



# SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN  
COMMUNITY DEVELOPMENT  
DIRECTOR

KURT BRADBURN  
MAYOR

MATTHEW HUISH  
CHIEF ADMINISTRATIVE OFFICER

## MEMORANDUM

September 5, 2019

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**To:** Sandy City Board of Adjustment  
**From:** Community Development Department  
**Subject:** Firefly Forest Subdivision – Final Review – Alleged Error Review  
 3392 E. Deer Hollow Circle  
 [Community #29 - The Dell]

BOA-08-19-5696  
 3.039 Acres  
 R-1-40A, SAO Zone

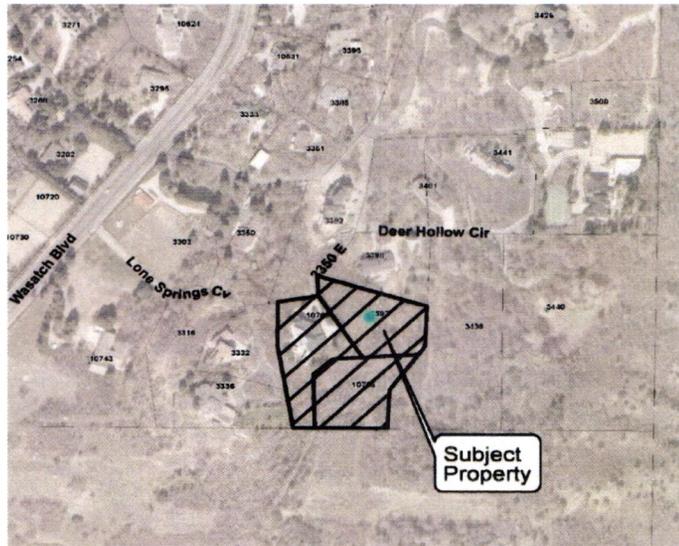
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**HEARING NOTICE:** *This item has been noticed to property owners within 500 feet of the subject area.*

PROPERTY CASE HISTORY	
Case Number	Case Summary
ANEX-09-12-2542	The Lone Springs Annexation added approximately 32.17 acres with 21 parcels of mostly developed land from Salt Lake County into Sandy City and given the R-1-40A Zone District on 12/14/2012.
ANEX-07-12-2459	The Payzant Annexation added approximately 5 acres with three parcels of vacant land into Sandy City and given the R-1-40A Zone District on 10/26/2012.
SUB-02-18-5360 SPEX-05-18-5406	On May 17, 2018, the Planning Commission determined that subdivision review was not complete for the Lance Platt Subdivision (aka Firefly Forest) and special exception requests were denied as well. This proposal was for a flag-lot design proposal that involved a total of four lots, but the intent was to create one new buildable lot as the other lots involved already had homes on them.
SUB-12-18-5580 SPEX-01-19-5593	A new revised application was submitted on the subject property. This revised design involved two lots fronted on a private street, with the intent to create one new buildable lot. On May 2, 2019, the Planning Commission approved several waivers and special exceptions in relation to the proposed Firefly Forest Subdivision. They also determined that preliminary review was complete for the subdivision. On May 16, 2019, the Planning Commission adopted the Findings relating to their decision. On June 20, 2019, the Planning Commission determined that final review of this subdivision was complete.

## REQUEST

The Appellants, Kelly Powers, Trent Pearce, Zhibin Guo, and Kirk Olsen, are represented by James Dunkelberger of Bennett Tueller Johnson & Deere (“Appellants”). On the Appellants’ behalf, Mr. Dunkelberger has filed a request with the Sandy City Board of Adjustment to review a claim that the Sandy City Planning Commission erred in their decision to determine that Final Review of the Firefly Forest Subdivision is complete (see attached **Appellants’ Letter**). These Appellants are property owners who are immediately adjacent to the proposed subdivision (see the location map of the subject property on the right).



## BACKGROUND

The previous staff reports to the Planning Commission for the Firefly Forest Subdivision (revised) for Preliminary Review (dated April 26, 2019) and Final Review (dated June 13, 2019), contains a full detail of the background of the property and its surroundings (see attached **Exhibit A and B of the Appellants’ Letter**). Please refer to this exhibit for a full report of Planning Division Staff’s (“Staff”) analysis and recommendations to the Planning Commission. The minutes from the May 2<sup>nd</sup>, May 16<sup>th</sup>, and June 20<sup>th</sup> Planning Commission meetings should also be referenced (see attached **Exhibit C and G of the Appellants’ Letter** and **Planning Commission Minutes**). A full recording of those meetings can also be found on a City website where all public meeting records are hosted: <https://sandyutah.legistar.com/Calendar.aspx>.

## NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject parcel to notify them of the Board of Adjustment meeting, scheduled for September 12, 2019.

## ANALYSIS OF REQUEST AND ORDINANCE SUMMARY

It is the Appellants’ belief that the Planning Commission erred in its application of the Sandy City Land Development Code (“Code”) in determining that the final review is complete for the proposed Firefly Forest Subdivision (revised). Their letter is very detailed. They conclude that the actions of the Planning Commission were arbitrary and capricious, mainly on the claim that the Planning Commission erred in its determination that final review was complete in spite of opposition from Mr. Guo, a property owner within the proposed plat.

The intention of this report is not to provide a rebuttal of the Appellants’ argument, but merely to point out some facts to the Board of Adjustment for its consideration. It is clear that Mr. Guo has made his stance known that he is not in support of the proposed plat. However, it is not a required item to be reviewed by the Planning Commission at this stage of the approval process.

The Land Development Code sets out the criteria for the Planning Commission's evaluation of proposed subdivisions. The following contain applicable excerpts of City ordinance(s) [underlining added for emphasis]:

### **15A-30-03 Application and Review Process**

- E. **Planning Commission Review.** When the preliminary subdivision plat has been determined to be complete and in compliance with all requirements, the plat, together with all supporting information, will be forwarded to the Planning Commission for review at a public meeting.

The Planning Commission shall review the plat, including all supporting information, to determine if all appropriate impacts have been addressed and to receive public input, concerning impacts and mitigation. The Planning Commission may require additional studies/analyses to enable it to determine what impacts should be addressed and may establish additional requirements to address those anticipated impacts.

### **H. Final Plat Approval**

1. The Director shall review the final plat and all supporting documents to determine if they are complete and comply with all the requirements of all departments, agencies and the Planning Commission. When the Director makes the determination that the final subdivision plat is complete and complies with all the requirements, the plat will be stamped and signed by the Planning Commission, the Chief Engineer of the Public Utilities Department, the City Engineer, the City Attorney, the Mayor, and each of those whose signature is required by the Utah Code Ann. or elsewhere in this Code.

The Planning Commission completed a Preliminary Review on June 2, 2019. In that meeting, they reviewed "all supporting information, to determine if all appropriate impacts have been addressed and to receive public input, concerning impacts and mitigation."

In the Conditions of Approval, the Planning Commission required that the application be brought back to them for Final Review. This is not the typical process as outlined in the above code references. Final Review is typically delegated to the Community Development Director. However, the Planning Commission is the Land Use Authority and it has the ability to complete that review as well. This Final Review was conducted with the Planning Commission on June 20, 2019. In that meeting they reviewed all supporting information to determine if all appropriate impacts had been addressed and to receive public comment concerning impacts and mitigation. The Planning Commission determined that the Final Review was complete, subject to the conditions of approval. Those conditions were set to establish additional requirements to address those anticipated impacts.

In Staff's review of the record, the Planning Commission adequately articulated its conclusions and analysis in its motion at Preliminary and Final review stages. It does not appear that its decision was carried out in an arbitrary or capricious manner. They followed the code requirements listed above. The code does not require that the subject property owners demonstrate consent until they sign the final mylar plat, which is prepared in the Final Approval phase of the process. At that time, if the plat is not signed by all subject property owners, it

doesn't progress to plat approval as outlined in 15A-30-03(H). Mr. Guo's rights as a property owner are unchanged by the action of the Planning Commission. If not all affected property owners sign the plat, nothing would be able to proceed further. Therefore no claims of taking or damages could be complained of by the Appellants.

### **LEGAL STANDARD TO BE MET AT PUBLIC HEARING**

The Sandy City Land Development Code, Section 15A-35-1 sets the standards for reviewing an appeal. The following excerpts of this section are presented to remind the Appellants and the Board of the proper standards and procedures that must be followed [underlining added for emphasis]:

### **15A-32-01 Appeals**

#### **E. Information to be Presented.**

1. An appellant must first present any and all information to the land use authority which it intends to raise before the appeal authority. The appellant may not bring new information for consideration before the appeal authority that had not been previously presented to the land use authority during its consideration of the matter.
2. An appellant must present to the designated appeal authority every theory of relief that it can raise in district court.
3. No new information that was not previously presented to the land use authority may be presented on appeal.

