

2. Pepperwood View PUD
Requesting preliminary approval for a 24-lot Twin-home PUD
2009 East Pepperwood Drive [Pepper Dell, Community #28] SUB-2-16-4923

The applicant, Skylar Tolbert of Ivory Homes, requested preliminary subdivision approval for a 24-unit PUD subdivision. All units will be attached twin homes. Two different building elevation types will be built. All of the base provisions of the zone have been met. Setbacks and other like requirements shall be determined by the Planning Commission through their review of this report.

The existing grade of the site slopes from a high point near the eastern edge to a low point at the western edge of the property. Overall, there is about 32 feet of fall over the approximately 440 feet of distance for an average grade of about 8%. There is one portion along the north property line that is at or above a 30% slope.

With the exception to a small area in the north-east corner of the property that is still in Salt Lake County, properties to the north and west are zoned R-1-20A. Properties to the east are zoned R-1-40A, and the properties to the south are zoned R-1-10. All land uses are single-family except for Larkin Mortuary and Cemetery which is located across 2000 East to the west.

1. City Council Conditions: During the motion to approve the rezone of this property, the City Council provided recommendations to the Planning Commission for conditions to the preliminary approval of the subdivision. Whether these recommendations are added as conditions of this preliminary approval is at the discretion of the Planning Commission. The recommended conditions are as follows:
 - a. That there be a height restriction of 25 feet for homes along the east boundary of the subdivision
 - b. That the east entry to the subdivision align with Pleasant Hills Drive
 - c. That the elevation of the top back-of-curb along the eastern portion of the private street be 4,868 feet above sea level
 - d. That the zoning cannot be ratified until the Council sees the report and results from the Planning Commission

Staff recommends that the Planning Commission approve the Preliminary Subdivision plan for the Pepperwood View PUD located at 2031 East Pepperwood Drive, subject to the following conditions:

1. That the applicant complies with each department's comments and redlines throughout the final review process and that all issues be resolved before the subdivision can be recorded.
2. That all City provisions, codes and ordinances are adhered to during the review, construction and operations process of this project.
3. That the following architectural elements be required for all buildings in the PUD and that they be recorded as a note on the plat:

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- a. That garages need to be subservient to living space and/or porch space by at least five (5) feet and that the living space consume no less than 50% of the front elevation of each home.
 - b. That no fewer than two unique architectural elevations for homes should be built and that a variety of different materials, colors and articulations be used between adjacent buildings to further diversity the architecture of the project.
 - c. That only high quality materials be used throughout the buildings in the project including but not limited to: stone, brick, other masonry sidings like Hardy board, natural wood articulations, etc. and that use of materials like vinyl or metal be limited to articulations on the buildings only.
 - d. That each side of each building receive equal design and material attention, minimally including the use of at least two (2) windows on each side of each building.
 - e. That each home have a covered porch with the minimum dimensions of six (6) feet wide by six (6) feet deep.
4. That the setbacks for the subdivision be dictated as follows and that these setbacks be recorded as a note on the plat:
- a. Front to Garage – 20’
 - b. Front to Living/Porch – 15’
 - c. Side Between Structures – 10’
 - d. Side Along Pepperwood Drive – 10’
 - e. Rear Between Structures – 20’
 - f. Rear – 20’

Andrew King presented this item to the Planning Commission. He stated that as a note, the item tonight has gone before the City Council and has been voted on to rezone the property to a PUD(8). That rezone has not yet been ratified by the City Council. Their ratification is pending a decision from the Planning Commission on the subdivision approval before them tonight.

Commissioner Doug Haymore commented that when Mr. King states that it meets all of the requirements of the base zone, that’s accurate, however though City Council isn’t happy with rezoning this if they only meet the base requirements. They actually want to get an agreement that they will meet different requirements before they approve the zone change and Mr. King responded yes.

Chairman Scott Sabey commented that this issue has previously been before the Planning Commission and they spent an extensive amount of time discussing it and would not give it a PUD(8). The compromise they found was a PUD(4). So, what the City Council did after the Planning Commission’s decision, was double down on it.

