



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN COMMUNITY DEVELOPMENT DIRECTOR

MONICA ZOLTANSKI MAYOR

SHANE E. PACE CHIEF ADMINISTRATIVE OFFICER

Staff Report Memorandum May 11, 2023

To: Board of Adjustment
From: Community Development Department
Subject: South Towne Center Mall Subdivision Plat Amendment
Appeal to Review Alleged Error
10450 S State St.
(Commercial Area, Community #9)

BOA03092023-006495
CBD Zone
Approx. 84 Acres

Meeting Notice: This item has been noticed to property owners within 500 feet of the subject area, on public websites, and at public locations.

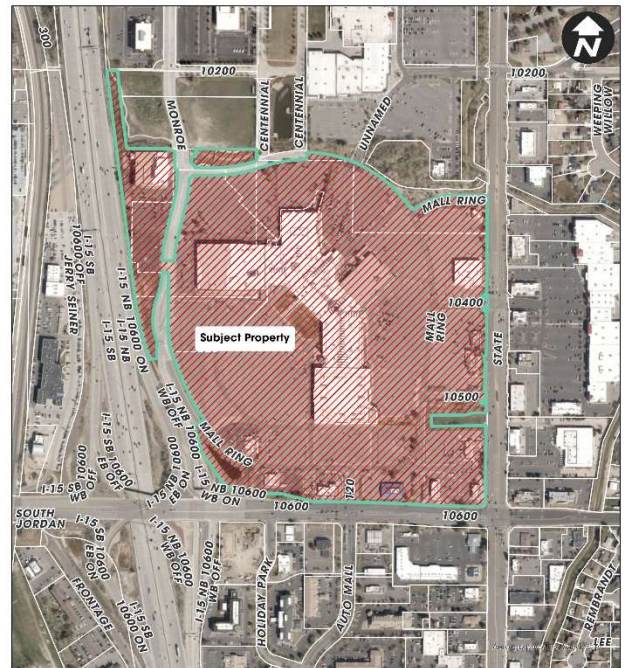
Request

The request is for review of an alleged error of an administrative decision related to an application to amend the South Towne Center Mall Subdivision plat. The applicant is Bruce Baird (representing the property owner South Town Owner PR LLC). The site is a group of properties around South Towne Mall located at 10450 S State St., as shown on the adjacent vicinity map. The applicant’s submittals for the appeal are included as Exhibits “C” through “E.”

Background

The property owner previously filed a subdivision review application on October 12, 2021 (case file #SUB10122021-006180) to amend the South Towne Center Mall Subdivision plat. The proposal would subdivide and create separate pad sites on the South Towne Center shopping mall property.

After the initial application review cycle by city staff, the applicant was informed of changes and requirements necessary to make the preliminary plat application complete, which included addressing Sandy City’s Transportation Master Plan for Monroe Street. The applicant’s subsequent and revised preliminary plat submittal did not address the Monroe Street right-of-way (see Exhibit “E”). As such, staff determined, and the applicant was informed, that the application to amend the South Towne Center Mall Subdivision plat is not complete. The applicant is appealing this staff decision.



BOA03092023-006495
Alleged Error Appeal
10450 S State Street
Community Development Department
Cartography Eleanor Meares

Relevant Case History	
Case Number	Case Summary
SUB10122021-006180	Proposed amendment to the South Towne Center Mall Subdivision. This case is the subject of the appeal.

Public Notice

A public notice was mailed out to all property owners within 500 feet of the subject property for the Board of Adjustment meeting.

Analysis

The appellant asserts that the Sandy City staff erred in their application of the Sandy City Land Development Code (LDC) by determining that the application to amend the South Towne Center Mall Subdivision plat was incomplete. See Exhibit “D” for the applicant’s letter of appeal.

The LDC provides criteria for staff to evaluate a preliminary subdivision plat application. The following contain applicable excerpts of the LDC:

Chapter 21-30 Subdivision Review

Sec. 21-30-3. Application and Review Process

(d) Preliminary Subdivision Review

...

