions, are reviewed for correctness. *See id.* § 10-6-4(C)(2). In conducting its review, the AHO may not amend or modify the terms or requirements of the ordinance, but must only determine whether an error was made in applying the ordinance.<sup>6</sup>

The burden is on Zion West, as the appealing party, to establish that the Planning Commission’s decision was arbitrary, capricious, or illegal. *See id.* § 10-6-4(B)(1).

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<sup>6</sup> In the past, Utah caselaw suggested that deference was owed to both factual and legal determinations. Recognizing this caselaw, the Utah Supreme Court has clarified that no deference is given to a land use authority’s interpretation of its own ordinances. *See Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 12 n.13, 416 P.3d 389. This is consistent with Springdale Code § 10-6-4(C)(2).

This appeal presents essentially two questions. First, the interpretation of the geologic hazard ordinance and whether it requires the Planning Commission to defer entirely to an applicant's report. This presents a legal question reviewed for correctness. The second issue is whether there is substantial evidence in the record to support the Planning Commission's application of the ordinance to the facts to the geologic hazard ordinance. That analysis requires deference to the Planning Commission's decision.<sup>7</sup>

## ANALYSIS

### **I. Interpretation of the Geologic Hazard Ordinance.**

Zion West first contends that the Planning Commission exceeded the scope of its authority under the geologic hazard ordinance. Specifically, Zion West asserts that the ordinance limits the Planning Commission's role to ensuring whether an applicant submits a report that meets the standards identified in the ordinance. If it does, Zion West says, the Planning Commission must defer to the report and approve the application. What the Planning Commission cannot do, Zion West argues, is second-guess the report or retain or its own engineer to evaluate the report.

The Planning Commission takes a different view. It contends that it is not constrained to defer to an applicant's report and that it has authority to consult its own expert to ensure that the proposed development does not pose an unreasonable risk to life or property.

The answer to these issues turns on an interpretation of the geologic hazard ordinance. Municipal ordinances are subject to the same rules of interpretation as statutes. *See Pinetree Assoc. v. Ephraim City*, 2003 UT 6, ¶ 13, 67 P.3d 462. Thus, the primary goal is to determine the intent of the Town Council, and the first place to look for that intent is the ordinance's text. *See Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863.

#### A.

As explained above, the purpose of the geologic hazard ordinance, as adopted by the Town Council in 2021, was to "promote and protect the health, safety, and welfare" of the Town's citizens as well as to "protect the infrastructure and financial health" of the Town. Springdale Town Code § 10-15F-1. To that end, the geologic ordinance requires an initial analysis in the form of a geotechnical report that identifies things such as problematic soils and other geologic hazards. *See id.* § 10-15F-5(A), (B). "[I]f the initial analysis ... identifies significant site-specific risk of geologic hazard on a property, then a geologic hazard investigation and report that meets the standards of this chapter is required." *Id.* § 10-15F-5(D).

The geologic hazard ordinance then lists specific requirements for this report. *See id.* §§ 10-15F-7, 8. The ordinance also imposes certification requirements to ensure that the investigation

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<sup>7</sup> Zion West also argued in its appeal that it was deprived of due process and that affirming the Planning Commission's decision would result in a taking requiring just compensation. Though both parties briefed these issues, Zion West clarified at the hearing that it raised these issues for preservation purposes only. Consistent with this clarification, this Ruling does not address the due process and takings issues.

and report is prepared by a Utah-licensed professional geologist who must also certify that the report meets the required standards. *See id.* § 10-15F-9(A).

After the applicant submits these reports with its application, it falls to the Planning Commission to “review any proposed land use that requires preparation of a geologic report under this chapter to determine compliance with the standards in this chapter, as well as the other standards referenced in this chapter.” *Id.* § 10-15F-9(E).

In conducting this determination, the Planning Commission must “determine whether the proposed land use or development, as documented by the report, complies with” four listed standards, each of which is connected by the conjunctive “and.” Those standards, summarized, are

- a) whether “geologic hazards investigation report has been prepared by qualified, Utah-licensed professionals”
- b) Whether the proposed land use presents “an unreasonable risk to the health, safety, and welfare of persons or property,”
- c) Whether the “risk to human life and damage to property are reduced to an acceptable and reasonable level,” and
- d) If the geologic report is “deficient,” the Planning Commission is to notify the applicant via letter describing the deficiencies.