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Commissioner Doug Haymore commented that they did so only if the same result as contract zoning takes place.

The applicant, Skyler Tolbert with Ivory Development, 978 East Wood Oak Lane, Salt Lake City, stated that the subdivision before the Planning Commission is 24, twin home units, 12 total buildings. The intent, although they will not restrict it, would be to target a 55 plus aged buyer. From public hearings and notices that have gone out, they've had lots of phone calls with very interested people that live in the area. They don't want to take care of their big yards anymore, but want something like what Ivory is proposing. He commented on some of the recommendations that came from City Council. He stated that the first one was to keep the building height on lots 116 through 111, which is the east side homes, no greater than 25 feet. He stated they are fine with that recommendation. The second recommendation was to keep the top back of curb on that same eastern road at a specific elevation, which is 4,868. He stated that this was Mr. McCandless' recommendations. He stated that they had a concept plan at the time and he did some math and got that elevation. What has been turned into staff is very close to that. He stated that there is an existing elevation at the top back of curb on Pepperwood. They would come in off of Pepperwood into the subdivision, which is 3 feet higher than Mr. McCandless' recommendation. They bring the road down pretty quickly and about the middle of the road they hit where he wants and at the end are below where they want. Based on the existing top back of curb of Pepperwood Drive, they have done their very best to keep that down. He stated that he spoke with Mr. McCandless and he was happy that they had done that, given the existing situation. The third item was that City Council wanted roads to line up and the road in question is the east side road. Because of the PUD and not wanting to ask for exceptions on rear yard setbacks, so they don't push the units even closer to the east neighbors, they met the City Ordinance and pushed that road further away from the intersecting road, so they are offset 50 feet from the road across the street. They have met the City Ordinance and Code on that. Those were the recommendations from City Council. He indicated that staff has been great and that they have gone through numerous redlines at this point.

Commissioner Doug Haymore asked Mr. Tolbert if the east entry to the subdivision would not align with Pleasant Hill Drive but that they have met Code or did he intend to say that it will align with Pleasant Hill Drive.

Mr. Tolbert responded that it will not align with Pleasant Hill Drive. He stated that they have pushed it to the west to meet City Code.

Chairman Scott Sabey opened this item to public comment.

Ron Edwards, 2034 East Pepperwood Drive, asked if this was a done deal already and if he was wasting his time. He stated that there was a gentleman present related to Chuck Horman and asked if he was present and if he was he requested that he recuse himself. The Planning Commissioners believe that he was referring to the City Council. He commented that this area is

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all residential and the closest townhomes he is aware of is over a mile away on 1300 East. He stated that this area has always been single family residential. He doesn't believe it is right to put these in a single family residential area. He believes it should be zoned to single family residential.

Todd Henderson, 10767 South 2000 East, Sandy, stated that he has a half acre right behind this area. He doesn't believe that any of the neighbors are against building at this location. He believes that it is reasonable to build 4 or 6 homes on that property. He believes the density is unreasonable for the area. He stated that his house is lower and he does not want townhomes looking in his back yard. He doesn't believe that this request is reasonable.

Alison Demke, 10747 South 2000 East, Sandy, stated that she feels the same way that Todd Henderson does. She believes that a lot of people came to live here for the open space. She stated she is not against building, but she understands why a PUD would work here, but agrees that the zoning is so dense that it seems greedy to her. She stated that she has horses and her children sell eggs from their chickens on the corner. She believes there are things that are more important than money. She believes that people's dreams are getting further away from Salt Lake and from Sandy and that saddens her.

Diane Callus, 10424 Dimple Dell Road, stated that she believes the density is way too high for the area. She stated that the people that live in the area for space to be around them and that no one else is allowed to zone this way and she doesn't believe that Ivory should. She doesn't believe that Ivory should set precedence for making the density so great. She suggested that they do something that has less than 24 homes on it. She believes if this goes through it would seem like some kind of a power play with Ivory.

