



RECEIVED
JUN 14 2019
SANDY CITY
COMMUNITY DEVELOPMENT

June 14, 2019

Sandy City
Community Development Department
Attn: Brian McCuistion
Room 210
10000 Centennial Parkway
Sandy, UT 84070

RE: Firefly Forest Subdivision - Alleged Error Review Application

To Whom It May Concern:

This firm represents Kelly Powers, Trent Pearce, Zhibin Guo, and Kirk Olsen, property owners (collectively the “*Owners*”) adjacent to the proposed Firefly Forest Subdivision. Pursuant to Sandy City Land Development Code § 15A-35-01, the Owners are requesting that the application for the Firefly Forest Subdivision be reviewed by the Board of Adjustment.

Enclosed are the following required information per the Alleged Error Review Application Requirements:

1. Completed Board of Adjustment Application Form
2. Plot Plan
 - This item was submitted with the Firefly Forest Subdivision plan on May 2, 2019 and is publicly available on Legistar
3. Building Elevations, floor plans and any other pertinent information (not applicable)
4. Letter to the Board of Adjustment from Bennett Tueller Johnson & Deere
 - Exhibit A – Staff Memorandum
 - Exhibit B – May 2, 2019 Meeting Minutes
 - Exhibit C – May 9, 2019 Findings and Conclusions
5. Legal Description and Address of property
 - This item was included on the Subdivision Map submitted with May 2, 2019 Planning Commission Minutes
6. Other Information
7. Property Plat
 - Subdivision Map submitted with May 2, 2019 Planning Commission Minutes
 - My Map created with the Salt Lake County Assessor Maps on June 12, 2019
 - Firefly Subdivision Map created by the Community Development Department

3165 East Millrock Drive
Suite 500
Salt Lake City, Utah
84121-4704

t (801) 438-2000
f (801) 438-2050
www.btjd.com

- Recorded Plat Entry #1536548 from Salt Lake County Recorder

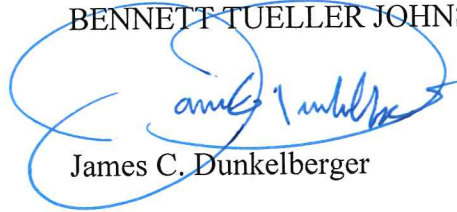
8. Names and Addresses of Property Owners on mailing labels

9. Check in the amount of \$400 for the filing fees.

Please contact me if you have any questions or concerns.

Sincerely,

BENNETT TUELLER JOHNSON & DEERE



James C. Dunkelberger

RECEIVED

JUN 14 2019

SANDY CITY
COMMUNITY DEVELOPMENT DEPARTMENT



Community Development
10000 Centennial Parkway
Sandy, Utah 84070
Telephone # (801) 568-7250
Facsimile # (801) 568-7278

Board of Adjustment Application

Revised November 2008

For staff use only

File/Case Number: BOA-06-19-5674 Date Filed: 6-14-19
Fee: \$400⁰⁰ Receipt# _____ Assigned Planner: MW

Type of Request (mark all that apply)

Use Account Code #1-51-314515 unless otherwise noted.

<input type="checkbox"/> Variance	<input checked="" type="checkbox"/> Alleged Error
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Please give a brief summary of the action requested: Applicant requests that the Board reverse the Planning Commission's approval of waivers and special exceptions for the project.

Project Information

Name of Proposed Project: Firefly Forest Subdivision
Address of Proposed Project 3392 E. Deer Hollow Circle
Parcel Tax I.D. Number(s) (if available): 28-14-428-025; 28-14-428-034
Current Condition (i.e. undeveloped, current zone, etc) R-1-40A, SAO Zone
Proposed Development/Action (i.e., subdivision, retail bldg, new zone) Subdivision

Applicant Information

Applicant's Name: Kelly Powers c/o BTJD Company: Bennett Tueller Johnson & Deere
Address: 3165 E. Millrock Dr., Suite 500 City, State, Zip: Salt Lake City, UT 84121
Phone #: Office: (801) 438-2000 FAX: (801) 438-2050 Home/Cell: _____
Email: jdunkelberger@btjd.com Signature: [Signature] Attorney for Kelly Powers Date: 6/14/2019

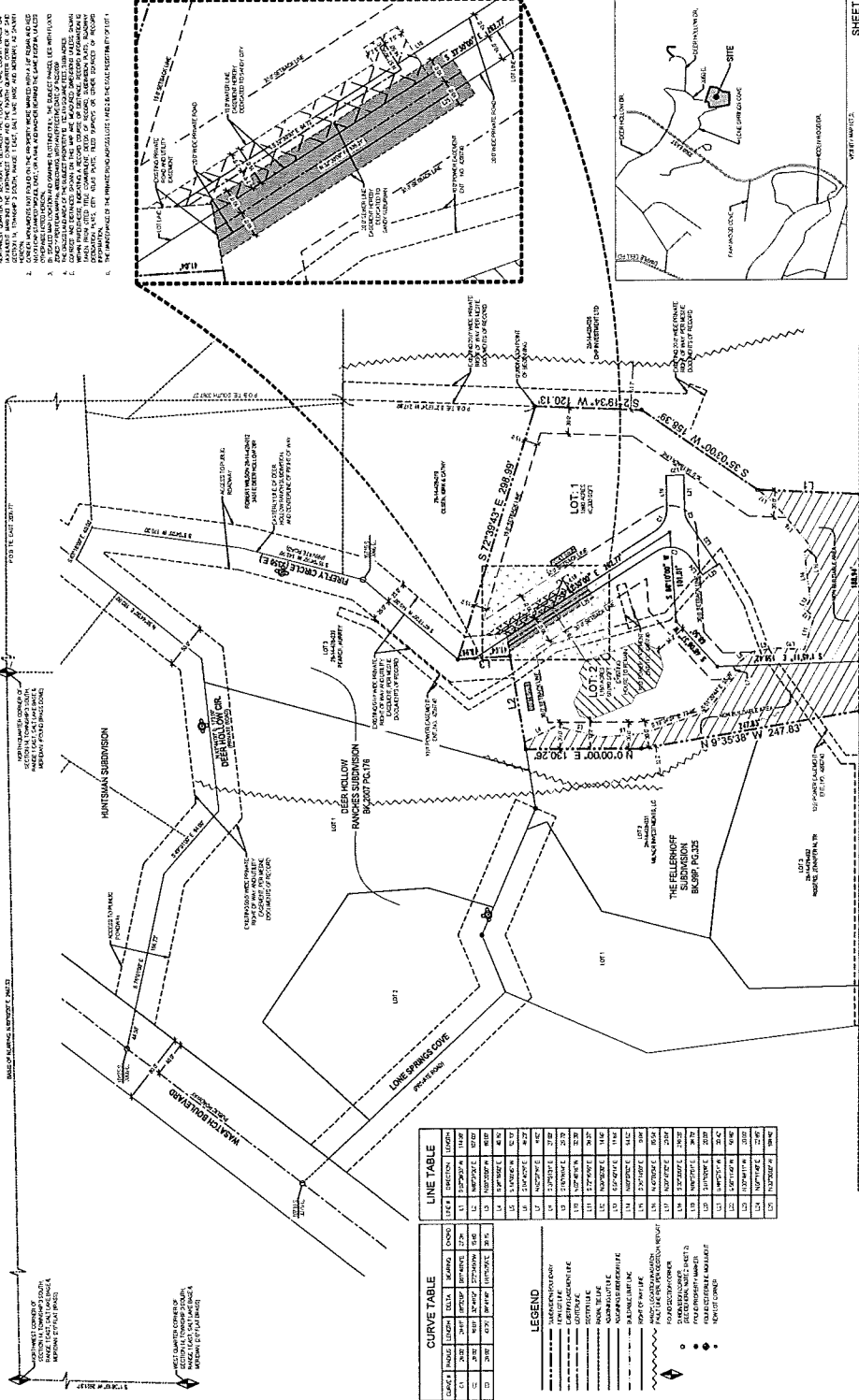
Property Owner Information (if different than applicant)

Owner's Name: Kelly Powers
Address: 3336 E. Lone Springs Cove City, State, Zip: Sandy, UT 84092
Phone #: Office: _____ FAX: _____ Home/Cell: _____
Email: _____ Signature: [Signature] Attorney for Kelly Powers Date: 6/14/2019

Note: The Board of Adjustment normally meets on the second Thursday of the month. Applicants will be notified of changes in meetings and meeting times. The Planning Division will not officially accept a submittal until the conditions and necessary parts of each application procedure are completed. The Board of Adjustment will not review any submittal made less than fourteen (14) days prior to the scheduled meeting.

FIREFLY FOREST SUBDIVISION

A RESIDENTIAL SUBDIVISION
LOCATED IN THE SOUTHWEST
SALT LAKE BASIN AND MERIDIAN,
UTAH SOUTH 33RD EAST, SANDY, UTAH



- NOTES**
- 1. ALL LOTS ARE TO BE CONVEYED TO THE CITY OF SANDY, UTAH, TO BE HELD IN TRUST FOR THE CITY OF SANDY, UTAH, TO BE USED FOR THE CITY'S GENERAL PURPOSES.
 - 2. THE CITY OF SANDY, UTAH, SHALL BE RESPONSIBLE FOR THE COSTS OF ALL RECORDING FEES AND THE COSTS OF ALL SURVEYING AND RECORDING FEES.
 - 3. THE CITY OF SANDY, UTAH, SHALL BE RESPONSIBLE FOR THE COSTS OF ALL SURVEYING AND RECORDING FEES.
 - 4. THE CITY OF SANDY, UTAH, SHALL BE RESPONSIBLE FOR THE COSTS OF ALL SURVEYING AND RECORDING FEES.
 - 5. THE CITY OF SANDY, UTAH, SHALL BE RESPONSIBLE FOR THE COSTS OF ALL SURVEYING AND RECORDING FEES.

SURVEYOR'S CERTIFICATE

I, DANIEL W. McNEIL, a duly licensed professional land surveyor under the laws of the State of Utah, have surveyed and shown on the attached plat the boundary description and area of the above described land and the boundaries of the subdivision.

FIREFLY FOREST SUBDIVISION
A RESIDENTIAL SUBDIVISION

BOUNDARY DESCRIPTION

AND THE LAND AND THE INTEREST THEREIN IS BEING OFFERED TO THE CITY OF SANDY, UTAH, FOR THE CITY'S GENERAL PURPOSES.

OWNER'S DEDICATION

I, the undersigned, being the owner of the above described land, do hereby dedicate the same to the City of Sandy, Utah, for the City's general purposes.

FIREFLY FOREST SUBDIVISION

BY: [Signature] [Name]

INDIVIDUAL ACKNOWLEDGEMENT

I, [Name], being the owner of the above described land, do hereby acknowledge that I have read the boundary description and area of the above described land and the boundaries of the subdivision and that I have signed this instrument of dedication voluntarily and without any duress, coercion, fraud, or undue influence.

BY: [Signature] [Name]

INDIVIDUAL ACKNOWLEDGEMENT

I, [Name], being the owner of the above described land, do hereby acknowledge that I have read the boundary description and area of the above described land and the boundaries of the subdivision and that I have signed this instrument of dedication voluntarily and without any duress, coercion, fraud, or undue influence.

BY: [Signature] [Name]

CONSENT TO DEDICATE AND RECORD

I, [Name], being the owner of the above described land, do hereby consent to the dedication and recording of this instrument.

BY: [Signature] [Name]

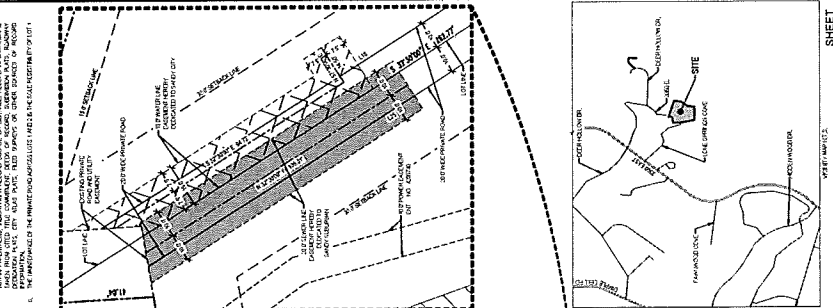
FIREFLY FOREST SUBDIVISION
A RESIDENTIAL SUBDIVISION
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASIN AND MERIDIAN, UTAH SOUTH 33RD EAST, SANDY, UTAH

SALT LAKE COUNTY RECORDER

RECORDED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

FILE NO. _____

BY: [Signature] [Name]



SANDY CITY GENERAL PLAT NOTES

- 1. ALL LOTS ARE TO BE CONVEYED TO THE CITY OF SANDY, UTAH, TO BE HELD IN TRUST FOR THE CITY OF SANDY, UTAH, TO BE USED FOR THE CITY'S GENERAL PURPOSES.
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- 3. THE CITY OF SANDY, UTAH, SHALL BE RESPONSIBLE FOR THE COSTS OF ALL SURVEYING AND RECORDING FEES.

APPROVALS TO FORM

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

CITY ENGINEER

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

SANDY CITY PUBLIC UTILITIES

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

SANDY CITY PARKS & RECREATION

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

PLANNING COMMISSION

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

DOMINION

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

CENTURY LINK

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

COMCAST

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

ROCKY MOUNTAIN POWER

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

SANDY SUBURBAN IMPROVEMENT DISTRICT

APPROVED THIS _____ DAY OF _____ A.D. 20__ AT _____ O'CLOCK ____ M.