(2) Upon submittal of an application and supporting information and attendance at a Development Review Meeting, if necessary, the preliminary subdivision plat shall be forwarded to the reviewing departments and agencies who shall review it preliminarily to determine if the plat, together with all supporting information, is complete and complies with all the requirements of this title and other applicable City and agencies' standards.

a. If the departments' and agencies' reviews determine that all required, necessary, and requested information has not been submitted or that some of the specifics of the plan or information do not comply with the requirements of this title, the applicant shall be notified in writing and/or on the plat of any deficiencies, comments, corrections, and requirements (including additional information and/or studies) to be addressed. The revised plat and all required, necessary and requested supporting information must be resubmitted after the appropriate additions and/or corrections are made in order to complete the application.

b. Upon resubmittal, the preliminary subdivision plat will again be forwarded to the reviewing departments and agencies. The applicant shall be required to resubmit the plan and supporting documents to the City until all departments and agencies determine it is complete and complies with the requirements of this title and other applicable City and agencies' standards. Failure to submit complete information will result in written notification to the applicant that the review cannot proceed further until all required, necessary, and requested information is submitted.

(e) Planning Commission Review

(1) 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.

Sec. 21-30-12. Street Dedication

Unless previously dedicated, declared a private street, or located within a planned unit development, the developer shall dedicate to the City the full width of all street rights-of-way on the final plat; provided, however, that in cases where a proposed street in the subdivision parallels undeveloped property where no street currently exists and evidence is provided showing that the owner of the abutting property has no intention of developing it within the near future, and as may be recommended by the City

Engineer and approved by the Planning Commission and Mayor, the Mayor may waive the full width dedication requirement and allow the dedication of a lesser width if he finds that it promotes the public interest.

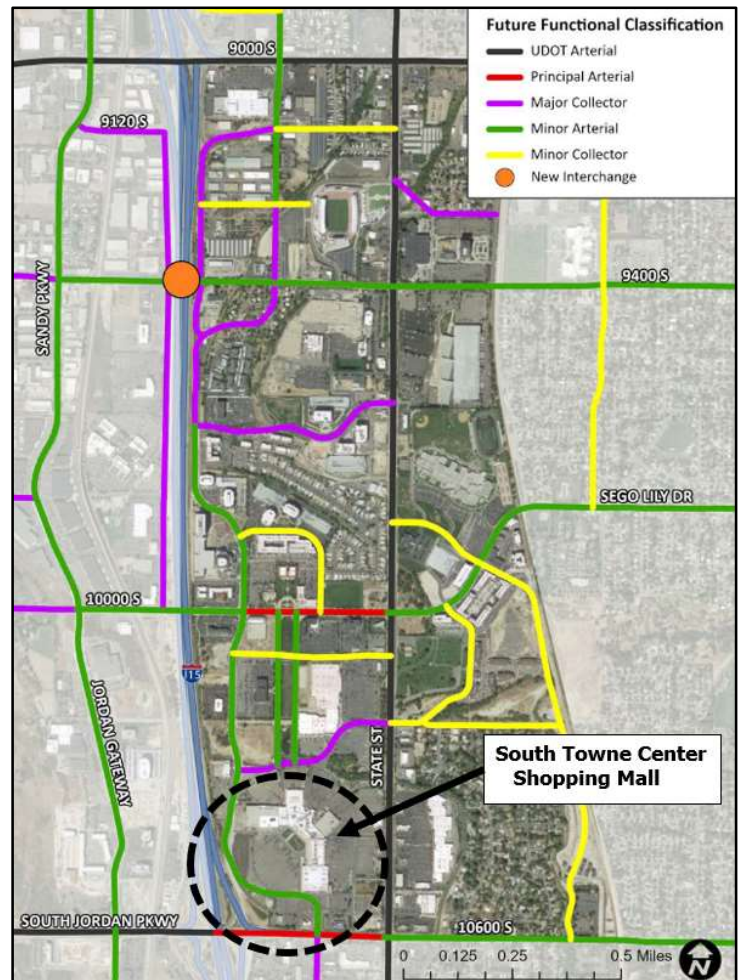
Chapter 21-21 Subdivision Design Standards

Sec. 21-21-10. Street Standards for All Types

(b) The arrangement, character, extent, width, grade, and location of all streets shall conform to the Transportation Master Plan and shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.