*Id.* § 10-15F-9(E)(3)(a)-(d).

The first and last standards are not in dispute as there is no question about Landmark’s qualifications nor did the Planning Commission reject Zion West’s report as deficient in any respect.

The dispute instead centers on the second and third standards: who and what determines whether the proposed land use presents “an unreasonable risk to the health, safety, and welfare of persons or property”; and who and what determines whether the “risk to human life and damage to property are reduced to an acceptable and reasonable level.” According to Zion West, the Landmark report alone resolves these questions. According to the Planning Commission, it decides these questions aided by all available information. Having considered the arguments of both parties against the language in the ordinance, the AHO agrees with the Planning Commission’s interpretation.

Zion West emphasizes the language “*as documented by the report*” in Section 10-15F-9(E)(3) and contends that it cabins the Planning Commission’s determination to evaluating only whether the Landmark report checks all the appropriate boxes. According to this interpretation, if Landmark opines that there is not an unreasonable risk or otherwise provides a mitigation plan that it says will reduce any such risk to an acceptable and reasonable level, the Planning Commission must approve the application.

But when interpreting ordinances, “we do not view individual words and subsections in isolation” but construe “each part or section” “in connection with every other part or section so as to produce a harmonious whole.” *Penunuri v. Sundance Partners, Ltd.*, 2013 UT 22, ¶ 15, 301 P.3d 984. So we cannot solely focus on the language Zion West emphasizes. Instead, we must consider all parts and sections of the geologic hazard ordinance.

And importantly, Section 10-15F-9(E)(3) begins by stating that “Springdale *will determine* whether the proposed land use or development, as documented by the report, complies with the following standards ...” *Id.* § 10-15F-9(E)(3) (emphasis added). That initial language of command puts the responsibility on the Planning Commission, as Springdale’s reviewing body on these matters, to decide whether the proposed development complies with the standards in the ordinance. And while the report drives this determination—“as documented by the report”—it does not confine it such that the Planning Commission is relegated to performing a mere clerical review of whether the report says all the right things.

In this regard, Advisory Opinion No. 83 from the Office of the Property Rights Ombudsman and relied upon by Zion West, is instructive.<sup>8</sup> There, the Draper City Code stated that the “[t]he city shall determine *whether the report complies* with all of the following standards ...” Draper City Code § 9-19-110(F) (quoted in Advisory Op. No. 83) (emphasis added). Thus, in the ombudsman’s view, if the report itself met the standards, then Draper City had to accept it regardless of conflicting expert opinion from its own engineers. Not so with Springdale’s ordinance. Springdale’s ordinance directs the Planning Commission to evaluate “the proposed land use or development” for compliance, not merely the report. Springdale Code § 10-15F-9(E)(3). Other provisions in Title 10, Chapter 15F confirm this broad review authority.

Section 10-15F-9(B), for example, authorizes the Town to “set other requirements as are necessary to mitigate any geologic hazards and to ensure that the purposes of this article are met.” *Id.* § 10-15F-9(B). The next section—Section 10-15F-9(C)—likewise permits the Town to establish additional “requirements necessary to protect the health, safety, and welfare of the citizens of Springdale, protect the infrastructure and financial health of Springdale, and minimize potential adverse effects of geologic hazards to the public health, safety, and property as a condition of approval of any development which requires a geologic hazard investigation report.” *Id.* § 10-15F-9(B). This section expressly refers to the geologic hazard investigation report but does not limit the Planning Commission to the four corners of that report when imposing additional requirements on a proposed development.

Similarly, Section 10-15F-9(E) also authorizes the Planning Commission to review the proposed land use—not simply the geologic report. It provides that the Town “will review any proposed land use that requires preparation of a geologic report under this chapter to determine compliance with the standards in this chapter, as well as the other standards referenced in this chapter.” *Id.* § 10-15F-9(E).