BY: [Signature] [Name]

McNEIL ENGINEERING

Professional Engineering & Surveying

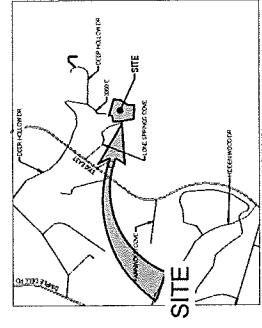
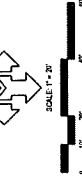
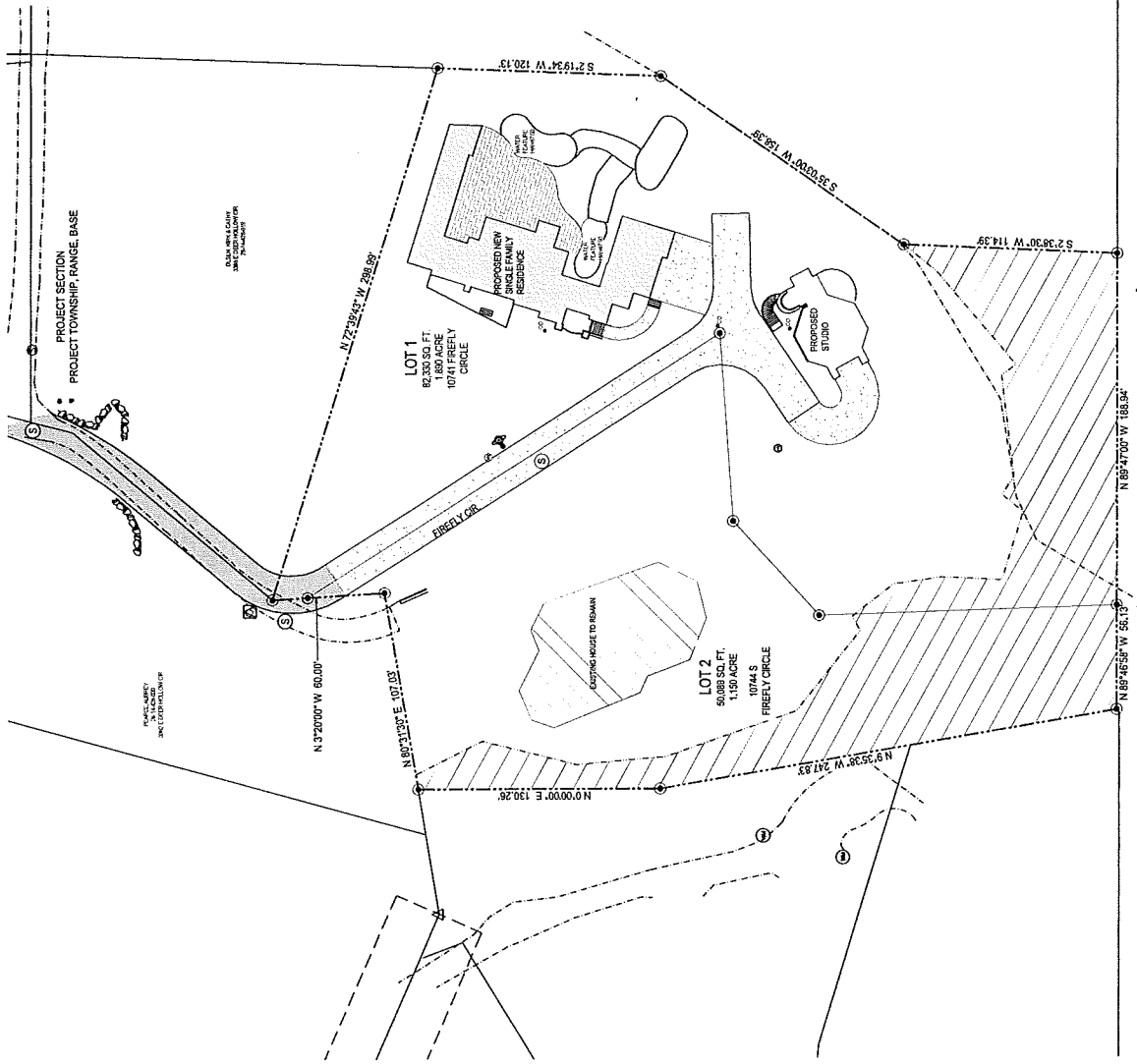
1000 South Main Street, Suite 200, Sandy, UT 84086

PHONE: 781.466.3100 FAX: 781.466.3101

WWW.MCNEIL-ENGINEERING.COM

FIREFLY FOREST SUBDIVISION CONSTRUCTION PLANS

3392 FIREFLY CIRCLE
SANDY, UTAH



DRAWING INDEX

SHEET	DESCRIPTION
0000	0000 SITE PLAN
0001	0001 GENERAL NOTES AND SPECIFICATIONS
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0003	0003 GENERAL NOTES AND SPECIFICATIONS
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ALL WORK AND MATERIALS FOR WATER MUST CONFORM TO SANDY CITY STANDARDS AND SPECIFICATIONS

ALL WORK AND MATERIALS FOR SEWER MUST CONFORM TO SANDY CITY STANDARDS AND SPECIFICATIONS

ALL WORK AND MATERIALS IN THE PUBLIC RIGHT-OF-WAY MUST CONFORM TO SANDY CITY STANDARDS AND SPECIFICATIONS

OWNER & CONTACT
 OWNER: JAKE FROST/PLAT
 1850 S. SANDY PARKWAY
 SANDY, UTAH 84070
 LANCE@FROSTENGINEERING.COM
 CONTACT: ROBERT POKER
 8912 SANDY PARKWAY
 SANDY, UTAH 84070
 RPOK@MCNEILENGINEERING.COM
 801-583-2586

McNEIL ENGINEERING
 Structural and Sustainable Design, Professional Site Work and Tree
 Civil Engineering • Consulting & Landscape Architecture
 Structural Engineering • Land Surveying & MDS



REVISIONS	
KEY	DESCRIPTION

PROJECT NO:	3113
DRAWN BY:	BJP
CHECKED BY:	BJP
DATE:	3-14-13

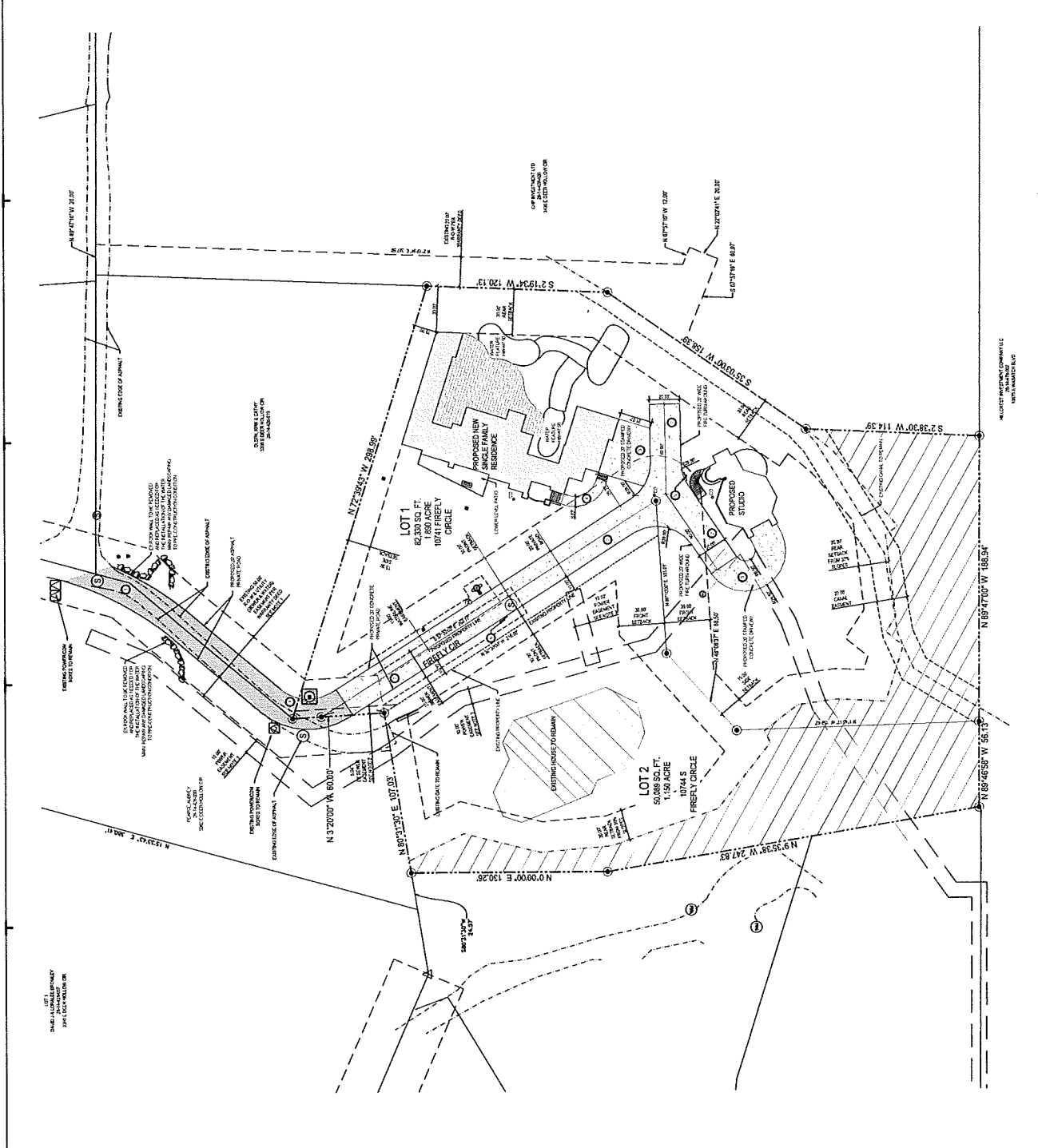
SITE PLAN	
C1.01	

GENERAL NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
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KEYED NOTES:
 1. PROPOSED NEW RESIDENCE.
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 3. PROPOSED NEW RESIDENCE.
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 9. PROPOSED NEW RESIDENCE.
 10. PROPOSED NEW STUDIO.

GENERAL SITE PLAN NOTES:
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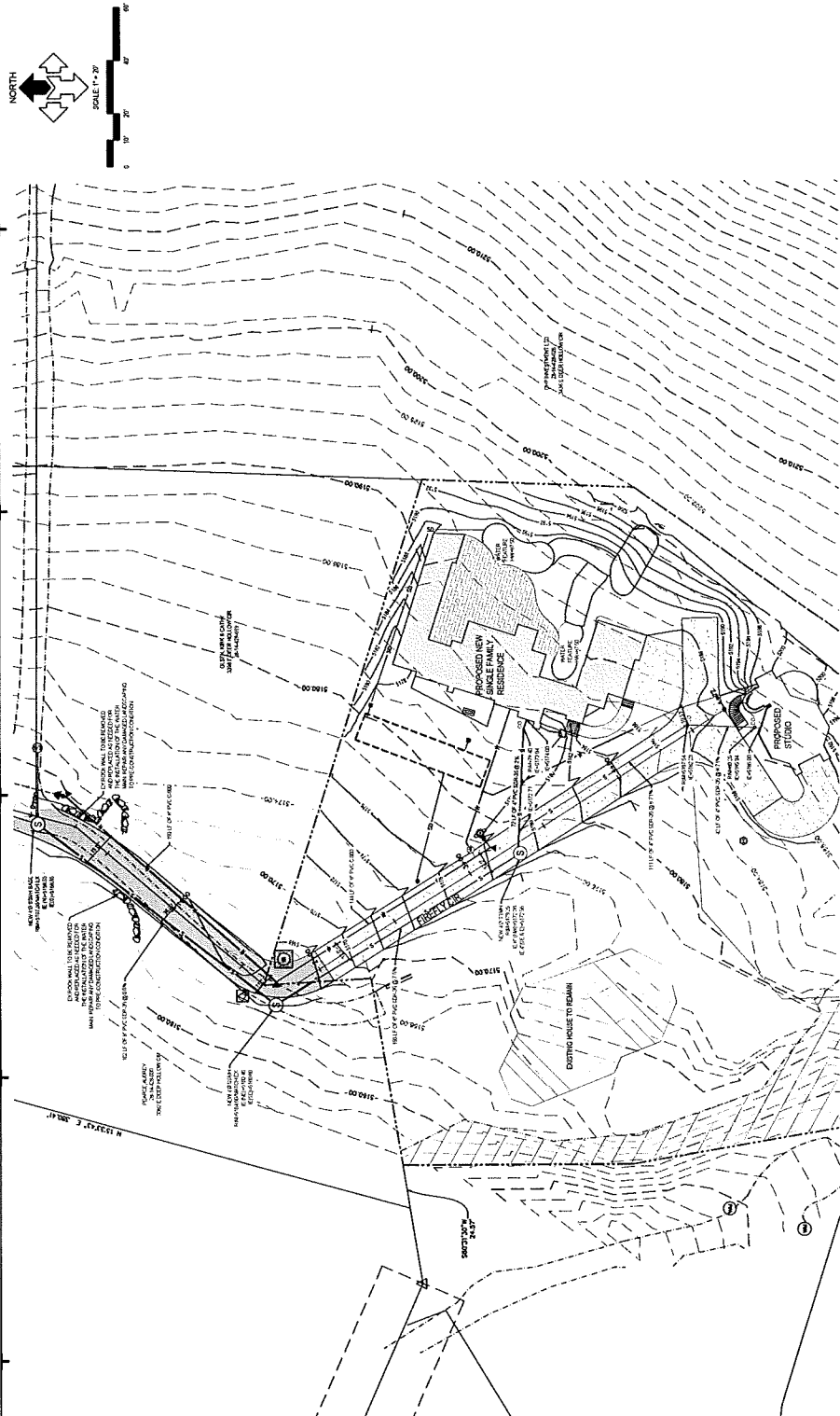
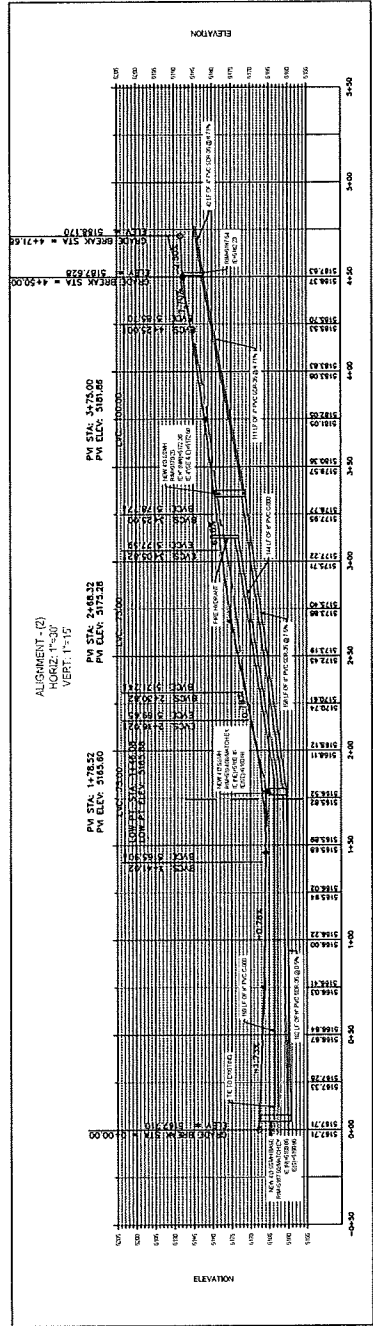


SECTIONS	
C3.01	
REVISIONS	DATE DESCRIPTION

FIREFLY FOREST SUBDIVISION
3932 FIREFLY CIRCLE
SANDY, UTAH



McNEIL ENGINEERING
 Structural Engineering • Consulting & Land Surveying & GIS
 6113 South Sandy Parkway, Suite 208 Sandy, Utah 84070 (435) 733-2779
 licen.utah.gov / utah.gov / engineering