#### **F. Review of the Record of the Land Use Authority.**

1. The appeal authority's review of decisions of a land use authority shall be confined to the administrative record developed by the land use authority unless the appeal authority determines that the record is incomplete or deficient.
2. If the appeal authority determines that the record is incomplete or deficient, it may review the matter de novo.

**G. Burden of Proof.** The appellant has the burden of proving that the land use authority erred.

#### **H. Standard of Review.**

1. **Legal Issues – Correctness Standard.** The appeal authority shall determine the correctness of a decision of the land use authority or administrative official in its interpretation and application of a land use ordinance. Because no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority or administrative official provided. However, the appeal authority shall not overrule that decision as a matter of law without the advice of its legal counsel.
2. **Factual Issues and Other Issues – Arbitrary and Capricious Standard.** Land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are charged with and are experienced in implementing the goals and policies of the community as adopted by and under the supervision of elected representatives of the public. Accordingly, they should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which an appeal authority should not interfere with unless it is shown that there is no reasonable basis to justify the action taken, and that, therefore, the determinations made were so unreasonable as to be

arbitrary and capricious. It is not the appeal authority's prerogative to substitute its judgment for that of the land use authority where the record discloses a reasonable basis for the land use authority's determination.

The Board's review of the Planning Commission decision is to determine whether a reasonable mind could reach the same conclusion as the Planning Commission did, in light of the evidence the Planning Commission had before it. The Appellants must marshal all the evidence in support of the Planning Commission decision and show that in spite of the facts, which support the decision, and in light of conflicting or contradictory evidence, the decision is not supported by substantial evidence. Substantial evidence is evidence, which is adequate to convince a reasonable mind to support a conclusion. See *Carlsen v. Board of Adjustment of City of Smithfield* 2012 UT App 260 ¶¶ 4, 5, 7.

### STAFF RECOMMENDATION

The Board should carefully consider and follow the statutory requirements for an appeal set out above before rendering a decision. As stated in the ordinance cited, the Appellants bear the burden of proving that the land use authority erred. It is not enough to show that one could reasonably reach a different conclusion on the facts; as long as there is a reasonable basis for the decision reached by the Planning Commission.

Based upon our analysis of the Appellants' Letter requesting the appeal and the standard of review required, Staff recommends the following:

That the Board of Adjustment determine that the **record on this decision is complete** and not deficient as demonstrated in the referenced Staff Reports, Planning Commission Minutes, Findings and Conditions, and available recordings of the Planning Commission meetings, and therefore, that **the matter can be reviewed on the record**, and not de novo.

That the Board of Adjustment determine that the Planning Commission **did not err** in making its decision to determine that the Final Review of the Firefly Forest Subdivision (revised) was complete, based upon the following findings:

#### Findings:

1. The Appellants have not shown that there was no reasonable basis to justify the action taken, and therefore, the determinations made were so unreasonable as to be arbitrary and capricious; in other words, the Planning Commission decision was correct in its interpretation and application of the Land Development Code.
2. (*If applicable*) The Planning Commission decision was reasonable and based on substantial evidence, including the following:
  - a. (*The Board will need to further cite and articulate the evidence, if applicable*)

Planner:

Reviewed by:



Mike Wilcox  
Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2019\BOA-08-19-5696\_FIREFLY FOREST SUBDIVISION FINAL REVIEW - ALLEGED ERROR\STAFF REPORT.DOCX

**Included Exhibits Attached Hereto:**

Appellants' Letter (including all exhibits)

May 16th Planning Commission Minutes

**Notice to Appellants:** Be prepared to discuss the criteria for an appeal of the decision of Planning Commission as mentioned above in your presentation to the Board of Adjustment. However, you may be aware of additional information that could be useful to the Board of Adjustment, which you may wish to present orally or in writing at the public hearing.

**NOTE:** *Any appeal of the decision of the Board of Adjustment must be made within thirty [30] days to the appropriate District Court of the State of Utah. The proper forms and procedure for filing such an appeal may be obtained from the District Court or the attorney of your choice. Sandy City **DOES NOT** have this information and **cannot** assist you in any way with the filing of any appeal of a Board of Adjustment decision. Copies of the case file, including all evidence submitted will be made available to interested parties. You may make a copy of the audio tape of the proceedings at our offices located at 10000 Centennial Parkway, suite 210, Sandy, Utah.*