Alexander Brozig, 9628 South Indian Ridge, Sandy, stated that he wanted to back up what Ms. Callus said about this being a power play. He stated he grew up in Pepperwood, has lived in Sandy his entire life and believes this is obscene and will be an eyesore and he strongly opposes it.

MK Mortenson, 20 Sunwood Lane, Sandy, asked what this will do with traffic.

Chairman Scott Sabey responded that a traffic study has been done and the Traffic Engineer will address that. But he can say that given both the width of Pepperwood Drive and the current width and ultimate indented width of Highland Drive, we are far below maximum traffic count capacity.

Mr. Mortensen believes that Pepperwood Drive is quite busy in the mornings. He stated that when this goes in, the people who move in there will start to complain about the horses and the way the life occurs and will want something different. He believes they will complain about what existed before they ever came to the area.

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(Inaudible) asked if the Planning Commission has studied what the County did a year and a half ago in their study of this area. He asked what their decision was and wanted to know if they knew. He stated that if you don't know than you aren't learning from history and those who don't study history are condemned to repeat it. He challenged the Planning Commission to share what the County's findings were after the long and careful study. He stated that the Planning Commission took into consideration all of the arguments and they unanimously rejected it. He also stated that the City Council then rejected high density unanimously. He suggested that before the Planning Commission comes to meetings such as these they should study history, such as March 2013 when those events took place. He asked how many of the Planning Commissioners are in favor of keeping as much open space up there as possible.

Chairman Scott Sabey informed him that the Planning Commissioners are not elected officials, they are volunteers. He stated that they review a lot of information in order to prepare for these and several other issues, but he cannot quote the number of people that voted on a particular County hearing, as opposed to a City hearing that the Planning Commission deals with. He stated that the Planning Commission volunteers for all of their meetings, not only the meetings with the issues that affect their homes, because they care.

Jorie Walker, 13459 South 1400 East, Draper, owner of Beecher Walker Architects, stated that he knows the developer and just speaking for him and the quality of projects that they do, Pepperwood Creek was going to be completely different than initially proposed. It turned out really well and now is a great addition to the City and to the Pepperwood area. He believes that this project is similar.

Scott Olsen, 1482 East Raddon Drive, Sandy, stated that he is aware that Ivory builds a very good product, however, this project is very high density and he would rather see them do something not as high density that would match the community that it's in and not set out from everything else that's there.

Chris Howels, 2421 Brook Lane, Sandy, stated that he works for the developer and wanted to provide context. He reported that this isn't just Ivory Homes before the Planning Commission, the developers are as well and they have owned this property for over 40 years. He stated that they have owned this property since 1975 and it has had a commercial zone and he stated that they have cared very deeply about the thoughts that have been expressed today, which is why it has not been developed for over 40 years. He stated that at one point, his father in law received a death threat because of a 7-Eleven that was proposed to go there. He commented that they feel like this development type has historically been very successful, very low impact on the community, on the roads and on the school system. In addition, he believes that it's important to recognize that they are downzoning this property. By nature, the impact of residential rather than commercial will be much less.

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Ted Bydon, 10270 Dimple Dell Road, Sandy, stated he is curious why there we have a great equestrian park and yet we keep trying to build houses around it that are not designed at all for people with horses.

Ron Edwards, 2034 East Pepperwood Drive, Sandy, stated that he changed the house on the lot and had a curb cut on the side of his house. He indicated that he was on temporary power for 9 months over a 12 foot curb cut that the City wouldn't allow him to have. He believes that Ivory Homes is big and powerful and can rape any piece of land they can buy. This should not be allowed.

Chairman Scott Sabey closed this item to public comment.