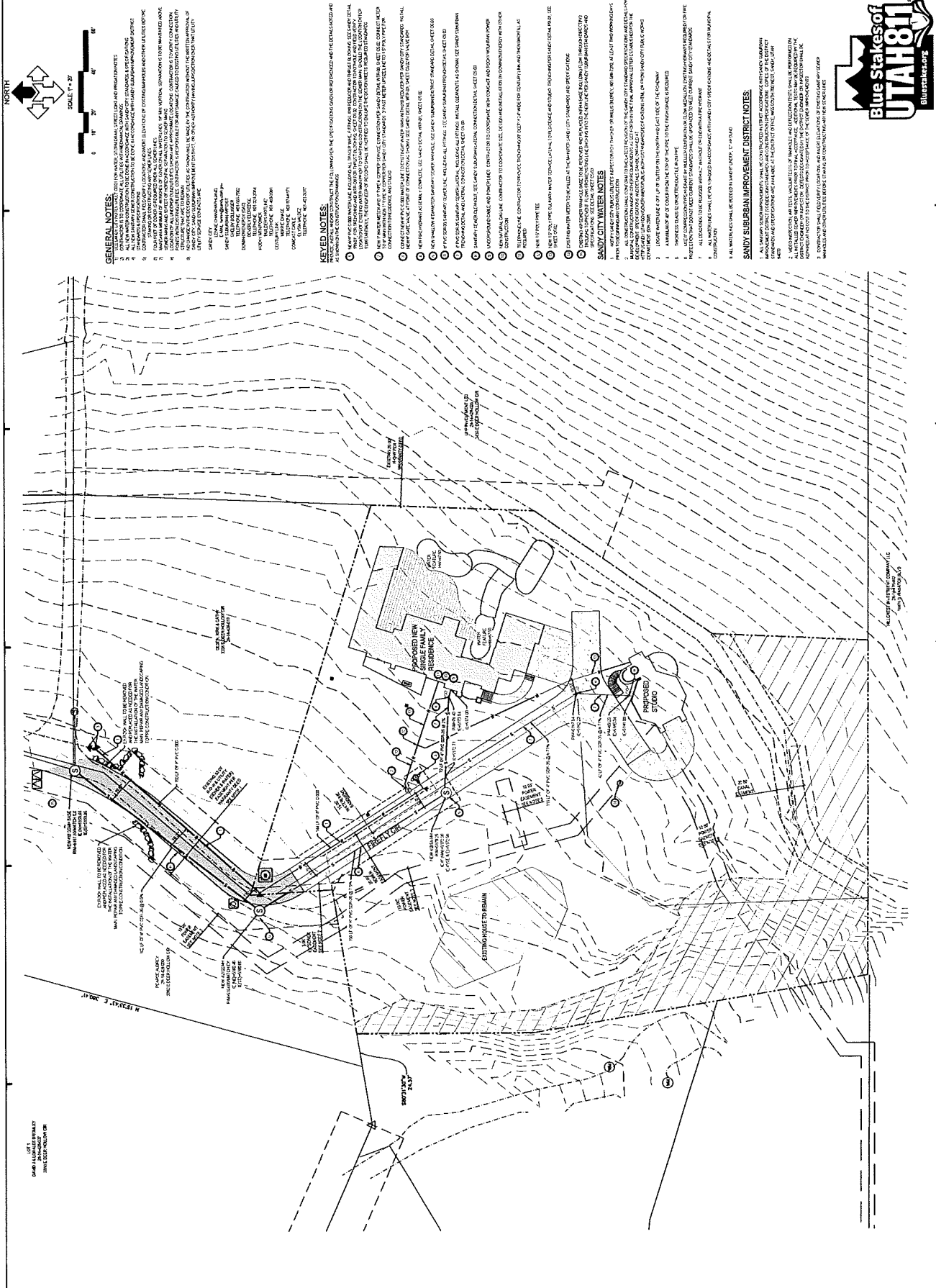


REVISIONS	
NO.	DESCRIPTION

FIREFLY FOREST SUBDIVISION
3392 FIREFLY CIRCLE
SANDY, UTAH



MCNEIL ENGINEERING
Structural Engineering • Consulting • Land Surveying & HDS
3115 South Lindy Parkway, Suite 200, Sandy, Utah 84070 (801) 778-7778
Construction and Sustainable Design, Residential, Commercial and Transit



- GENERAL NOTES:**
1. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
 2. THE LOCATION OF UTILITIES IS APPROXIMATE AND SHOULD BE VERIFIED BY FIELD SURVEY.
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- KEYED NOTES:**
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- SANDY CITY WATER NOTES:**
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PROPOSED: ...
EXISTING: ...
UTAH 811: ...

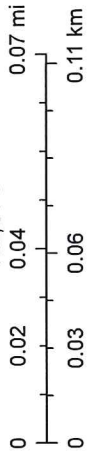
DATE: 11/11/2019
DRAWN BY: [Name]
CHECKED BY: [Name]

My Map



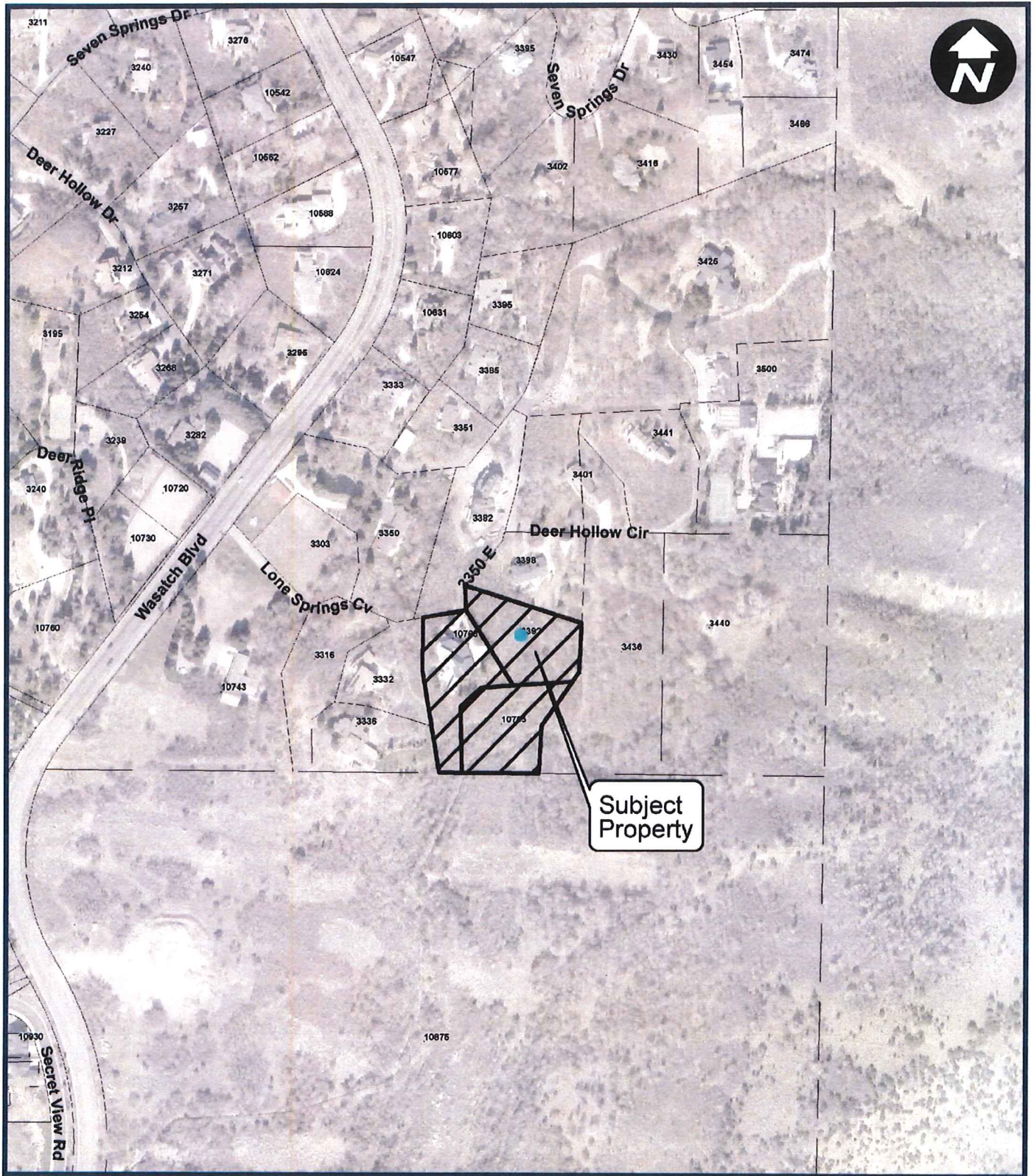
June 12, 2019

1:2,878



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

This map was created by the office of the Salt Lake County Assessor, in cooperation with the offices of Surveyor, Recorder, Auditor, and Information Services. Copyright 2013, Assessor GIS. The information depicted here is to be taken as an approximate fit in regards to the spatial position of the layers presented. This map is not intended to represent an actual field survey of, nor establish the actual relation between, any of the layers depicted here.



SUB-12-18-5580

Firefly Forest Subdivision

3392 E Deer Hollow Circle



PRODUCED BY MIKE WILCOX
THE COMMUNITY DEVELOPMENT DEPARTMENT

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
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SANDY UT 84070
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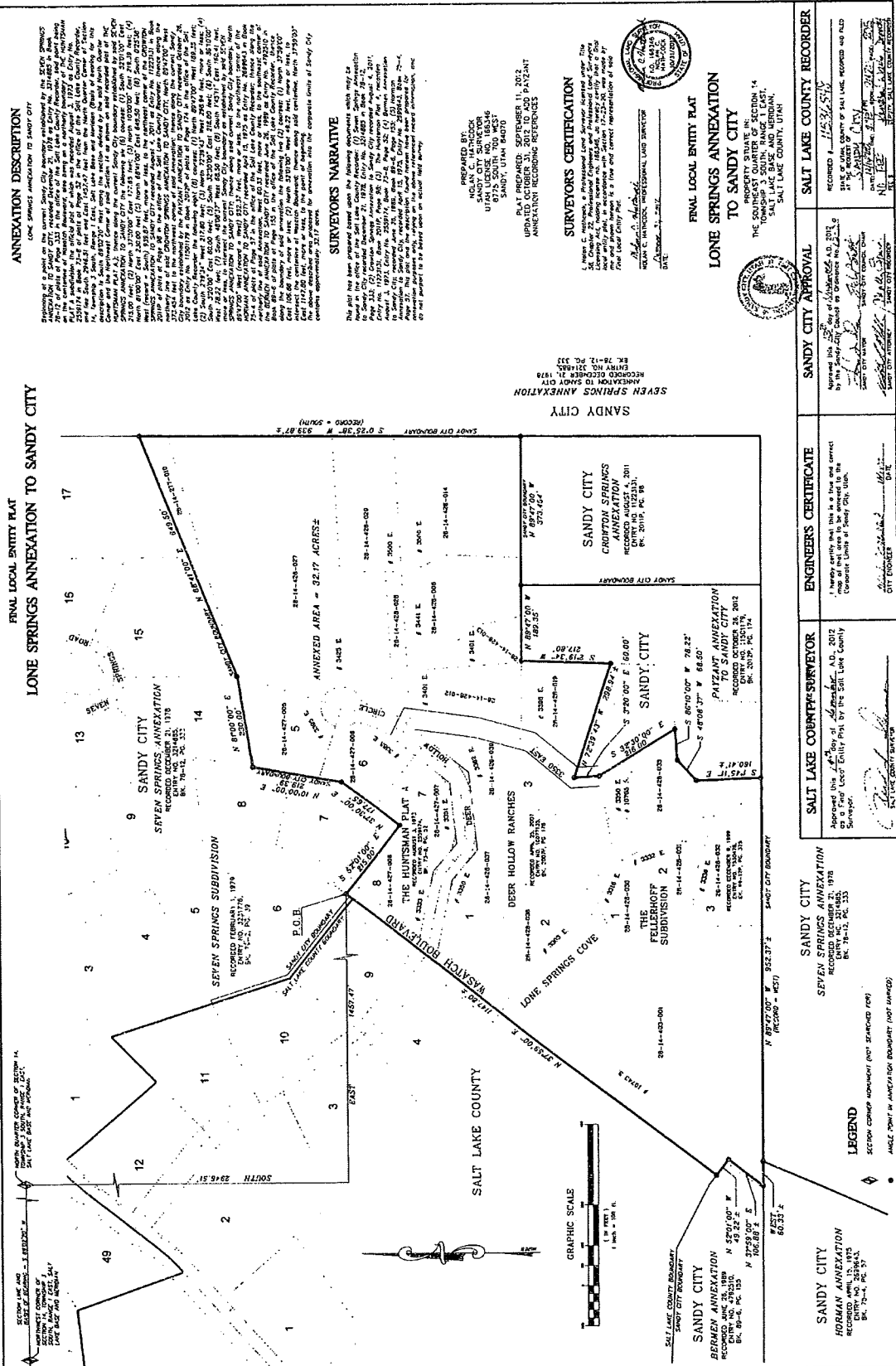
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PLAT

SEE ONLINE PLATS AT
[HTTP://REC.CO.SLC.UT.US](http://rec.co.slc.ut.us)

FINAL LOCAL ENTRY PLAT
LONE SPRINGS ANNEXATION TO SANDY CITY



ANNEXATION DESCRIPTION
LONE SPRINGS ANNEXATION TO SANDY CITY

This plat is a part of the Lone Springs Annexation to Sandy City, which was approved by the Board of Commissioners of the City of Sandy, Utah, on December 11, 2012. The Lone Springs Annexation to Sandy City is a part of the Lone Springs Annexation to Sandy City, which was approved by the Board of Commissioners of the City of Sandy, Utah, on December 11, 2012. The Lone Springs Annexation to Sandy City is a part of the Lone Springs Annexation to Sandy City, which was approved by the Board of Commissioners of the City of Sandy, Utah, on December 11, 2012.

SURVEYORS NARRATIVE

This plat has been prepared based upon the following documents which may be found in the office of the Surveyor General of the State of Utah, Salt Lake County Office, 200 West 100 South, Salt Lake City, Utah 84111. The documents are: (1) The original plat of the Lone Springs Annexation to Sandy City, recorded on December 11, 2012, in Book 10088, Page 870A. (2) The original plat of the Lone Springs Annexation to Sandy City, recorded on December 11, 2012, in Book 10088, Page 870A. (3) The original plat of the Lone Springs Annexation to Sandy City, recorded on December 11, 2012, in Book 10088, Page 870A.

SURVEYORS CERTIFICATION

I, the undersigned, being a duly qualified and licensed Surveyor in the State of Utah, do hereby certify that the foregoing is a true and correct representation of the facts as shown by the records of the Surveyor General of the State of Utah, Salt Lake County Office, 200 West 100 South, Salt Lake City, Utah 84111.

FINAL LOCAL ENTRY PLAT
LONE SPRINGS ANNEXATION
TO SANDY CITY

PROPERTY STATE IN RECORD 14
THE SURVEYOR'S OFFICE IS LOCATED AT:
SALT LAKE COUNTY, UTAH
SANDY, UTAH 84086

SALT LAKE COUNTY SURVEYOR	ENGINEERS CERTIFICATE	SANDY CITY APPROVAL	SALT LAKE COUNTY RECORDER
Approved this 14th day of December, A.D. 2012, as a Final Local Entry Plat by the Salt Lake County Surveyor.	I hereby certify that this is a true and correct copy of the original plat as shown to me by the Surveyor.	Approved this 14th day of December, A.D. 2012, as a Final Local Entry Plat by the Board of Commissioners of the City of Sandy, Utah.	RECORDED # 10088 PG 870A DATE 12/14/12
<i>[Signature]</i> SALT LAKE COUNTY SURVEYOR	<i>[Signature]</i> CITY ENGINEER	<i>[Signature]</i> SANDY CITY RECORDER	<i>[Signature]</i> SALT LAKE COUNTY RECORDER

2012-12-14 14:52:37
2012-12-14 14:52:37
2012-12-14 14:52:37

June 14, 2019

Via Hand Delivery and Email (bmccuistion@sandy.utah.gov)

Sandy City Board of Adjustment
Community Development Department
Attn: Brian McCuistion
10000 Centennial Parkway
Sandy, Utah 84070

RE: Firefly Forest Subdivision Alleged Error Review Request

Dear Board Members:

Pursuant to Sandy City Land Development Code § 15A-35-01 *et seq.*, and through counsel, Kelly Powers, Trent Pearce, Zhibin Guo, and Kirk Olsen (collectively, the “**Appellants**”) hereby appeal the Sandy City Planning Commission’s decision (the “**Decision**”) approving Lance and Robyn Platts’ application (the “**Application**”) for several waivers and special exceptions relating to a proposed two-lot subdivision.¹ As set forth below, the Planning Commission acted arbitrarily and capriciously when it elevated one developer’s economic interests over the health and safety of Sandy City residents and first responders. Appellants respectfully request that the Board of Adjustment (the “**Board**”) overturn the Decision.