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<sup>8</sup> See *Nilssen v. City of Draper*, Advisory Op. No. 83 (Utah Property Rights Ombudsman) (issued Feb. 1, 2010).

Thus, the Planning Commission had it right when it explained that “[t]here is no case law, Utah statute, or Town ordinance that requires the [Planning] Commission to defer and rely fully upon statements or opinions in a geologic hazard report.”<sup>9</sup> The totality of the geologic hazard ordinance, Title 10, Chapter 15F, confirms this view.

B.

The next interpretive issue is whether the Planning Commission had the authority to retain its own expert to assist in its review and evaluation of the applicant’s report. Zion West contends the Planning Commission had no such right. But the AHO agrees with the Planning Commission that nothing in the ordinance prohibits it from retaining its own geologic experts to review the report and advise the Planning Commission.

In its brief and during the hearing, the Planning Commission relied on Section 10-15F-9(E)(3)(c) as authorizing it to retain and consult its own geologic hazard expert. The AHO agrees with Zion West that this provision is specific to the Planning Commission consulting its geologic hazard expert to determine which of multiple mitigation options identified in a report to implement. *See id.* § 10-15F-9(E)(3)(c). (“If the report identifies multiple options for mitigation, the Town, after consulting with its geologic hazard expert, may mandate which of the options must be implemented.”). But the AHO disagrees with Zion West that this means that the Planning Commission can only consult its own expert to select among mitigation options.

Rather, the language used in this section assumes that the Planning Commission already has its own geologic hazard expert. It states “the Town, after *consulting with its geologic hazard expert ...*” *Id.* (emphasis added). The Planning Commission cannot consult this geologic hazard expert when determining which mitigation options to implement if it does not already possess the right and authority to retain such an expert.

The Planning Commission, like municipal bodies generally, consists of public servants who may lack the appropriate training, education, or experience in engineering and related fields. Thus, it would make no sense for the Town to vest its Planning Commission with the responsibility to evaluate these matters but prohibit it from retaining an expert to assist in that evaluation. For these reasons, and in the absence of specific language prohibiting the Planning Commission from retaining its own expert, the AHO will not impair the Planning Commission’s ability to perform its job by inferring such a prohibition from the ordinance.

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In sum, the Planning Commission’s interpretation of the geologic ordinance as to the scope of its authority is correct and thus not illegal.

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<sup>9</sup> Planning Comm’n Br. at 18-19.

## II. Substantial Evidence Determination.

Given the correctness of the Planning Commission’s ordinance interpretation, the next question is whether there is substantial evidence in the record to support its denial of the application on the grounds that the proposed development creates an unreasonable risk. In reviewing this aspect of the Planning Commission’s decision, the question is not whether the AHO agrees with the decision or would have reached the same conclusion. The question is whether a reasonable mind could reach the same conclusion based on all the evidence in the record. *See Mike’s Smoke*, 2015 UT App 158, ¶ 14; *Checketts v. Providence City*, 2018 UT App 48, ¶ 18, 420 P.3d 71. Under this standard, the AHO concludes that a reasonable mind could reach the same conclusion as the Planning Commission.

The Planning Commission’s response brief (at 14-18) aptly excavates the record evidence which supports its decision. Among other things, this evidence includes the following:

- Zion’s West’s engineer, Western Geologic, has “rate[d] the risk from land sliding at the Project as high” and recommended “the Project geotechnical engineer evaluate stability of the slopes based on site-specific soil conditions.” “A deep foundation system will likely be needed at the very least, though no mitigation may be feasible to reduce risk to the proposed development should the historical landslide reactivate and advance into the proposed development area.”<sup>10</sup>
- Zion West’s engineer further stated, “The owner and all future owners should be aware that this risk exists and be willing to accept it. The risk from landsliding should be disclosed in all future real estate transactions.”<sup>11</sup>
- Zion West’s engineer warned that “steep man-made cuts, and non-engineered fill materials are often major contributors to slope instability.” Thus, care should be taken to not “destabilize slopes at the site.”<sup>12</sup>
- Terracon noted that geological mapping by the Utah Geologic Survey identifies the landslide mass as having a “Very High” hazard rating and is identified as a category A feature which is considered the most likely units in which new landslides may initiate.
- Terracon opined that placing an occupied residential building at the toe of a very high classified landslide may involve above normal risk, possibly unreasonable risk, to the structure and occupants.<sup>13</sup>
- Terracon further opined that the “mitigation measures presented in the reports provide a reasonable approach to expansive soils and steep slopes at the site. However, the risk associated with proximity to a known landslide and its potential affects, should it