Commissioner Doug Haymore commented that he tries to look at this project in terms of a zoning issue, how this may be zoned, not rezoned, etc., He stated that he is really struggling with any single land use precedent that would allow this project in this place and he cannot find one. He doesn't find like uses anywhere near, he doesn't find that this is a good buffer. He indicated that he lives in Pepperwood and has a lot of respect for the developers and the people before them tonight. He stated that he gets annoyed with the constant statement that a developer has a lot of potentially interested clients. He believes that Sandy City has a track record of doing the next closest thing to CC&R's, which is making sure that when someone does invest in a property, they have a reasonable expectation that things won't change too much. He stated that what is not done is take low density, single family, and put high density multi-family right in the middle of it. He stated that the Planning Commission made a suggestion to the City Council that if the current owners can't find a use under commercial, maybe a good compromise would be to make this be 4 units per acre, so the Planning Commission suggested a PUD(4). There was a strong contingent that the Planning Commission not do anything, that it remain commercial. Because there's an argument that commercial would have less impact. He commented that maybe a way to balance this would be to have fewer homes with nicer space. He stated that he is offended by the statement that Pepperwood Creek is what this is. He believes it is very different and doesn't see any justification that he can support this. In addition, he believes that the City Council has given a flag that it doesn't fit. He agrees that it does have to be different because it just doesn't fit in the area. He stated that anyone that has studied Pepperwood Drive knows that it's not up to current standards in terms of the slope of the road. He believes that this road would not work with 2 exits in the winter time. He stated that he feels very strongly for the reasons of decency and honor.

Commissioner Jared Clayton commented that he believes a lot of things can change over 40 years that are outside the control of anyone. He believes that is why we are here, so people can change zoning because things do change. We don't live in a static realm. He believes that single family is appropriate in this situation. He believes people are discrediting it and that there are too many units, but that is not the issue before them.

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Commissioner Nancy Day commented that there are a lot of things that City Council wanted the Planning Commission to consider and she believes that being able to line the two roads up are very important, if it did go through. She stated that if this goes through, the City needs to finish the Highland Drive (20th East) side, even if it's a temporary finish, because she doesn't believe that that road will go through in her lifetime. Although this was discussed intensely before, she believes it is far too dense.

Commissioner Doug Haymore commented on what Commissioner Clayton stated that there are times when things change over time. Then all of the land use precedence says that in making that change, you find an appropriate, incremental step forward. He stated he cannot agree to the density because he cannot find a way to make it appropriate, to buffer its neighbors, to make it incremental, and can't find a way that even the City Council would be comfortable with it without attaching conditions to the zone, which is called contract zoning, which is illegal and would be grounds for appeal and litigation.

Commissioner Joe Baker commented that he is sensitive to and agrees with a lot of what has been said. He stated that he built his house 45 years ago in the middle of a 16 acre pee and sugar beet farm. Now he has a small back yard and a 10 story building across the street from him. He commented that change happens. He stated that there will be change and development seen, but it just needs to be managed, as was said before. He stated that he is concerned that the Planning Commission has gone from a PUD(4) to a PUD(8) and he would not support that. He would be happy to give his support to something a little less dense. He stated he has the highest respect for Ivory Homes but cannot vote for this density.

Commissioner Jared Clayton commented that this area is not only for horses. People use Dimple Dell for other recreational activities.

Chairman Scott Sabey stated that the most common comment that has been heard tonight is that this isn't appropriate, which is an emotional argument that plays into the objective standard of zoning requirements. He stated that zoning exists so that people can invest their money in a neighborhood that is what they expect and want. He commented that there is no doubt that there is a demand for the product, as the developer said, but what creates the demand is what everyone else has brought to the table, which is large lots, open area, an expansive neighborhood, and they want to capitalize on that by putting high density for their benefit while drawing the benefit by everyone else's home, but everyone else around it draws no benefit from the high density, rather they are burdened by it in the negative. He stated that there was a project brought to the Planning Commission for approval on a PUD(8) located at 1700 East and 10600 South and that was rejected as too high density. He stated that they came back with a lower density and it was approved. In that situation, the Planning Commission and City Council felt it was too much and that is the point of zoning. That people have a reasonable expectation of what's going to be built around them. He stated that there is nothing in the immediate area of this that comes close to this zoning, which is the emotional part of appropriate. The legal aspect of it goes to contract or spot