FACTS

Lance and Robyn Platt (the “**Platts**”) want subdivision approval and related waivers and special exceptions for a two (2) lot subdivision located at 3392 East Deer Hollow Circle.² The proposed subdivision is hereinafter referred to as “**Firefly Forest**” or the “**Property**.” The Property is 3.039 acres in size and includes one (1) existing lot and two (2) parcels. Once approved, Firefly

¹In the same meeting, the Planning Commission also passed preliminary subdivision approval for the proposal with the condition that it would need to come up for final review. That final review has not yet taken place and, as such, it would be premature for the Appellants to appeal the Planning Commission’s preliminary approval. *See* Sandy City Code § 15A-35-01(C).

² The facts contained herein (unless otherwise indicated) were presented to the Planning Commission in the Community Development Department Memorandum re: Firefly Forest Subdivision (the “**Staff Memorandum**”), a true and correct copy of which is enclosed herewith as **Exhibit A**. This section also highlights certain oral statements made by interested parties and members of the Planning Commission during the May 2, 2019 meeting.

Forest would consist of one new 1.89 acre lot (“*Lot 1*”) where the Platts would build a new home and an existing lot (“*Lot 2*”) with amended boundaries to accommodate the new development. Appellant Zhibin Guo is and would remain the owner of Lot 2. The Property is in Zone R-1-40A0.

The Property’s location is also designated a Sensitive Area Overlay (“*SAO*”) Zone. The SAO’s purpose is to minimize environmental hazards and protect the natural scenic character of qualifying areas within Sandy City. The Property qualifies as SAO because it has greater than thirty percent (30%) slope and is located in a watershed area and fault zone.

The Property’s three parcels have a complex ownership background and legal status. The westernmost parcel (now owned by Mr. Guo) was determined to be a lot of record and granted a building permit by Salt Lake County in the 1980’s before its annexation to Sandy City. That parcel once also included the southeastern parcel shown on Figure 1. In the early 2000’s the owner split the parcel in half to create the layout shown on Figure 1. Because the two parcels on the east side of the Property were not created legally, they were not lots of record and were not buildable.

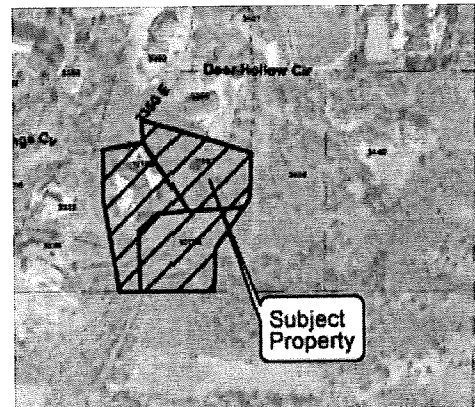


Figure 1 – Parcels – Modified from Staff Memorandum Page 2

The Platts originally proposed Firefly Forest in 2018. At that time, Sandy City conducted a neighborhood meeting. A number of nearby homeowners, including some of the Appellants, attended.³ The nearby homeowners raised a number of concerns, including fire and other safety issues, which Sandy City documented. Relevant documents are attached to the Staff Memorandum, Exhibit A. The Platts’ efforts in 2018 culminated in a “final administrative decision” from the Sandy City Community Development Director, James Sorensen (“*Mr. Sorensen*”) confirming that no subdivision process was previously followed and that the lots were, therefore, not buildable. Mr. Sorensen stated that he found “no legal support in any State or local law or ordinance” that would exempt the Property from Sandy City’s subdivision requirements. Mr. Sorensen further stated that “[t]he assertion that the Platts could not have known that they were purchasing illegally created, un-subdivided parcels is also not supported by fact or law.”

In early 2019, the Platts submitted Firefly Forest for subdivision approval and requested the waivers and special exceptions at issue in this appeal. The waivers and special exceptions included the following:

³ Appellants are the homeowners immediately adjacent to the Property. Mr. Powers lives just west of the proposed Lot 2. Mr. Olsen lives directly north of the proposed Lot 1. Mr. Pearce lives to the north of the proposed Lot 2. Mr. Guo is the current owner of what would become Lot 2 of Firefly Forest.

1. Waiver of curb, gutter, parkstrip, and sidewalk
2. Special Exceptions for:
 - a. Lots without public frontage
 - b. Fewer than two (2) points of access
 - c. Less than twenty-seven feet (27') of asphalt width; and
 - d. Length of cul-de-sac over 600 feet in SAO

The Staff Memorandum pointed out that the Platts' "proposal for improvements associated with the subdivision plat does not comply with the Land Development Code unless **all** of the [] waivers and special exceptions are granted." The Staff Memorandum analyzed the proposed waivers and special exceptions and discussed the recommendations from the City Engineer and Fire Marshal. Ultimately, the Staff Memorandum recommended that the Planning Commission approve the requested waiver of sidewalks and parkstrips and the exception for the public frontage requirement. The Staff Memorandum recommended that the Planning Commission decline to approve the waiver of curb and gutter and the exceptions requested for road width, access, and cul-de-sac length. The Staff Memorandum indicated that staff was concerned that the City Engineer did not support the majority of the proposed waivers and exceptions. And, although the Fire Marshal recommended approval, the recommendation was based solely on an analysis of the International Fire Code and not Sandy City's Land Development Code. Staff also worried about the precedent that granting the full range of waivers and exceptions requested would set for similarly situated properties along Wasatch Boulevard. The Staff Memorandum noted that "it is not anticipated that all available waivers and special exceptions will be combined to create a long, narrow single access road in a geographical location that is uniquely susceptible to fire, earthquake, and topographical constraints." *See id.* at 10.

The Planning Commission met on May 2, 2019 (the "**May 2 Meeting**"). A true and correct copy of the May 2 Meeting Minutes is attached hereto as **Exhibit B**. The Planning Commission took public comment. *See* Minutes at 3. Appellants (except Mr. Guo) were present in person or by proxy and voiced safety and other concerns about Firefly Forest. The Planning Commission members and staff discussed the proposed waivers and exceptions. *See id.* at 4–5. The Fire Marshal stated that, as a firefighter, "he would not feel comfortable sending fire engines to this area because it would take time to turn around to get out of this area." *See id.* at 4. He concluded that "[i]t would not be safe at this point." *See id.* at 5. The City Engineer agreed and pointed out that "the Sandy City Code has a stricter requirement" than the International Fire Code and that Firefly Forest was "not an ideal situation" because it "is bad and severely underbuilt." *See id.* The City Engineer underscored his concerns that flooding could occur in the event of a storm or

waterline breakage. *See id.* He stated that although the Platts’ 2019 proposal improved on the issues with the 2018 proposal, he could “not stand behind a subdivision that is severely underbuilt and is a safety risk.” *See id.*

Notwithstanding the staff recommendation, the Planning Commission approved the requested waivers and special exceptions at the conclusion of the May 2 Meeting. *See id.* at 5–6. Because the Staff Memorandum contained no findings to support the decision, staff was instructed to prepare findings to be “presented at a subsequent meeting for review, comment, and approval.” *See id.* at 5. Staff prepared a Memorandum, dated May 9, 2019, that set forth proposed findings and conclusions (the “*Findings and Conclusions*”), which was included in the agenda for the Planning Commission’s May 16, 2019 meeting (The “*May 16 Meeting*”). A copy of the Findings and Conclusions is attached hereto as **Exhibit C**. The Planning Commission approved the Findings and Conclusions at the May 16 Meeting. The Planning Commission approved the minutes for the May 16 Meeting on June 6, 2019. This appeal follows.

STANDARD OF REVIEW ON APPEAL

The Board has jurisdiction to hear appeals applying the land use codes and ordinances unless otherwise indicated in the Sandy City Land Development Code (the “*Code*”). *See* Code § 15A-03-04. On appeal, “[t]he appellant has the burden of proving that the land use authority erred.” *See id.* § 15A-35-01(G). The Board reviews for correctness the Planning Commission’s interpretation and application of a code provision or land use ordinance. *See id.* at § 15A-35-01(H)(1); *see also Green v. Brown*, 2014 UT App 155, ¶ 10, 330 P.3d 737 (reviewing land use authority’s legal decision for correctness). The Board reviews the Planning Commission’s determination of factual and other issues under the “arbitrary and capricious” standard. *See id.* at § 15A-35-01(H)(2). While this standard mandates some deference to the Planning Commission, the Board should overturn any decision where there “is no reasonable basis to justify the action taken.” *See id.*

ISSUE PRESENTED AND ARGUMENT

Did the Planning Commission act in an arbitrary and capricious manner when it approved the requested waivers and special exceptions for Firefly Forest?

Yes. The Board should reverse the Planning Commission’s decision with respect to the approval of the (1) curb and gutter waiver; (2) road width exception; (3) access exception; and (4) cul-de-sac length exception. The Findings and Conclusions do not adequately support the

Planning Commission's decision or adequately address the safety concerns raised in the Staff Memorandum, other relevant documents, or orally at the May 2 Meeting. *See Hugoe v. Woods Cross City*, 2013 UT App 278, ¶ 12, 316 P.3d 979 (“[T]he failure of an agency to make adequate findings of fact on material issues renders its findings arbitrary and capricious unless the evidence is clear, uncontroverted and capable of only one conclusion.”). Further, the Findings and Conclusions run contrary to the evidence presented to the Planning Commission. *See Motor Vehicle Mfr. Ass’n v. St. Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that a decision is arbitrary and capricious when it runs counter to the weight of the evidence before the agency). The Findings and Conclusions and oral comments by Planning Commission members also demonstrate that the commissioners considered and relied on their own beliefs and sympathies rather than the factors relevant to the waiver and special conditions at issue. *See id.* (stating that a decision may be arbitrary and capricious where it relies on factors not contemplated under the applicable authorities). The result was a win for the Platts but a blow to the safety and enjoyment of the neighborhood’s current residents and the safety of Sandy City emergency personnel.

A. Curb and Gutter Waiver

Code § 15A-21-02 states “[t]he 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.” Section 15A-21-02 further provides that “[u]nless waived by the Planning Commission upon recommendation from the City Engineer, these improvements will be required.” Here, the City Engineer recommended the Planning Commission deny the requested waiver of curb and gutter because:

The existing streets have City water lines under the road. The proposed street will also have City water lines extended under the road to provide service to the development. Part of the purpose of curb and gutter is to control water from flooding adjacent homes. When a water line breaks, the curb and gutter is there for protection and convey the water away from adjacent properties.

The Findings and Recommendations did not address this concern raised by the City Engineer. In fact, the Findings and Recommendation did not address the curb and gutter separately from the sidewalk and parkstrips (which the City Engineer recommended be waived). Instead, the Findings and Recommendations gave the following justifications for the waiver of curb and gutter:

“It was presented by testimony of the residents of the neighborhood that sidewalk, parkstrip, curb and gutter improvements were not typical of or expected in the neighborhood.”

“The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by adding only one new home in the neighborhood where there are only twelve existing homes.”

“The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by extending the private road network 450 feet resulting in a cul-de-sac similar in length to the existing cul-de-sac and serving only one new lot from the extension.

“The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by following precedent because there is no existing curb, gutter, sidewalk or parkstrip along Deer Hollow Circle.”

“The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by having large lots and homes spaced far away from each other and retaining the rural aesthetic.”

None of the foregoing findings made any attempt to address the City Engineer’s concerns or justify the Planning Commission’s decision in light of the flood risk and other concerns raised in the Staff Memorandum, City Engineer recommendation, and the May 2 Meeting. Further, the findings stated above—and the discussion among the Planning Commission members—demonstrate that the existence of the current homes in the area and the current state of the road (which lacks sidewalks, gutters, curbs or parkstrips) was the Planning Commission’s primary rationale.⁴ But this does not take into account the changes to the area that Firefly Forest will bring and the increased risk of flooding and other issues the City Engineer discussed.

The Planning Commission’s basis for granting the waiver boils down to the belief that new construction should somehow be grandfathered in due to the existence of neighboring homes on nonconforming streets. Of course, this is exactly the sort of precedence problem the Staff Memorandum pointed out. If the Planning Commission’s decision is allowed to stand, it will

⁴ This is consistent with the discussion at that May 2 Meeting. One of the Commissioners stated, with respect to the absence of curb and gutter, “My personal opinion would be that this area has lived without it and would be fine continuing to live without it.” See Recording of Meeting at 1:57.

essentially rewrite the Land Development Code for new development east of Wasatch Boulevard. While the Planning Commission's decision is not binding precedent in the legal sense, there could be no reasonable justification to deny future applicants curb and gutter waivers where no justification was identified or required here. The Planning Commission's decision to allow the waiver is arbitrary and capricious because it failed to adequately address the evidence of flood and other risks and relied on factors irrelevant to the waiver at issue.

B. Two Access Points

Code § 15A-21-10(D) provides that “[a]t least two points of ingress/egress shall be provided for each subdivision, PUD, or multi-family project.” The Planning Commission may grant a special exception *only* if the proposal meets a number of criteria. These include (1) thirty or fewer lots are accessed by a single ingress/egress; and (2) the City Engineer and Fire Marshall review “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.” *See id.* In addition, the proposal must have (a) one or more turnarounds approved by the Fire Marshal and City Engineer; (b) emergency access; (c) the “future extension of a stub street that will provide additional access, including a temporary turn around”; and/or (d) “[a]ll buildings are equipped throughout with automatic sprinkler systems approved by the Fire Marshal and Chief Building Official.” *See id.*

Here, the Staff Memorandum points out that, although there are less than thirty homes on the single access point, the “area is at a higher safety risk than typical subdivisions due to the hillside, climatic, and geotechnical complexities of the area.” The Staff Memorandum noted that “[t]here is a high potential for impairment of Dimple Dell Circle, a single access road, due to the high snow potential this area has with narrow widths and insufficient area to push and store snow.” *See id.* at 9. “Also, there is a high risk that this road could become compromised from a wildfire, earthquake or water line break.” *See id.* “It would leave the existing and future residents in the area trapped with no way to escape or send emergency responders to the homes.” The staff and City Engineer did not believe that Firefly Forest included “sufficient improvements to address the issues of a single access road with these conditions.” *See id.*

The Findings and Conclusions did not adequately address the concerns raised in the Staff Memorandum. Rather, the Findings and Conclusions noted only that there were thirty or less homes using the single access point and the City Engineer and Fire Marshal reviewed the potential

for impairment.⁵ The Findings and Conclusions noted that there is “one or more hammerheads or other approved turn-arounds” but concede that not all the buildings are “equipped throughout with automatic sprinkler systems.” *See id.* Nevertheless, the Findings and Conclusions contain no facts or evidence that provides a reasonable justification for approving this exception over the recommendation of staff and the City Engineer. The Staff Memorandum recommended that the Planning Commission not approve this exception *despite* the existence of proposed turnarounds in Firefly Forest. The turnarounds do not address the concern discussed in the Staff Memorandum that residents and emergency responders could be trapped on the single access road in the event of a wildfire, earthquake, flood, or similar event. Because the Planning Commission offered no reasonable basis to approve this exception given the concerns raised by staff and the City Engineer, the decision is arbitrary and capricious.

C. Road Width

Code § 15A-21-11(A)(1) states that “[a]pproved private streets for access to residential dwelling structures shall have a 27-foot minimum width paved surface.” The Planning Commission may grant a special exception after considering the City Engineer’s and Fire Marshal’s recommendation. The Planning Commission must consider (a) existing site conditions, topography, *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.