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<sup>10</sup> R.134.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> R.172, 174.

reactivate, as has occurred in the past, cannot reasonably be completely removed at this site.”<sup>14</sup>

This does not mean that there is no evidence pointing the other direction. To the contrary. Zion West submitted un rebutted evidence that, among other things, engineering tests showed that the Site exceeded industry standards for seismic safety.<sup>15</sup> It also showed that the Site was not within the 1992 Landslide. Given that location, and against the seismic risks, one could reasonably conclude that the 1992 Landslide does not pose an unreasonable risk. This is particularly true if the landslide risk is only as significant as the risk of a seismic event that might trigger it (as apparently occurred in 1992). Indeed, given that the Town is in a seismically active area, risk elimination appears to be an impossibility.

For that reason, it would be problematic if the Planning Commission applied a risk elimination standard to the evidence. The geologic hazard ordinance does not envision, let alone require, risk elimination. Instead, as detailed above, it speaks in terms of “unreasonable risk” and mitigation to “an acceptable and reasonable level.” Springdale Code §§ 10-15F-9(E)(b), (c). Though some of Terracon’s statements leaned in the direction of risk elimination,<sup>16</sup> the Planning Commission ultimately applied the correct standard to the record evidence.

To that end, the final exchange between Landmark and Terracon is important. Landmark wrote to Terracon that “we do not feel that the this [S]ite poses an undo [sic] risk to public safety when compared to other recently developed sites in the Town of Springdale.”<sup>17</sup> It concluded that “the [S]ite poses a similar risk to other developed sites within the Town of Springdale.”<sup>18</sup>

From these statements, a reasonable mind could conclude that the Site does present an unreasonable risk to the health, safety, and welfare of persons or property. That risk does not become reasonable just because other sites within the Town are equally at risk. Allowing unreasonable risk to perpetuate itself strays from the Town Council’s intent in adopting the geologic hazard ordinance in 2021 to guard against the continuation of such risks.

Terracon confirmed this view of Landmark’s assessment. Replying to Landmark, Terracon concluded: “I think we are both arriving at a similar conclusion. The [S]ite comes with risk that cannot be fully mitigated within the scope of development. You refer to it as similar risk to other developed sites in Springdale. I refer to it as above average risk for a residential structure.”<sup>19</sup>

In sum, based on the evidence in the record, including the opinions from both experts, a reasonable mind could reach the same conclusion as the Planning Commission that the proposed

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<sup>14</sup> R.172.

<sup>15</sup> Summarized in Zion West’s Amended Appeal at 21.

<sup>16</sup> See, e.g., R. 26 (“Full mitigation and risk elimination are likely cost prohibitive.”).

<sup>17</sup> R. 24.

<sup>18</sup> *Id.*

<sup>19</sup> R. 23.


land use presents an unreasonable risk to the health, safety, and welfare of persons or property and that risk cannot be mitigated to an acceptable and reasonable level. *See* Springdale Code §§ 10-15F-9(E)(b), (c). Accordingly, the Planning Commission’s decision is not arbitrary or capricious.<sup>20</sup>

**RULING**

For the reasons stated above, the Planning Commission’s decision to deny Zion West Properties’ design/development review application is affirmed.

DATED: November 17, 2022.

Town of Springdale Appeal Authority



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By: Bryan Pattison  
Administrative Hearing Officer

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<sup>20</sup> There was also some discussion in the written arguments from both parties about the Planning Commission’s discussion and possible misunderstandings over hold harmless and liability provisions in the geologic hazard ordinance. Having reviewed those arguments and issues, the AHO concludes that this discussion did not impact or taint the Planning Commission’s decision.