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MEMORANDUM

July 30, 2019

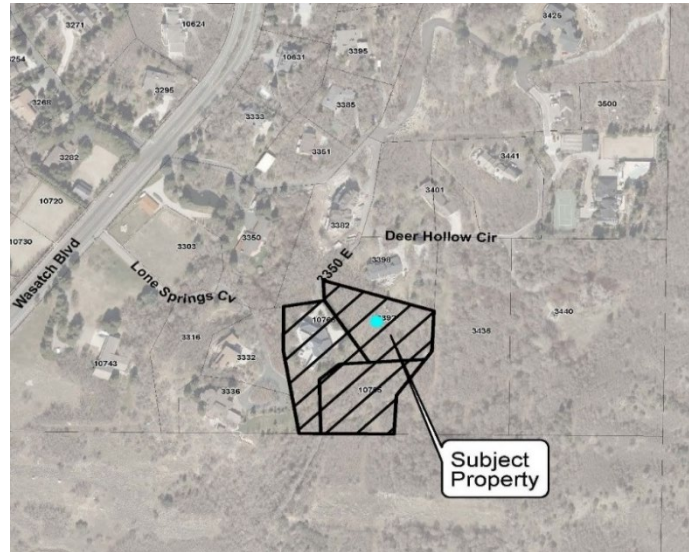
To: Sandy City Board of Adjustment
From: Community Development Department
Subject: Firefly Forest Subdivision – Alleged Error Review BOA-06-19-5674
 3392 E. Deer Hollow Circle 3.039 Acres
 [Community #29 - The Dell] R-1-40A, SAO Zone

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, Treat 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 approve several special exceptions relating to the Firefly Forest Subdivision (see attached **Appellants’ Letter**). These Appellants are property owners that are immediately adjacent to the proposed subdivision (see the location map of the subject property on the right).



BACKGROUND

The attached previous staff report for the Firefly Forest Subdivision (revised) dated, April 26, 2019, contains a full detail of the background of the property and its surroundings (see attached **Exhibit A 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 2nd and 16th Planning Commission meetings should also be referenced (see attached **Planning Commission Minutes**). A full recording of those meetings can also be found at <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 August 8, 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 approving several waivers and special exceptions related to 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 did not follow Staff recommendations nor address all concerns raised by Staff.

The intention of this report is not to provide a rebuttal of the Appellants’ argument, but merely point out some facts to the Board of Adjustment for their consideration. It is clear that Staff did not support the requests as proposed by the Platts, the proposed developers of the Firefly Forest Subdivision. It is also clear that the Planning Commission did not agree with Staff or come to the same conclusions in their analysis (see the **Memo to the Planning Commission dated May 9, 2019**). However, it is important to note that it is not a requirement of the Land Development Code that the Planning Commission follow staff’s recommendation. For many of the waivers and special exceptions, it is a requirement to have a recommendation from certain staff members, but it does not state that the Planning Commission must agree or follow those

recommendations. The Land Development Code does give the criteria for the Planning Commission to evaluate. The following contain applicable excerpts of City ordinance(s) [**bold** and underline added for emphasis]:

15A-21-02 Curbs, Gutters, Sidewalks and Drive Approaches

The City Engineer may recommend that curbs, gutters, and sidewalks be installed on all existing and proposed streets and along the frontage of any lot within a subdivision in conformance with the Sandy City Standard Specifications and Details for Municipal Construction. Inspections by the Engineering Division are required for the installation of all curbs, gutters, sidewalks, and drive approaches. If the developer/builder fails to notify the Engineering Division for inspection prior to installation, the City Engineer may require remedial action, including, but not limited to, the removal and replacement of the improvements in question. **Unless waived by the Planning Commission upon recommendation from the City Engineer, these improvements will be required.**

15A-21-10 Streets

N. Parkstrips and sidewalks shall be required on all streets. They shall be designed and installed according to the City's Standard Specifications and Details for Municipal Construction. The Planning Commission may waive, either one or both of these improvements, after considering a recommendation from the City Engineer and Fire Marshal. The following criteria **must** be evaluated prior to waiving these improvements:

1. The number of homes within the subdivision.
2. The length of a cul-de-sac.
3. The precedence of adjoining improvements.
4. The configuration of lots.
5. Where the only other alternative is a private road design.

15A-21-21 Lots

B. Except as may be otherwise provided in this Development Code, **all lots shall have the required frontage upon a dedicated and improved street.** Exceptions may include the following:

1. Residential building lots that do not have frontage upon a public street shall obtain a special exception from the Planning Commission as part of the preliminary review process.