Based on the requirements of Sandy City Code cited above, Sandy City staff has processed the subject preliminary plat application in accordance with the LDC, as described in the following:

1. After the initial application material for an amendment to the South Towne Center Mall Subdivision plat was submitted, and as required by Sec. 21-30-3(d)(2)(a), the applicant was “notified in writing and on the plat of any deficiencies, comments, corrections, and requirements that needed to be addressed.” Staff comments to the applicant included the need to address the Monroe Street right-of-way consistent with the Sandy City Transportation Master Plan, and as required by Sandy City Code Sec. 21-21-10(b) and Sec. 21-30-12. See Exhibit “A” and the adjacent map for references to the Sandy City Transportation Master Plan. See also Exhibit “F” (p. 4) for staff comments regarding Monroe Street.
2. Based on these comments by city staff, Sandy City Code Sec. 21-30-3(d)(2)(a) requires the applicant to submit a “revised plat and all required, necessary and requested supporting information to be resubmitted after the appropriate additions and/or corrections are made in order to complete the application.” The Sandy City Attorney’s Office suggested to the applicant two possible options for the resubmittal:
 - a. Show the location, width, and legal description of the future public road on the plat; or
 - b. Include a note on the plat referencing the Sandy City Transportation Master Plan and the future Monroe Street that would be required prior to any further development/redevelopment or subdivision of the property.



Sandy Downtown Transportation Master Plan
2050 Roadway Functional Classification

However, the applicant provided a revised preliminary plat submittal that did not address either of these options. As shown on Exhibit “E,” the Monroe Street right-of-way is not addressed in the applicant’s resubmittal, and the response by the applicant to this issue is: “Attorneys are coordinating” (Exhibit “F” p. 3). Staff were informed by the City Attorney’s Office that while they had met, the applicant had not provided a satisfactory resolution to date.

3. Consistent with the requirements of Sec. 21-30-3(d)(2)(b), the applicant was informed that the application was incomplete, and the review could not proceed further until the Monroe Street issue had been addressed. See Exhibit “B” for communications between Sandy City staff and the applicant.ⁱ

Legal Standards for an Appeal

The LDC, Section 21-35-1 sets the standards for reviewing an appeal. The following excerpt of this section establishes the proper standards and procedures for reviewing an appeal:

Sec. 21-35-1. 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' determination.

(i) Scope of Authority. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

The Board's review of the staff's decision is to determine whether a reasonable mind could reach the same conclusion as the staff did, in light of the evidence staff had before it. The Appellant must marshal all the evidence in support of the staff 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.

Recommendation

Staff recommends that the Board of Adjustment carefully consider and should follow the statutory requirements for an appeal set out above before rendering a decision. As stated in the ordinance cited, the appellant bears 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 if there is a reasonable basis for the decision reached by staff.

Based upon the staff analysis of the appellants' letter requesting the appeal and the standard of review required, staff recommends that the Board of Adjustment determine that the staff did not err in making its decision that the application for an amendment to the South Towne Center Mall Subdivision plat is incomplete and that review of the preliminary plat cannot proceed further until the Monroe Street issue had been addressed. This conclusion is based upon the following findings:

Findings:

1. The record of this decision is sufficient and not deficient as demonstrated in the referenced staff report and associated exhibits; therefore, this matter can be reviewed on the record, and not de novo.
2. The appellants have not shown that there is no reasonable basis to justify the action taken, and the determinations made were so unreasonable as to be arbitrary and capricious.
3. Based on the findings and evidence cited in this staff report, the preliminary plat application for an amendment to the South Towne Center Mall Subdivision plat was processed as required by the Sandy Land Development Code.
4. Therefore, the staff's decision was correct in its interpretation and application of a land use ordinance.

Planner:



Melissa Anderson
Zoning Administrator

Exhibits

- A. Sandy City Transportation Master Plan (p. 82)
- B. Email communications between Sandy City and the applicant (3/2/2023 through 3/3/2023)
- C. Application for appeal
- D. Applicant's letter of appeal
- E. Proposed amended plat for the South Towne Center Mall Subdivision
- F. Staff comments and applicant responses to the proposed amended plat

File Name: S:\USERS\PLN\STAFFRPT\2023\BOA03092023-006495_SOUTHTOWN MALL AMENDED PLAT - ALLEGED ERROR\STAFF REPORT\BOA03092023-006495 BOFA STAFF RPT.FINAL.DOCX

ⁱ The applicant also asserts that the road dedication is unconstitutional and that it is illegal to suspend the preliminary plat review process based on an unconstitutional ordinance. The role of the Board of Adjustment is to determine the correctness of a staff decision in its interpretation and application of a land use ordinance. Consequently, determining if the Sandy City Code is constitutional is beyond the purview of the Board of Adjustment. Furthermore, Sandy City staff has never suggested that the applicant provide the road for free or pay more than a proportionate share of the dedication or construction of the road. These issues are beyond the scope of the Board of Adjustment review and need not be further addressed.