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zoning. While contract zoning is illegal, spot zoning is legal. A review of what the City Council's discussion was on the record doesn't show a basis for meeting a change of the zoning requirement and zoning this to a significantly greater density that meets the objective standard, in his opinion. He commented that zoning is in place in order to have a reasonable expectation, including the density. He can't see how the City could ever meet the standard. He reported that decisions have come down from the Supreme Court also include the need to have some flexibility because as Commissioner Baker stated, there is growth and things change, but at the same time, there are limits on that. The Supreme Court has said that if you're going to make a reasonable accommodation, then there has to be a mitigation of the damages that occur. He doesn't see how the damages that result from this could be mitigated. He also believes that it creates a significant danger to the traffic on Pepperwood Drive because people would have to turn across traffic, then stop and wait for a gate, on a street that has not only a lot of traffic, but is a steep downhill, it's icy in the winter, a lot of cars slide off the road, and to put 2 streets with a gate on the bottom end of that street, he believes creates an unreasonable risk to the people on it.

Pat Casaday commented that a subdivision cannot be approved or denied without zoning in place. He believes the City Council has put the Planning Commission in a bad position by asking that this be done in reverse, approve the subdivision and then see what the zoning is going to be. He suggested that this be tabled until the City Council has performed their function of approving a particular zone for this area, because he doesn't see anything that the Planning Commission can do.

Chairman Scott Sabey commented that rather than table it, the Planning Commission could refuse to do it, both for the reasons that have been stated and the reason that Pat Casaday has stated.

Commissioner Doug Haymore commented that they could say that it doesn't meet the current zoning, contrary to what they were told, because it doesn't meet the proposed base zoning.

Chairman Scott Sabey commented that he is concerned that tabling it doesn't send a message that the Planning Commission wants to send.

Pat Casaday commented that the City Council is basically putting the Planning Commission in a very bad position by asking that a subdivision be approved, before they've approved a zone, with conditions. He believes that if you want to send a message, that's probably the way you send it. Tell them that they need to perform their function before Planning Commission can fulfill its function.

Commissioner Doug Haymore motioned that he does not find sufficient justification consistent with land use precedent for the density proposed here. Currently there is not a zone which allows for it. It's not consistent with anything around it, it doesn't mitigate any

of the damages of putting a density of this nature in the middle of the other densities, it doesn't take into account that there are reasonable incremental steps to accommodate change, which is something just less dense. The only way the City Council is comfortable doing this would be by, in effect, finding a work around so that contract zoning would take place, and the Planning Commission certainly can't be a party to nor approve that. There are conditions of safety based on the non-standard Pepperwood Drive installation that draws significant question as to the slide and freeze conditions on that hill with 2 exits and entries. He stated that there was also a question of a man made hill that was part of making this work and he doesn't find that the understanding of that entire slope is completely of man's creation. He commented that looking at the neighbor to the north, there is clearly a slope difference there and he doesn't see this mitigating that either.

Chairman Scott Sabey added an amended the motion to read that additionally, Code does not provide for the Planning Commission to approve a subdivision when the relevant zoning has not yet been put in place for that subdivision. That's doing it backwards, so it can't be done because the City Council has not done it in the right order.

Commissioner Doug Haymore added that the Planning Commission find that the argument of going from commercial to residential is not necessarily a decreased impact, although that is what is generally the considered result from such a move. In this instance, a commercial use as would be preferable on this lot, versus the proposed PUD(8) which would actually be a higher impact.

Based on those findings, Commissioner Doug Haymore moved that the Planning Commission reject this application.

Nancy Day seconded the motion. The vote was as follows: Doug Haymore, yes; Nancy Day, yes; Jared Clayton, yes; Ron Mortimer, yes; Joe Baker, yes; Scott Sabey, yes. The vote was unanimous in favor.