Here, the Staff Memorandum stated that the City Engineer might support “some modification” to the width standard but not the requested exception to allow a twenty-foot road. *See* Staff Memorandum at 7. The Staff memorandum reasoned:

The existing improvements on Deer Hollow Circle and the proposed improvements of Firefly Circle are deficient in road width to adequately service the number of homes in the area especially because of the length of the single access road. . . . While the existing improvements may meet the minimums of the International Fire Code, they do not meet the requirement of the City’s Land Development Code. There is a major concern with regard to emergency access, especially in the event

⁵ Again, the existing conditions and “precedent” seemed to weigh heavily on the Planning Commission. During the May 2 Meeting, one of the Commissioners stated that he found “compelling” that there were already twelve houses there using only the single access point. *See* Recording of Meeting at 2:12. Another Commissioner stated “I don’t have an issue on that because I think this neighborhood has been this way for years, and I think that’s what makes it attractive. . . . I think if the twelve houses can handle it, then thirteen houses can.” *See* Recording of Meeting at 2:15.

of a home fire or wild fire. It would be unsafe to require fire-fighting and other emergency personnel to enter the area if there is only a narrow single point of access road to service the development. Personnel could be trapped and their lives put at unnecessarily heightened risk.

See id. The Fire Marshal reiterated these concerns at the May 2 Meeting.

The Findings and Conclusions state that the “Planning Commission finds that existing site conditions do not necessitate a 27-foot wide road, and that a 20-foot wide road for fire access is sufficient.” *See* Findings and Conclusion at 6. The “evidence” cited in support of this finding included the Fire Marshal’s April 24, 2019 letter stating that Firefly Forest included improvements for fire fighting infrastructure including an additional hydrant and sprinklers in the proposed new home. However, the staff had the benefit of this letter in crafting the Staff Memorandum and nevertheless concluded that the proposed improvements did not sufficiently mitigate the concern with the road width. And the city employees took pains in the Staff Memorandum and at the May 2 Meeting to point out that the Fire Marshal analyzed the risks only through the lens of the International Fire Code. The Staff Memorandum and Fire Marshal stated clearly that despite compliance with the International Fire Code, the Firefly Forest proposal presented an unsafe situation for fire-fighters or other emergency responders and for current and prospective homeowners. *See* Staff Memorandum at 7; May 2 Meeting Minutes at 4.

The Findings and Conclusions also relied on the fact that “there are only twelve existing lots and only one additional lot for a total of thirteen lots.”⁶ The Findings and Conclusions state that this demonstrates that “fire access is sufficient.” But the Findings and Conclusions do not explain how or why the number of lots justifies a departure from the fire safety recommendations of the Staff Memorandum and Fire Marshal. If the infrastructure is deficient for even the existing homes, then it does not matter if proposal is for one home or many. Even one home exacerbates the clear safety risk. It makes no sense to add one more family to an unsafe situation (even if it is just one) simply to allow the Property’s owners to make good on their investment.

The only other justifications for the special exception are that the decreased road width will aid in stormwater, runoff, and flood control and that a narrower road will be more aesthetically pleasing, which is a factor in SAO development. But neither of these provides a reasonable justification for the exception given the practical realities of the proposal for Firefly Forest. As

⁶ Similarly, at the May 2 Meeting, one of the Commissioners stated “I don’t have a problem with the twenty-foot asphalt myself. I think it is in character with what you have in there.” *See* Recording of Meeting at 2:08.

the Staff Memorandum points out, an important element of flood control is the existence of a gutter. But the Planning Commission waived that requirement. It is difficult to justify an exception (road width) in the name of flood control while also approving a waiver (curb and gutter) that undermines that same goal. In a similar vein, it would be ironic to base a road width exception on aesthetics where Firefly Forest will severely and permanently damage the neighborhood aesthetics and rural look and feel. The Findings and Conclusions fail to offer a reasonable basis for the decision to grant this exception. The decision was arbitrary and capricious.

D. Cul-de-sac Length

Code § 15A-15-04(B)(7)(b) states that, in an SAO, “[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 policy will be improved above existing conditions.” *Id.*⁷ Here, the Staff Memorandum noted that the “existing roads go far beyond the maximum lengths permitted in the code.” The Staff Memorandum concluded:

This proposed development would perpetuate what Staff views as an unsafe situation. This decision must be based upon the geographical constraints of the site or if public safety will be improved above existing conditions. While there is some proposed additional improvements to access the existing homes in the area that would not occur without this development, Staff does not feel that the geographic constraints of the area merit extending a single access road beyond 600 feet.

See Id. at 9–10.

The Findings and Conclusions again relied on the Fire Marshal’s April 24, 2019 Letter. The Findings and Conclusions acknowledged that Firefly Forest would add 450 feet of additional private street but believed that the development would improve public safety given the addition of a hydrant and two turn arounds. However, the Staff Memorandum and follow up by the Fire Marshal made clear that any public safety benefit from the turnaround would not outweigh the risk

⁷ The Oxford English Dictionary defines “consider” (for one definition) as to “[t]ake something into account when making a judgment.” However, it appears that the Findings and Conclusions assume that the term “consider” means simply that the recommendations were before the Planning Commission. This requirement, however, is not met by merely noting the recommendation or lack thereof without doing anything to resolve the underlying concerns or justify departure from the recommendation.

to residents or justify the increased density. The Planning Commission's conclusion to the contrary is not supported by the evidence cited.

The Findings and Conclusions also relied on the existence of the current nonconforming road.⁸ The Planning Commission noted that the existing road is over 1400 feet long. But, again, the existence of a nonconforming road does not justify adding an additional 450 feet and thereby exacerbating the already present public safety concerns. This attempt to justify new development with existing use elevates the Planning Commission's interpretation of "precedent" and sympathy for the new coming owner⁹ above the clearly stated public safety concerns articulated in the Staff Memorandum and emphasized by the Fire Marshal. The Planning Commission's personal beliefs and sympathies are not a proper consideration and, coupled with the lack of any other reasonable justification, demonstrates that the approval of this exception is arbitrary and capricious. *See Motor Vehicle Mfr. Ass'n*, 463 U.S. at 43 (stating that a decision may be arbitrary and capricious where it relies on factors not contemplated under the applicable statutes and authorities).

CONCLUSION

Firefly Forest does not qualify for the requested waivers and special exceptions for numerous reasons. Nothing in the Planning Commission's discussion during the May 2 Meeting or the Findings and Conclusions justify departing from the recommendations contained in the Staff Memorandum. The City Engineer and/or Fire Marshal are not on board with the waivers and special exceptions the Planning Commission has now approved. The Findings and Conclusions fail to identify any evidence that would provide a reasonable justification for approving the requested waivers and special exceptions. The evidence cited was either (1) already considered by Staff and reflected in the non-recommendations in the Staff Memorandum (as with the Fire Marshal's April 26, 2019 letter); and/or (2) not a proper consideration for the Planning Commission (as with the reliance on the current nonconforming use and/or sympathy for the Property's owners). Either way, the Planning Commission's decision on each point was arbitrary and capricious. Appellants respectfully request that the Board overturn the Planning Commission's decision.

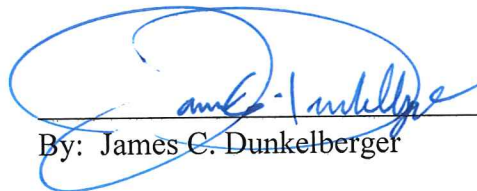
⁸ At the May 2 Meeting, one of the commissioners stated that the increased cul-de-sac length "Doesn't really increase the safety risk from what's already existing up there." *See* Recording at 2:26.

⁹ At one point during the May 2 Meeting, one of the Commissioners stated: "We are putting the shoulders on one homeowner [sic] at the end of the street the last lot because they had the unfortunate condition of not having this recorded properly. . . . I just can't get over that aspect of things. It does sort of feel like a 'gotcha'. . . . It just seems unfair." *See* Recording of Meeting at 2:30. Later, the same Commissioner said: "In my feeling, this is the wrong time to place it on the shoulders of one property owner."

Appellants are prepared to appear before the Board (in-person and/or through counsel) in support of this appeal and to answer any questions that the Board may have regarding their opposition to Firefly Forest.

Respectfully Submitted,

BENNETT TUELLER JOHNSON & DEERE



By: James C. Dunkelberger

EXHIBIT A

(Staff Memorandum)



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

April 26, 2019

To: Planning Commission
From: Community Development Department
Subject: Firefly Forest Subdivision (Prelim Review & Special Exception Requests) - 1 New Lot
3392 E. Deer Hollow Circle
[Community #29 - The Dell]

SUB-12-18-5580
SPEX-01-19-5593
3.039 Acres
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 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 4 lots, but the intent was to create 1 new buildable lot as the other lots involved already had homes on them.

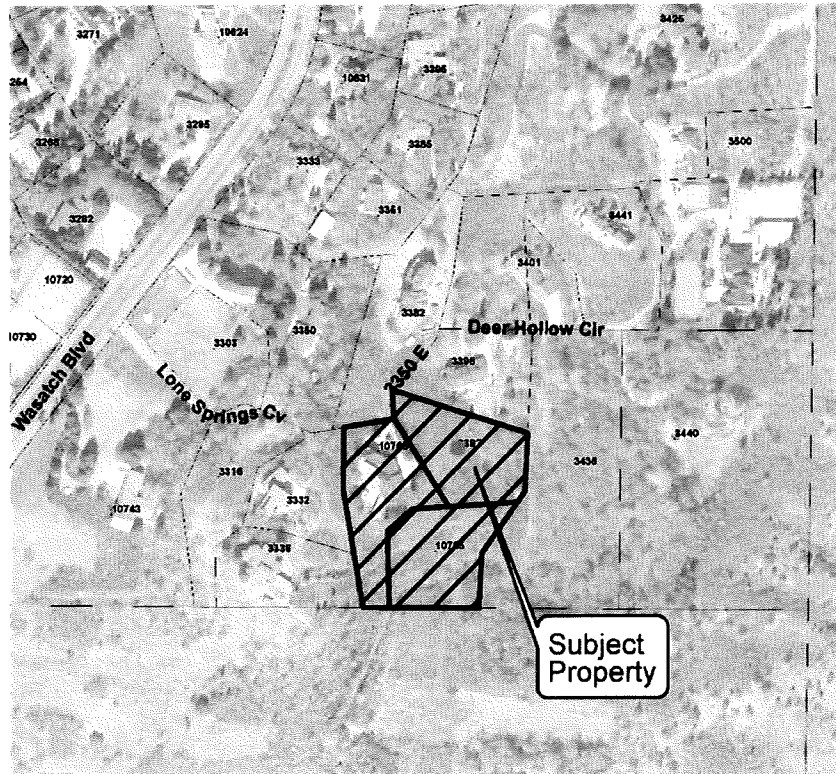
REQUEST

The applicants, Lance & Robyn Platt, are requesting preliminary subdivision and Sensitive Area Overlay review for a proposed two (2) lot subdivision. This application is revised from the design that was reviewed by the Planning Commission in May, 2018. The subject property is 3.039 acres in size and consists of one (1) existing lot and two (2) parcels. The proposed subdivision would create one new 1.89 acre lot (Lot 1), where the Platt's would build a new home, out of two parcels

that have not been created with a subdivision plat and are not yet considered buildable. It would amend the lot boundaries of an existing home (Lot 2). Lot 2 is included in the plat because the southern half of this lot was never legally split through a subdivision and is being incorporated into Lot 1.

BACKGROUND

The subject property is made up of three (3) parcels that the previous owners of the properties created by deed through the Salt Lake County Recorder's Office. One of the parcels (known as 10765 S 3350 E) was



determined to be a lot of record and granted a building permit by Salt Lake County in the mid 1980's before it was annexed into Sandy City. That original parcel included the southern part of the proposed Lot 1 and the proposed Lot 2. At some point in the early 2000's, the owner split this parcel in half to create the parcels as shown in the map above.

The applicant conducted extensive research to determine if the existing parcel (known as 3392 E Deer Hollow Cir) was created legally in the County as a lot of record (this is also the northern portion of the proposed Lot 1 area). The Community Development Director determined, after thorough review of the information provided by the applicant, that this property was not a legal buildable lot in the County prior to annexation into Sandy City (see attached decision). Staff will not allow building permits on these parcels unless they are approved through a subdivision process. Going through the subdivision process will clarify property boundaries for these parties and create a new lot that is legal for residential construction.

All of the prior development in this area has been approved under the code requirements of Salt Lake County. Since the Deer Hollow Circle area has been annexed into the City, there have been two (2) new homes built (3425 E. & 3382 E. Deer Hollow Cir). Those homes were built lots on legally created under the County's codes and were only required to make improvements that met minimum International Fire Code standards because they were already legally created lots.

The subject property is located within an area referred to as the Sensitive Area Overlay (SAO) Zone. The purpose of the SAO is to provide standards, guidelines, and criteria that will minimize environmental hazards and protect the natural scenic character of sensitive areas within Sandy City. This applies to areas located adjacent to faults, flood plain, watershed, or areas with 30% or greater slope. The project is located in an area with 30% or greater slope constraints, water

shed, and faults. Studies have found that no other geologic concerns are applicable to this proposal.

The subject property is zoned R-1-40A and is surrounded by the same zoning district to the north, west and east. There is undeveloped land zoned PUD(1.62) to the south. There are existing single-family homes to the north, west, and east of the property.

NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject parcel to notify them of the Planning Commission meeting. The applicant held a neighborhood meeting on March 6, 2018. This was well attended and several questions and concerns were raised during the meeting. A full report from the meeting is attached to this report. A new neighborhood meeting has not been held regarding this revised subdivision plan.

ANALYSIS

The R-1-40A zone is a single-family zone that requires lots to be at least 40,000 square feet in size. The “A” designation provides property owners with rights to have large animals on their property, to the degree that they maintain compliance with regulations for housing and storing of animals as found in Section 15A-11-03 of the Development Code. The zone is a standard zone in the city, which means that all provisions for setbacks, building height, lot frontage, lot size, etc. are all pre-determined by ordinance and must be adhered to. The proposed plat conforms to these dimension standards of the zone.

Because the property lies within Sandy City’s Sensitive Area Overlay (SAO), the subdivision and any structure built on the proposed lots would need to conform to the provisions of the Overlay in addition to the underlying zone. Both lots appear to meet the minimum usable area of 5,000 square feet as required by the SAO. The buildable areas for each lot will need to be shown on the final plat and ensure they comply with required setbacks, which include setback from property lines and required setback distances from areas of greater than 30% slope and fault lines. The properties are also subject to the requirements of the Wildland Urban Interface Area, which has additional requirements for building permits in the area.

There are several waivers and special exception requests associated with this proposed application. The applicant’s proposal for improvements associated with the subdivision plat does not comply with the Land Development Code unless **all** of the following waivers and special exceptions are granted:

1. Waiver of curb, gutter, parkstrip, and sidewalk
2. Special Exceptions for:
 - a. lots without public frontage
 - b. fewer than two (2) points of access
 - c. less than twenty-seven feet (27’) of asphalt width
 - d. length of cul-de-sac over 600 feet in SAO

The applicant, via their attorney, has submitted a letter providing their analysis of why these waivers and exceptions meet the criteria of the Land Development Code (see attached). If the Planning Commission approves these requests, then the applicant’s current subdivision design and the associated improvements could proceed through the review process. If they are not

approved, then it could require significant changes to the proposed improvements and may require that the revised application return to the Planning Commission for another preliminary and/or final review.

Access:

The subject properties only have a single point of access via a fifty-foot (50') wide private road easement, Deer Hollow Circle. Though the easement is fifty-foot (50') wide, the existing road varies in width from seventeen (17') to twenty-five feet (25') with no curb and gutter, parkstrips, or sidewalks. Most of the road width is closer to twenty-feet (20'). It currently services twelve (12) homes. The proposed subdivision shows a new private road, called Firefly Forest Circle, which replaces an existing private driveway that leads back to the existing home, 10765 South 3350 East. This private road would begin at the ninety-degree bend in Deer Hollow Circle between the two proposed lots and end in a modified "T" hammerhead on the proposed Lot 1. The proposed private road would have an improved width of twenty-feet (20'), with no curb or gutter. As proposed, Firefly Circle would have shared ownership and easement between Lots 1 and 2 once it enters the boundary of the subdivision (the first 200' of the road is within a previously established fifty-foot (50') private roadway easement). The applicant is proposing no further improvements to Deer Hollow Circle. Beginning at Wasatch Boulevard, the overall length of Deer Hollow Circle is approximately 1400 feet. The proposed Firefly Circle connects to Deer Hollow Circle at a point that is 950 feet from Wasatch Boulevard and is approximately 450 feet long, making it 1400 feet in length overall.