15A-21-11 Additional Standards for Private Streets/Lanes

1. Approved private streets for access to residential dwelling structures shall have a 27-foot minimum width paved surface (32-foot right-of-way).

The Planning Commission **may grant a special exception** to allow less than a 27-foot pavement width, after considering a recommendation from the City Engineer and Fire Marshal. The City Engineer and Fire Marshal will consider the following conditions when making a recommendation to the Planning Commission for approval of a narrower pavement width:

- (a). Existing site conditions, topography, and improvements, etc.;
- (b). Fire access and water availability;
- (c). Number of lots based on zoning;
- (d). Lot dimensions including frontage;
- (e). Flood control and storm drain; and
- (f). Public utilities.

15A-15-04 Development Standards for Sensitive Areas

7. Streets and Ways. Streets, roadways, and private streets, lanes and driveways shall follow as nearly as possible the natural terrain minimizing cuts and fills. In addition to the standards identified in the Subdivision Design Standards within this Title, the following additional standards shall apply:
 - c. Variations of the street design standards developed to solve special visual aesthetics and functional problems may be presented to the Planning Commission upon recommendation from the City Engineer for consideration and approval. Examples of such variations may be the use of split roadways to avoid deep cuts, one-way streets, modifications of surface drainage treatments, sidewalk design, or the extension of a cul-de-sac.

15A-21-10 Streets

- D. At least two points of ingress/egress shall be provided for each subdivision, PUD, or multi-family project.

Special Exception: The Planning Commission may grant a special exception to allow a subdivision to have only one point of ingress/egress, after considering a recommendation from the City Engineer and Fire Marshal, under the following circumstances:

1. 30 or fewer lots are accessed from the single ingress/egress; and
2. The City Engineer and Fire Marshal have reviewed the potential for impairment of such single access resulting from vehicle congestion, condition of the terrain, climatic conditions or other factors that could limit access and have made either a positive or negative recommendation to the Planning Commission with regards to a single point of ingress/egress; and
3. The proposed development project has one or more of the following, as determined and recommended for approval or denial by the City Engineer and Fire Marshal to the Planning Commission:
 - a. One or more cul-de-sac(s), hammerhead(s), or other approved turn-around(s) approved by the Fire Marshal and City Engineer, that comply with all development standards herein.
 - b. An emergency access (a point of ingress/egress that provides access for emergency vehicles to respond to a building, or facility, in the event the main access is compromised. The design of this access must meet the International Fire Code).
 - c. The future extension of a stub street that will provide additional access, including a temporary turn-around.

- d. All buildings are equipped throughout with automatic sprinkler systems approved by the Fire Marshal and Chief Building Official.

15A-15-04 Development Standards for Sensitive Areas

B. Development Standards for All Sensitive Areas

7. **Streets and Ways.** Streets, roadways, and private streets, lanes and driveways shall follow as nearly as possible the natural terrain minimizing cuts and fills. In addition to the standards identified in the Subdivision Design Standards within this Title, the following additional standards shall apply:
 - b. A cul-de-sac may not exceed 600 feet in length. However, the Planning Commission may grant a special exception to extend the length of the cul-de-sac after considering a recommendation from the City Engineer and Fire Marshal based upon geographical constraints or if public safety will be improved above existing conditions.

The Planning Commission's adopted Findings and Conditions appear to be properly based on these criteria. It appears to Staff that the Planning Commission did follow the Land Development Code by properly considering the factors and criteria listed in the Code. While their conclusion differed from Staff's, it does not mean that they erred. The Planning Commission adequately articulated their conclusions and analysis in their Findings adopted at the Planning Commission's subsequent meeting. Their motion to approve the application does not appear to have been carried out in an arbitrary or capricious manner.

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 [underline 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 should 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 that the Board of Adjustment determine that the Planning Commission did not err in making its decision to approve several waivers and special exceptions relating to the Firefly Forest Subdivision (revised), based upon the following findings:

Findings:

1. 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, the 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 therefore, the determinations made were so unreasonable as to be arbitrary and capricious; the Planning Commission decision was correct in its interpretation and application of the Land Development Code.

Planner:



Mike Wilcox
Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2019\BOA-06-19-5674_FIREFLY FOREST ALLEGED ERROR\STAFF REPORT.DOCX

Included Exhibits Attached Hereto:

Appellants' Letter (including all exhibits)

May 2nd Planning Commission Minutes

May 16th Planning Commission Minutes

Memo to the Planning Commission dated May 9, 2019

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.*