The proposed improvements as shown in the application do not meet all of the minimum requirements of the Sandy City Land Development Code. The standards require that any new development on a private street to be further improved to meet our current standards, which include:

1. lots with public street frontage
2. subdivisions design with two points of access
3. private road improvements of twenty-seven feet (27') of asphalt, curb and gutter, and potentially parkstrip and sidewalk improvements
4. maximum lengths of cul-de-sac (or single access) roads of 600 feet in a SAO zone, which is 200 feet longer than what would be allowed outside of the SAO.

These standards would require that Deer Hollow Circle be upgraded to current roadway width and improvement standards and that Firefly Circle also be designed to these standards. The standards would also require that a secondary access point be provided. The proposal falls short of meeting these development code requirements. As such, the applicants are seeking several waivers and special exceptions from the requirements stated above. Staff will analyze each request in detail below. The recommendations from the Fire Marshal and City Engineer are attached to this report. It is important to note that the response from the Fire Marshal only discusses whether the requested waivers or special exceptions are allowable under the International Fire Code and does not analyze the requirements of the Land Development Code.

Waivers:**WAIVER - Curb, Gutter, Parkstrip, and Sidewalk**

The applicant is not proposing any curb, gutter, parkstrip, or sidewalk to be installed in connection with the proposed development. The Planning Commission **may waive** the requirement for curb and gutter, parkstrip, and sidewalk with a recommendation from the City

Engineer and after evaluating the following criteria found in the sections of Land Development Code shown below:

Section 15A-21-02(**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.**

Section 15A-21-10(N) (**bold** and underline added for emphasis):

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.

Staff Analysis and Recommendation for Waiver

There are twelve (12) existing homes serviced on the existing private road, and the proposal would add one (1) more home. The cul-de-sac length is approximately 1400 feet long. Sidewalks and parkstrips do not exist in the adjoining developments. The lots are large and homes are spaced far away from one another. The area has an existing rural aesthetic where there is not a formal separation of pedestrians and automobiles. All homes are accessed from a private road design. The City Engineer supports the waiver of sidewalks and parkstrips to this requirement.

The waiver of curb and gutter requirements **are not supported by the City Engineer.** The existing streets have City water lines under the road. The proposed street will also have City water lines extended under the road to provide service to the development. Part of the purpose of curb and gutter is to control water from flooding adjacent homes. When a water line breaks, the curb and gutter is there for protection and convey the water away from adjacent properties.

* * * * *

Special Exceptions:**SPECIAL EXCEPTION #1 - Lots without Public Frontage**

As these lots will be accessed from a new private street that extends from an existing private street, they will not have frontage onto a public street. The Planning Commission may grant a special exception for this after evaluating the section of Land Development Code shown below:

Section 15A-21-21(B) (**bold** and underline added for emphasis):

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.

Staff Analysis and Recommendation for #1

There is no reasonable way to extend a public road to the proposed development. As the existing main access road is a private street, this continuation of private roads and lots without public frontage is acceptable. The lots meet the minimum lot width frontages on the proposed private street, Firefly Circle. Therefore, this is a reasonable request for deviation from the standard and Staff and the City Engineer support it.

* * * * *

SPECIAL EXCEPTION #2 - Less than Twenty-Seven Feet (27') of Road Width

The applicant is not proposing to widen or further improve Deer Hollow Circle, nor does Firefly Circle have the required improvements. 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 and after evaluating the following criteria found in the sections of Land Development Code shown below:

Section 15A-21-11(A)(1) (**bold** and underline added for emphasis):

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.

Section 15A-15-04(B)(7)(c) (**bold** and underline added for emphasis)

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.

Staff Analysis and Recommendation for #2

The site is located in the high bench area where there are steep slopes, geologic hazards, and forest fire risks. There are competing interests with hillside developments. One of the purposes of the SAO is to protect the natural scenic character of the area and promote minimal removal of natural vegetation by minimizing improvements and disturbance to the natural environment. The Land Development Code seeks to balance that interest with the needs to provide adequate public services of water, emergency vehicle access, and adequate fire breaks. The recent fires in California provide a reminder that these concerns are valid issues that affect the health, safety and welfare of our City. Deficient improvements can lead to loss of property and life.

The existing improvements on Deer Hollow Circle and the proposed improvements of Firefly Circle are deficient in road width to adequately service the number of homes in the area especially because of the length of the single access road. The existing single point access road, Deer Hollow Circle, is already more than double the lengths that has been determined appropriate by the Land Development Code. While the existing improvements may meet the minimums of the International Fire Code, they do not meet the requirement of the City's Land Development Code. There is a major concern with regard to emergency access, especially in the event of a home fire or wild fire. It would be unsafe to require fire-fighting and other emergency personnel to enter the area if there is only a narrow single point of access road to service the development. Personnel could be trapped and their lives put at unnecessarily heightened risk.

Staff would **support some modification** to this width standard in an effort to balance these competing interests, but does not support the requested exception to allow no additional improvement beyond the bare minimum International Fire Code requirements (20' pavement width). The City Engineer has recommended **not approving** this request.

* * * * *

SPECIAL EXCEPTION #3 - Fewer than Two (2) Points of Access

The development code also requires two (2) points of ingress/egress for a subdivision. The applicant is not proposing to provide a looped road to achieve this standard nor provide a stub street that would eventually create a second point of access to the area. 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 and after evaluating the following criteria found in the sections of Land Development Code shown below:

Section 15A-21-10(D) (**bold** and underline added for emphasis):

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.

Staff Analysis and Recommendation for #3

This area does service fewer than thirty (30) homes, but this area is at a higher safety risk than typical subdivisions due to the hillside, climatic, and geotechnical complexities of the area. There is high potential for impairment of Dimple Dell Circle, a single access road, due to the high snow potential this area has with narrow widths and insufficient area to push and store snow. Also, there is a high risk that this road could become compromised from a wildfire, earthquake or water line break. It would leave the existing

and future residents in the area trapped with no way to escape or send emergency responders to the homes. The proposed improvements would represent an improvement to some of the deficiencies in the area in the form of additional hydrants, fire turn-around(s), fire sprinklers in the proposed new home, and a twenty-foot (20') road improvement that would access an existing home. However, Firefly Circle is just as susceptible to the issues discussed on Dimple Dell Circle. This application causes a concern of increasing the potential risk to the area by adding a new home and accessory buildings without requiring sufficient improvements to address the issues of a single access road with these conditions.

Staff and the City Engineer do not recommend approval of this request. We support a solution that involves a full access connection of Firefly Circle to other roads in the area, or provide an emergency access that connects to another nearby road network.

* * * * *

SPECIAL EXCEPTION #4 - Length of Cul-de-sac Over 600 Feet

The applicant is proposing to add an additional home to a single access road, Firefly Circle via Deer Hollow Circle, which currently exceeds the maximum length allowed in the code. The typical maximum length of a cul-de-sac in a typical subdivision is 400 feet. There is no exception allowed for these instances. In the SAO, these are permitted up to 600 feet. The Planning Commission may grant a special exception to have a cul-de-sac or single access road extend beyond the 600 feet, after considering a recommendation from the City Engineer and Fire Marshal and after evaluating the following criteria found in the sections of Land Development Code shown below:

Section 15A-15-04(B)(7)(b) (**bold** and underline added for emphasis)

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.

Staff Analysis and Recommendation for #4

The existing roads go far beyond the maximum lengths permitted in the code. These limitations are founded on principles of safety. This proposed development would perpetuate what Staff views as an unsafe situation. This decision must be based upon the geographical constraints of the site or if public safety will be improved above existing conditions. While there are some proposed additional improvements to access the existing homes in the area that would not occur without this development, Staff does not

feel that the geographic constraints of the area merit extending a single access road beyond 600 feet. The proper resolution to this issue is to connect this development to other roads in the area. Staff and the City Engineer **do not support** this request.

* * * * *

CONCERNS

Staff has the following concerns regarding this proposal as submitted by the applicant:

1. City Engineer and Fire Marshal Recommendations. The City Engineer and Fire Marshal have made diverging recommendations in some instances. The City Engineer does not support most of the requested special exceptions and waivers as proposed by the applicant. His stance is based on not having sufficiently designed and sized infrastructure improvements for additional densification to an area that has deficient improvements to adequately service the area and does not meet current codes and standards for new development. The Fire Marshal does support the requests, if they will provide improved access that would meet the International Fire Code standards which would help improve access and ability to service the existing homes in the area and the new development. The Fire Marshal's review does not reflect an analysis of the City's Land Development Code Requirements and is only a review of International Fire Code requirements.
2. Precedent. Staff is concerned with the number of special exceptions and waivers being requested for this subdivision and the potential impact this decision will have on similarly situated properties. While each situation and application has its own unique set of circumstances (which is why we have special exceptions from the typical standards to adapt to those circumstances), it is not anticipated that all available waivers and special exceptions will be combined to create a long, narrow single access road in a geographical location that is uniquely susceptible to fire, earthquake, and topographical constraints. This case *is* similar to other areas that have been annexed from Salt Lake County and other properties east of Wasatch Boulevard in the SAO zone. There are standards established in the development code for the promotion of the health, safety and welfare of the public. Deviations or special exceptions should still promote the health, safety and welfare. Staff is concerned that a less than ideal situation will be made worse by not requiring full improvements as required by city code.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission determine that the following waivers and special exception requests be **approved** for the **Firefly Forest Subdivision**, located at approximately 3392 E. Deer Hollow Circle:

1. Waiver of sidewalk and parkstrip
2. Special Exceptions for lots without public frontage

This determination is based on the following findings:

1. The City Engineer and Fire Marshal recommend approving the special exceptions and waivers shown above from the Land Development Code requirements.
2. The criteria to approve the waiver and special exception as required in the code has been met in that the adjoining development has an existing precedent of no sidewalks or parkstrips, and is a private street.

Staff recommends that the Planning Commission determine that the following waivers and special exception requests be **denied** for the **Firefly Forest Subdivision**, located at approximately 3392 E. Deer Hollow Circle:

1. Waiver of curb and gutter
2. Special Exceptions for:
 - a. less than two (2) points of access
 - b. less than twenty-seven feet (27') of asphalt width
 - c. length of cul-de-sac over 600 feet

This determination is based on the following findings:

1. The City Engineer does not recommend approving the special exceptions or waivers that have been requested from the City Development Code requirements.
2. The criteria to approve the Special Exceptions as required in the code have not been met in that the intent of the Standard Specifications and Details for Municipal Construction is not met in the proposal in that there is high potential for impairment of a single access road; there is no emergency access, nor stub street to provide secondary access; the geographical constraints of the site do not warrant deviations from public safety interests; and, the existing site conditions, and existing improvements are insufficient to ensure the health, safety, and welfare without further improvement.

Staff recommends that the Planning Commission determine that the preliminary subdivision and Sensitive Area Overlay zone reviews area **are not** complete for the **Firefly Forest Subdivision**, located at approximately 3392 E. Deer Hollow Circle, based on the following findings:

1. That the proposed subdivision does not meet city code requirements for private road design, two (2) points of ingress/egress, exceeds maximum lengths of cul-de-sac (or single access) roads of 600 feet in a SAO zone.
2. The City Engineer does not recommend approving the special exceptions that have been requested from the Land Development Code requirements.
3. The criteria to approve the special exceptions as required in the code have not been met.

* * * * *

If the Planning Commission *disagrees* with staff and would rather *approve* the proposed subdivision with one or all of the waivers or special exceptions that have been requested, the following is some recommended language:

That the Planning Commission determines that the preliminary subdivision and Sensitive Area Overlay zone reviews area **are complete** for the **Firefly Forest Subdivision**, located at approximately 3392 E. Deer Hollow Circle, and that the following waivers and special exception requests be approved:

1. Waiver of curb, gutter, parkstrip, and sidewalk
2. Special Exceptions for:
 - a. lots without public frontage
 - b. less than two (2) points of access
 - c. less than twenty-seven feet (27') of asphalt width
 - d. length of cul-de-sac over 600 feet in SAO

This determination is based on the following findings and conditions:

Findings:

1. *(You'll need to provide findings for each of the waivers and special exceptions that are to be approved based on the criteria listed above)*

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, except as otherwise approved by waivers or special exceptions granted by the Planning Commission.
3. That all residential lots comply with all requirements of the R-1-40A zone, Wildland Urban Interface Area, and Sensitive Area Overlay zone.
4. That a vegetation plan be submitted to staff for final review.
5. That any area equal to or in excess of a 30% slope be indicated (crosshatched) on the final plat, and that perspective builders and homeowners be apprised of the restrictive nature of the hillside lots.
6. That the existing slope ratio be unaltered and that grading and landscaping of any of the hillside areas have approval of the Sandy City Engineering Division in accordance with the Sensitive Area Overlay Zone prior to building permits being issued.
7. That grading, home placement, and vegetation plans be submitted and approved for all lots prior to issuance of a building permit. The grading plan shall include a driveway plan and profile to assure conforming driveway slope. Any down sloping driveway will require approval by the City Engineer.
8. That structures comply with the Urban Wildland Interface requirements. This means that all homes and accessory structure be constructed of materials approved with a minimum of a one hour rated fire resistive construction on the exterior side or constructed with approved noncombustible materials. This will be determined on a case-by-case basis at building permit review. Also, that an approved noncombustible or fire treated roof covering be utilized for each home.
9. That homes be placed in a manner that minimizes the removal of vegetation on each property. Where it must be removed to accommodate a house, areas with the least mature vegetation should be prioritized for home locations over areas with more mature vegetation.
10. That compliance be made with the Sandy City Water Policy, e.g., water line extensions,

connections, water rights, and fire protection.

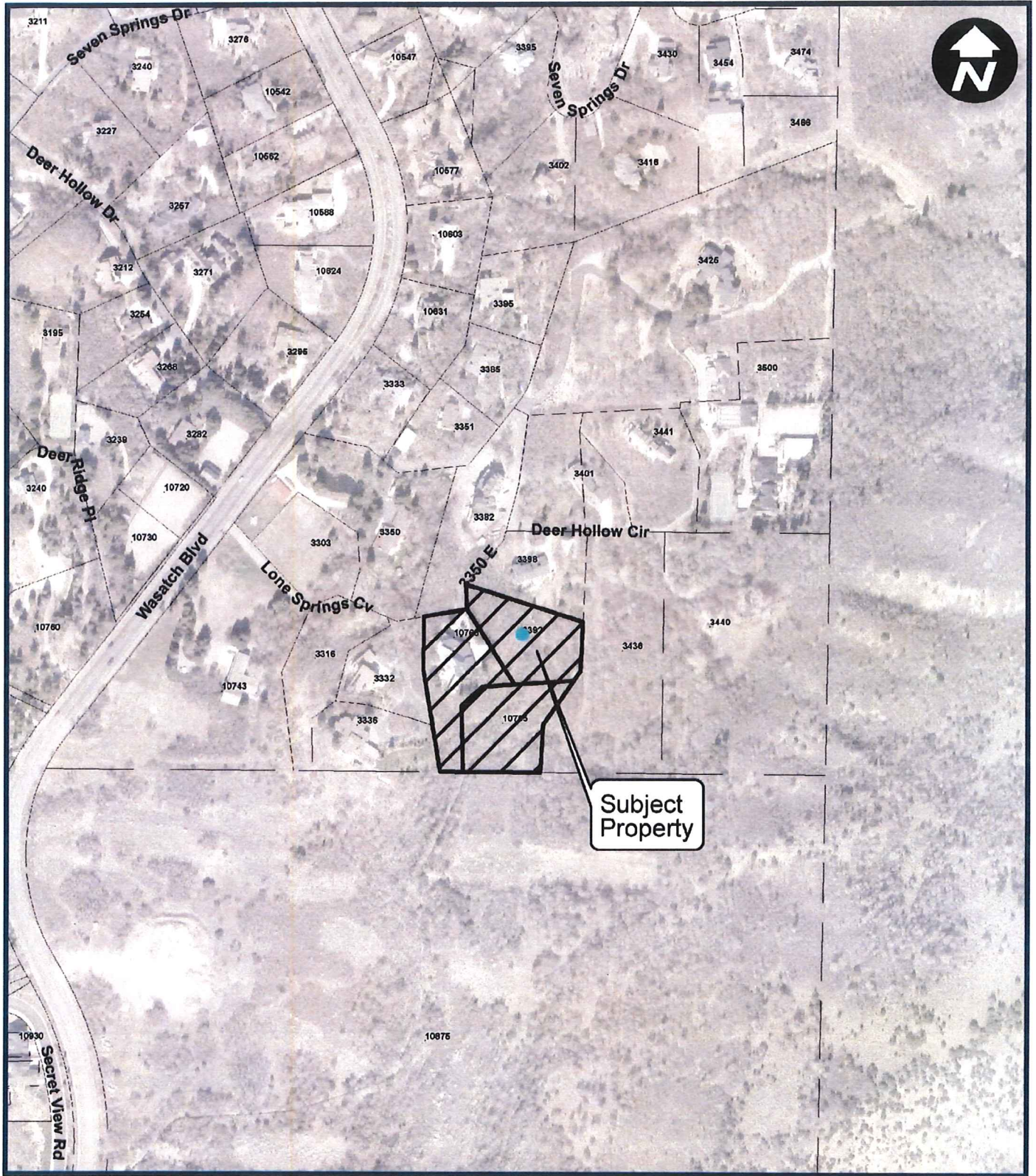
11. That a shared maintenance and access agreement for Lots 1 and 2 be recorded with the plat for the shared private road, Firefly Circle.
12. That the private road, Firefly Circle, be installed as part of the subdivision improvements and be bonded as part of the subdivision improvements, and that the engineering and configuration of the driveway be reviewed and approved by the City Engineer.
13. That the subdivision be brought back to the Planning Commission for Final Subdivision review.
14. All requirements of the International Fire Code be met for Deer Hollow Circle and Firefly Circle.

Planner:

Reviewed by:



Mike Wilcox
Zoning Administrator



SUB-12-18-5580
Firefly Forest Subdivision
3392 E Deer Hollow Circle

PRODUCED BY MIKE WILCOX
 THE COMMUNITY DEVELOPMENT DEPARTMENT



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

Community #29 Meeting Summary

Date: Wednesday, 3/13/18

Location: Alta Canyon Sports Center

Community #/Name: 29, The Dell

Community Coordinator: Aaron Erickson

Project Name: Lance Platt Subdivision

Number of Attendees: 15

Applicants: Lance and Robyn Platt

Number of Invitees: 21 Properties

Length of Meeting: 90 minutes

Notice Radius: 500 ft.

Project Description: Applicant's intent is to build 1 new home on 2 parcels. They want to propose two different options, a flag lot or private road to meet lot frontage requirements. They only want to widen the private lane that leads to the Gou's home from 12 ft. to 20 ft. Instead of widening the road all the way to Wasatch.

Community Comments:

1. Positive: N/A
2. Concerns:
 - Widening of the road – 2012 City Council meeting, it was promised not to widen the roads at the time of the annexation. No curbs, no street lights, no changes.
 - In the minutes of the City Council meeting – Steve Smith promised that. They only annexed into the city under that promise.
 - If the road is widened how will this be expanded?
 - Number of trees being taken down
 - Widening the road will take out some trees on the Olsen's lot
 - Fire protection states that you have to wipe out 50 ft. of trees, unless you build exterior of home with certain fire-rated materials.
 - Neighboring residents are worried about total number of trees that will be taken out.
 - Proximity to neighboring homes
 - Storm drainage
 - They will have storm ponds
 - Water flow and pressure
 - Due to some changes with a new tank they have met code without having to loop.
 - Private property rights of the Olsen's Pearce's and Gou's
 - The Gou's will have to give consent for the subdivision



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

- The Olsen's and Pearce's will have to give consent to widen the road
- Fire Protection
 - Applicant will be meeting fire code requirements
 - They will have to have a T or Y-turn around
- Can they build on the southern lot?
 - The applicants stated that due to the slope of the land – the City will not allow them to do this on portions where there is 30% or greater slope.
- Fault/Earthquake
 - Applicants completed a study – dug 140 ft. long, 7 ft. deep to verify it is okay to build there.

Community #29, The Dell Meeting

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Jennifer Rogers	3336 E Lone Springs Cove	jennifere@lonespring.com
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Car Bronvem		
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Nelda Davidson	10743 S. Wasatch Blvd	Sandy
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BRUCE R. BAIRD PLLC

ATTORNEY AND COUNSELOR
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April 22, 2019

Sandy City Planning Commission
Attn: Chair Person

**Re: Firefly
Opinion Regarding Requested Exceptions**

Dear Chair Person and Members of the Planning Commission:

I am counsel for Lance and Robyn Platt regarding the above-reference matter. In that connection I have reviewed the Platt's application, the City's applicable Codes and other standards, the prior application the Staff Reports and Department Reports related thereto and the minutes/transcript of the Planning Commission hearing on the prior application.

My findings clearly indicate that the exception requirements were not fully considered in the previous decision. Included with this letter you will find a summary of the requested "exceptions" for the Firefly project and why the project is entitled to the exceptions. I believe that the analysis in the summary is correct.

If the exceptions are not granted then the City is effectively rendering the property valueless. Sandy City has treated these parcels as separate legal parcels by way of taxation and other actions from the beginning. If the property is rendered valueless by regulatory actions of Sandy City that would constitute a regulatory taking requiring Sandy City to pay just compensation. In that regard I call your attention to *Arnell v Salt Lake County*, 2005 UT App 165. Here, given the Platt's proposal adequately addresses the safety requirement established by the Fire Code, Sandy City is not relieved of "Takings" liability by *Palazzolo v Rhode Island*, 533 U.S. 606 (2001).

I look forward to representing my clients at the Planning Commission hearing on this matter. I trust that the Planning Commission will do the right thing and approve the appropriate exceptions to allow the project to move forward.

Sincerely,



Bruce R. Baird

Code	Standard	Code	Exception
15A-21-02	Curbs, Gutters, Sidewalks Curbs, gutters, and sidewalks to be installed on all existing and proposed streets along the frontage of any lot within a subdivision in conformance with the Sandy City Standard Specifications.	15A-21-10(N)	The Planning Commission may waive [the requirement for sidewalks] after considering a recommendation from the City Engineer and Fire Marshal. The following criteria must be evaluated prior to waiving these improvements: <ol style="list-style-type: none"> 1. 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

Department	Comments	Requirement Met
City Engineer	Required "to ensure any additional densification of the City occurs with adequately designed and sized infrastructure." If the private road is improved from Wasatch Blvd to the subdivision with 27' of asphalt with 5' curb and gutter, then a recommendation to waive sidewalk...could be approved. <i>REF: SPECIAL EXCEPTION NON-RECOMMENDATIONS, Ryan Kump Staff Report</i>	While it is unknown whether the City Engineer considered all 5 conditions, the CE made a recommendation which meets the requirement for the PC to grant an exception. N/A
Fire Department Zoning Administrator	No Comment Public Works advised the DRC that this area does not have an underground drainage system to support curb and gutter and that the addition of such would only exacerbate a runoff problem. <i>REF: Development Committee Meeting, December 18, 2017.</i>	
Planning Commission	Verbally agreed to waive. One Planning Commissioner stated that adding curb, gutter and sidewalks, "Would be a mistake and disastrous to the neighborhood and community." Not disputed by any other PC member. <i>REF: AUDION FILE, Planning Commission Meeting on May 17, 2018.</i>	
Platts' Response	There were promises made to the existing neighbors during the annexation process that the City would not require curb, gutter, sidewalks or street lights. <i>REF: Community #29 Meeting Summary, 03/13/18 Staff Report.</i> Concerning Exception Ground # 3, "precedence", if that is the word actually intended, it is defined as: 1) act or fact of <u>preceding</u> ; 2) the right to <u>precede</u> in order, rank, or importance; priority; the fact of <u>preceding</u> in time; antedating; 4) the right to precede others in ceremonies or social formalities; 5) the order to be observed in ceremonies by persons of different ranks, as by diplomatic protocol. The "precedence" (or "precedents") of what actually currently exists on the area supports the Platts' request.	<ol style="list-style-type: none"> 1. There are 12 total homes serviced by Deer Hollow Cir. 2. Length is approx. 1,100'. 3. See Comments 4. See Plat Map for Configuration of Lots 5. This is a Private Road design.

Code	Standard	Code	Exception
15A-21-10(F)	Standards for Private Streets Private Street: 32 feet (27 feet pavement width minimum)	15A-21-11(A)(1)	The Planning Commission may grant a special exception to allow less than a 27' pavement width, after considering a recommendation from the City Engineer and Fire Marshall. The following conditions are to be taken into consideration: 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 f) Public Utilities

Department	Comments	Requirement Met
City Engineer	Required "to ensure any additional densification of the City occurs with adequately designed and sized infrastructure." REF: <i>SPECIAL EXCEPTION NON-RECOMMENDATIONS, Ryan Kump Staff Report</i>	Yes. The CE made a recommendation which meets the requirement for the PC to grant an exception.
Fire Department	"I have found the plans to be compliant with all current Utah State Fire Code, concerning access and water supply." REF: <i>Letter of Recommendation for Firefly Forest Sub., Robert DeKorver, May 10, 2018 Staff Report</i>	Yes
Zoning Administrator	"Development Staff agrees that there may be some good that will come from the proposal, but the potential for negative outcomes outweigh the good... The City is concerned that we are making a less than ideal situation worse by not requiring full improvements as required by code." REF: <i>Staff Report Memorandum, Mike Wilcox, May 9, 2018</i>	
Planning Commission	Verbally agreed to waive this requirement at the Planning Commission meeting on May 17, 2018, but not specifically voted on. One Planning Commission member stated that widening the road to 27', "Would be a mistake and disastrous to the neighborhood and community." Not disputed by any other Planning Commission Member. REF: <i>Audio file Planning Commission Meeting, May 17, 2018.</i>	
Platts' Response	The Platts have a 50' Right-of-Way from the Platts property to Wasatch Blvd making the requirement possible, however it would cause significant destruction to the neighborhood.	b. Proposed plan includes fire access and water availability. c. Proposed plan reduces the number of lots by combining two parcels. e. Proposed plan accounts for flood control.

Code	Standard	Code	Exception
15A-15-04(B)(7)(b)	Cul-de-sac May not exceed 600' in length	15A-15-04(B)(7)(b)	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.

Department	Comments	Requirement Met
City Engineer	Required "to ensure any additional densification of the City occurs with adequately designed and sized infrastructure." If the private road is improved from Wasatch Blvd to the subdivision with 27' of asphalt with 5' curb and gutter, then a recommendation to [an] exception the maximum lengths could be provided. <i>REF: SPECIAL EXCEPTION NON-RECOMMENDATIONS, RYAN KUMP STAFF REPORT</i>	Yes
Fire Department	"The applicants have improved the area for fire response by adding an additional hydrant that will service these two lots, provided for 20' of road access to their property and others, and provided for two fire department turn-arounds. They have also provided for their safety and any delay in fire operations by making the decision to sprinkler their home for early response fire suppression, when it was not a requirement to do so." <i>REF: Letter of Recommendation for Firefly Forest Sub., Robert DeKorver, May 10, 2018 Staff Report</i>	Yes
Zoning Administrator	"Development Staff agrees that there may be some good that will come from the proposal, but the potential for negative outcomes outweigh the good... The City is concerned that we are making a less than ideal situation worse by not requiring full improvements as required by code." <i>REF: Staff Report Memorandum, Mike Wilcox, May 9, 2018</i>	
Planning Commission	It was not understood that the Platts would be improving the current conditions for public safety with the addition of a fire hydrant, emergency turn-around, and vegetation removal.	
Platts' Response	The Platts clearly meet the requirement for an exception based on Platts proposal to improve the public safety above the existing conditions as referenced here: <ol style="list-style-type: none"> 1. Improve the existing dead end road to 20' width. 2. Add fire apparatus turn-around to support Guo residence. 3. Add fire hydrant to support Guo residence. 4. Removal of some existing vegetation reducing the fire threat to other homes. 5. Drainage retention system to support storm water minimizing run-off impact on the surrounding area. <i>REF: Platt Letter to Planning Commission, April 28, 2018</i>	

Code	Standard	Code	Exception
15A-21-10(D)	Two Points of Access At least two points of access shall be provided for each subdivision	15A-21-10(D)	<p>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:</p> <ol style="list-style-type: none"> 1. 30 or fewer lots are accessed from the single ingress/egress. 2. Reviewed the potential for impairment of such single access resulting from vehicle congestion, conditions of terrain, climatic conditions or other factors that could limit access and have made either a positive or negative recommendation. 3. The project has one or more of the following as, determined and recommended by the City Engineer and Fire Marshal: <ol style="list-style-type: none"> a) Cul-de-sac(s), hammerhead(s), or other approved turn-around(s) approved by the Fire Marshal and City Engineer b) An emergency access c) The future extension of a stub street that will provide additional access d) All buildings are equipped throughout with automatic sprinkler systems approved by the Fire Marshal and Chief Building Official

Department	Comments	Requirement Met
City Engineer	Required "to ensure any additional densification of the City occurs with adequately designed and sized infrastructure." REF: <i>SPECIAL EXCEPTION NON-RECOMMENDATIONS, Ryan Kump Staff Report</i>	Yes
Fire Department	"The applicants have improved the area for fire response by adding an additional hydrant that will service these two lots, provided for 20' of road access to their property and others, and provided for two fire department turn-arounds. They have also provided for their safety and any delay in fire operations by making the decision to sprinkler their home for early response fire suppression, when it was not a requirement to do so." REF: <i>Letter of Recommendation for Firefly Forest Sub., Robert DeKorver, May 10, 2018 Staff Report</i>	Yes
Zoning Administrator		
Planning Commission	Sticking point for the Planning Commission based on safety and "precedence". REF: <i>Planning Commission Meeting, May 17, 2018, Audio File</i>	
Platts' Response	While there is not a feasible solution available from the civil engineers who have evaluated two points of access, the Platts meet all of the conditions listed above required to receive an exception: <ol style="list-style-type: none"> 1. There are only 12 homes accessed from the single ingress, well under the requirement of 30 or fewer. 2. The City Engineer reviewed the potential for impairment and made a negative recommendation. The Fire Marshal made a positive recommendation. 3. The project does have one or more of the required criteria: <ol style="list-style-type: none"> a. The proposed turnaround has been approved by both the Fire Marshal and City Engineer. b. The proposed buildings will be equipped throughout with automatic sprinkler systems to be approved by the Fire Marshal and Chief Building Official. 	Yes



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

November 27, 2018

Dear Mr. Baird:

This letter is the final administrative decision in response to your letter of August 24, 2018 (the "August Letter"), regarding the Firefly Subdivision at 3392 East Deer Hollow Circle. I understand from your recent correspondence that you were unable to get anything from Salt Lake County in support of the claims set forth in the August Letter. Therefore, this determination is based on information provided in the August Letter and as further researched by Sandy City staff. The August Letter sets out the following events, chronologically:

- 1) May 5, 1970 - Claire Payzant acquired 5 acres of land from Venable Investment ("Payzant Parcel")
- 2) June 28, 1983 - Massoud Parvar acquired a 1.707-acre parcel immediately to the west of the Payzant Parcel ("1.7 Acre Parcel") from Clarence Bohm
- 3) January 9, 1989 - David & Marilyn Williams acquired one acre of the Payzant Parcel ("Williams Parcel")
- 4) September 27, 1993 - Massoud Parvar acquired 3/8 acre of land from Russ Gerson ("3/8 Acre Parcel")
- 5) July 11, 1996 - Lynette Slattery acquired one acre of the Payzant Parcel ("Slattery Parcel")
- 6) March 8, 2002 - Massoud Parvar combined the 1.7 Acre Parcel and the 3/8 Acre Parcel to create an approximately two-acre parcel ("Parvar Parcel")
- 7) April 26, 2004 - Parvar split the Parvar Parcel into two parcels of approximately one acre each ("Parvar Split").
- 8) April 9, 2018 - Platts acquired one of the one-acre Parvar Split parcels and the Slattery Parcel

Prior to March 1993, it is believed that the Salt Lake County definition of "subdivision" included a division of land into three or more lots. It is further believed that Salt Lake County adopted an ordinance that became effective on or about March 4, 1993, defining "subdivision" as a division of land into two or more lots.

On October 26, 2012, Sandy City annexed unincorporated Salt Lake County property into Sandy City in an annexation referred to as the "Payzant Annexation to Sandy City." This annexation included one of the Parvar Split parcels and all of the Payzant Parcel except the Williams Parcel.


The analysis regarding the various parcels mentioned in the chronology above is as follows:

- 1) The acquisition of the Payzant Parcel occurred in 1970. The information presented to me indicates that this acquisition was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into three or more lots. Therefore, this acquisition appears to have not required a subdivision process to be followed in Salt Lake County.

- 2) The acquisition of the 1.7 Acre Parcel occurred in 1983. The information presented to me indicates that this acquisition was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into three or more lots. Therefore, this acquisition appears to have not required a subdivision process to be followed in Salt Lake County.
- 3) The acquisition of the Williams Parcel occurred in 1989. The information presented to me indicates that this acquisition was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into three or more lots. Therefore, this acquisition appears to have not required a subdivision process to be followed in Salt Lake County.
- 4) The acquisition of the 3/8 Acre Parcel occurred in September 1993. The information presented to me indicates that this acquisition was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into two or more lots. Therefore, this acquisition required a subdivision in Salt Lake County, but no subdivision process was followed.
- 5) The acquisition of the Slattery Parcel occurred in 1996. The information presented to me indicates that this acquisition was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into two or more lots. Therefore, this acquisition required a subdivision in Salt Lake County, but no subdivision process was followed.
- 6) The combining of the 1.7 Acre Parcel and the 3/8 Acre Parcel occurred in 2002. The information presented to me indicates that the owner combined two parcels, one of which was legally created and one of which was not. Therefore, this acquisition appears to have required an additional process to be followed in Salt Lake County, but no process was followed.
- 7) The Parvar Split occurred in 2004. The information presented to me indicates that this was a division of land into two parcels. It occurred when Salt Lake County defined "subdivision" as a division of land into two or more lots. Therefore, the Parvar Split required a subdivision in Salt Lake County, but no subdivision process was followed.

Neither of the two parcels purchased by the Platts, which included the Slattery Parcel (addressed in enumerated paragraph 5 above) and one of the Parvar Split parcels (addressed in enumerated paragraph 7 above), was created in compliance with Salt Lake County subdivision requirements. Therefore, if the Platts desire to develop the property, they must first seek and obtain subdivision approval in compliance with the requirements of the Sandy City Land Development Code.

The August letter additionally discusses annexation, taxation, etc. and suggests that tax assessments and annexation exempt the property from Sandy City's subdivision requirements. The August Letter provides no citation to any law that supports this claim, and I found no legal support in any State or local law or ordinance. The assertion that the Platts could not have known that they were purchasing illegally created, un-subdivided parcels is also not supported by fact or law.


James L. Sorensen
Community Development Director



DEPARTMENT OF PUBLIC WORKS

Kurt Bradburn
Mayor

Matthew Huish
Chief Administrative Officer

Michael Gladbach, P.E.
Director

MEMORANDUM OF RECOMMENDATIONS TO THE PLANNING COMMISSION

Date: April 26, 2019
To: Mike Wilcox, Zoning Administrator
From: Ryan C. Kump, P.E., City Engineer
Project Name: Firefly Forest Subdivision
Plan Case Number: SUB-12-18-005580
Project Address: 3392 Deer Hollow Circle

A review of the above-mentioned project has been made. Consideration of requests, by the Developer, for various waivers and exceptions, has also been made. Following are recommendations and comments from the Sandy City Engineer:

* * * * *

Developer Request: Grant waiver of requirement of curbs, gutters, drive approaches, sidewalks and parkstrips.

Land Development Code: 15A-21-02 Curbs, Gutters, Sidewalks and Drive Approaches

Land Development Code: 15A-21-10(N) (Parkstrips and Sidewalks)

City Engineer Response: Grant waiver for requirement of drive approaches, sidewalks and parkstrips. Do not grant waiver for requirement of curb and gutter.

The City Engineer supports a waiver of the sidewalk, parkstrip, and drive approaches. The roadway will be a private road, and it is common, in private roadway networks, that parkstrips and sidewalks are not included in the infrastructure. This lends to the more rural and rustic aesthetic which is desired in many of these neighborhoods.

The City Engineer recommends that no waiver be granted for curb and gutter. It should be required as part of the development of this subdivision. With a City-owned-and-maintained waterline in this road, should the waterline break, the curb and gutter will help to channel the

water and prevent flooding of homes and property along the roadway, thus reducing the City's liability. This is consistent with our "private street" standard (roadways more than 150 feet in length and providing access to more than two lots) , which requires a minimum of 27 feet of asphalt and with 2.5-foot-wide curb and gutter, for a total of 32 feet in width. This private street standard should be met as part of the subdivision.

* * * * *

Developer Request: Grant exception from requirement to provide lots with frontage upon a dedicated and improved street.

Land Development Code: 15A-21-21(B)

City Engineer Response: Grant exception from requirement to provide lots with frontage upon a dedicated and improved street.

An exception to fronting a public and fully-improved, dedicated street is recommended, as all access in the area is currently off of private streets. Should the private street network meet minimum requirements as per city code for private streets, the home frontage would be adequate.

* * * * *

Developer Request: Grant exception from requirement to provide a minimum of 27 feet (width) of paved roadway surface for the private street.

Land Development Code: 15A-21-11(A)(1)

Land Development Code: 15A-15-04(B)(7)(c) – Sensitive Area Overlay

City Engineer Response: Do not grant exception from requirement to provide a minimum of 27 feet (width) of paved roadway surface for the private street.

The City Engineer recommends that no exception be granted for the installation of a minimum of 27 feet (width) of paved surface for the entire length of the private lane from Wasatch Blvd to the proposed subdivision. The roadway will be approximately 1,000 feet long, far exceeding the length (150 linear feet, with a maximum of two homes accessing the lane) allowed for a 20-foot-wide lane. There is a major concern with regard to emergency access, especially in the event of a home fire or wild fire. It would be unsafe to require fire-fighting and other emergency personnel to enter the area if there is only a single accessed narrow road running through this development. Personnel could be trapped and their lives put at unnecessarily heightened risk. The existing network also prevents the looping of utility lines—an ancillary but important benefit and consideration. Approving subdivisions to develop without proper infrastructure upgrades creates potential for continued development and densification in the Sensitive Area without improved access and safety. The current infrastructure in question is severely underbuilt, and adding density without improvements compounds an already compromised situation.

* * * * *

Developer Request: Grant exception from requirement to provide at least two points of ingress/egress.

Land Development Code: 15A-21-10(D)

City Engineer Response: Do not grant exception from requirement to provide at least two points of ingress/egress.

The City Engineer recommends that no exception be granted and that at least two points of ingress/egress, be required for the development of this subdivision. There is a major concern with regard to emergency access, especially in the event of a home fire or wild fire. It would be unsafe to require fire-fighting and other emergency personnel to enter the area if there is only one way in and out of the development. Personnel could be trapped and their lives put at unnecessarily heightened risk. The existing network also prevents the looping of utility lines—an ancillary but important benefit and consideration. Approving subdivisions to develop without proper infrastructure upgrades creates potential for continued development and densification in the Sensitive Area without improved access and safety. The current infrastructure in question is severely underbuilt, and adding density without improvements compounds an already compromised situation.

Should a stub private street, with an easement that provides for access, be provided to the south as part of a master plan, consideration for a positive recommendation from the city engineer for an exception may be given.

* * * * *

Developer Request: Grant exception from requirement that a cul-de-sac not exceed 600 feet in length.

Land Development Code: 15A-15-04(B)(7)(b)

City Engineer Response: Do not grant exception from requirement that a cul-de-sac not exceed 600 feet in length.

The City Engineer recommends that no exception be granted and that a cul-de-sac not be approved for the development of this subdivision. The cul-de-sac would be approximately 1,000 feet long, far exceeding the allowed length. There is a major concern with regard to emergency access, especially in the event of a home fire or wild fire. It would be unsafe to require fire-fighting and other emergency personnel to enter the area if there is only one way in and out of the development. Personnel could be trapped and their lives put at unnecessarily heightened risk. The existing network also prevents the looping of utility lines—an ancillary but important benefit and consideration. Approving subdivisions to develop without proper infrastructure upgrades creates potential for continued development and densification in the Sensitive Area without improved access and safety. The current infrastructure in question is severely underbuilt, and adding density without improvements compounds an already compromised situation.

* * * * *



SANDY CITY FIRE DEPARTMENT

BRUCE CLINE
FIRE CHIEF

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

April 24, 2019

Sandy City Planning Commission
10000 South Centennial Parkway
Sandy City, Utah 84070

Re: Letter of Recommendation for Firefly Forest Sub

Dear Commission Members,

As per Sandy City development code, I am writing a letter of recommendation, for your review, concerning Firefly Forest Subdivision. Please be advised that this letter is based on the adopted International Fire Code and adopted city ordinances that have been approved with the fire code by the Utah State Legislature.

Currently the applicants for this subdivision have submitted for review the fire department access, and water supply, site and utility plans to my office. After my review, I have found the plans to be compliant with all current Adopted International Fire Code as adopted by the Utah State Legislature, concerning fire department access and water supply.

At this time I am giving a positive recommendation to any waivers that are being applied for from the applicant in regards to fire department access and water supply as reviewed against the 2015 International Fire Code. This recommendation is based on the improvements the applicant has shown that they will take to mitigate any concerns with fire department response and water supply. The applicants have improved the area for fire response by adding an additional hydrant that will service two lots, provided for 20 feet of road access to their property, and provided for two fire department turn-a-rounds. They have also provided for their safety and any delay in fire operations by making the decision to sprinkler their home for early response fire suppression, when it was not a requirement to do so.

If approved I would ask that the applicant meet with the Fire Marshal to review the actual location of the additional hydrant, as well as, the requirements for wildland urban interface, as they will be building in the wildland urban interface area.

I thank you for your time and consideration in this matter. If you have any further questions, please contact me.

Sincerely,

Robert K. DeKorver Jr

Robert K. DeKorver Jr
Fire Marshal
Sandy City Fire
0-801-568-2945
rdekorver@sandy.utah.gov

EXHIBIT B

(Meeting Minutes Dated May 2, 2019)



Sandy City, Utah

10000 Centennial Parkway
Sandy, UT 84070
Phone: 801-568-7256

Meeting Minutes

Planning Commission

Dave Bromley
Michael Christopherson
Monica Collard
Ron Mortimer
Cyndi Sharkey
Cory Shupe
Jamie Tsandes
Cameron Duncan (Alternate)
Jeff Lovell (Alternate)

Thursday, May 2, 2019

6:15 PM

Council Chambers

4:00 PM FIELD TRIP

1. [19-142](#) Field Trip Map for 5-2-19 PC meeting.

6:15 PM REGULAR SESSION

Roll Call

DRAFT

Staff: James Sorensen, Community Development Director; Brian McCuiston, Planning Director; Mike Wilcox, Zoning Administrator; Darian Alcorn, Sr. City Attorney; Britney Ward, Transportation Engineer; Ryan Kump, City Engineer; Matt Huish, CAO; Robert DeKorver Jr., Fire Marshal; Raima Fleming, Planning Secretary

- Present** 7 - Commissioner Dave Bromley
Commissioner Cyndi Sharkey
Commissioner Jamie Tsandes
Commissioner Michael Christopherson
Commissioner Cory Shupe
Commissioner Jeff Lovell
Commissioner Ron Mortimer
- Absent** 2 - Commissioner Monica Collard
Commissioner Cameron Duncan

Welcome

Pledge of Allegiance

Introductions

Public Hearings

2. [SPR-11-18-5](#) Arcadia Apartments Phase 2 - Mixed Use Development (Site Plan Review)
[565 \(2nd\)](#) 172 West Harrison Street (8920 South)

[Community #1 - Northwest Exposure]

Mike Wilcox introduced this item to the Planning Commission.

Adam Lankford, Applicant, gave an overview of the proposed item.

Mike Wilcox went over staff concerns regarding this proposal.

The Chair opened this item to public comment and there was none.

A motion was made by Cory Shupe, seconded by Ron Mortimer, that the Planning Commission find that the preliminary site plan review is complete for the proposed Arcadia Apartments – Phase 2 Mixed Use Site Plan, located at approximately 172 West Harrison Street, based on the 12 conditions listed in the staff report. The motion carried by the following votes:

- Yes:** 7 - Dave Bromley
 Cyndi Sharkey
 Jamie Tsandes
 Michael Christopherson
 Cory Shupe
 Jeff Lovell
 Ron Mortimer

- Absent:** 2 - Monica Collard
 Cameron Duncan

3. [SUB-03-19-5](#) [625](#) Arcadia Apartments -1st Amendment Subdivision (Preliminary Review)
 172 West Harrison Street (8920 South)
 [Community #1 - Northwest Exposure]

Mike Wilcox introduced this item to the Planning Commission.

Adam Lankford, Applicant, stated he agrees with the staff report.

Commissioner Dave Bromley asked if the line shown on the plat is the mid point of the drive line.

Adam Lankford replied he worked to get it down the center line but it is not possible, due to lending concerns.

Mike Wilcox stated this was a concern to staff. The proposed location will put the property line close to the proposed building, but it can still comply with the setback requirements.

The Planning Commission and the applicant had a brief discussion on CC&R's.

The Chair opened this item to public comment and there was none.

A motion was made by Jamie Tsandes, seconded by Cory Shupe, that the Planning Commission find that the preliminary subdivision review is complete for the proposed Arcadia Apartments Subdivision - 1st Amendment, located at approximately 172 West Harrison Street, based on the three conditions listed in the staff report. The motion carried by the following vote:

Yes: 7 - Dave Bromley
Cyndi Sharkey
Jamie Tsandes
Michael Christopherson
Cory Shupe
Jeff Lovell
Ron Mortimer

Absent: 2 - Monica Collard
Cameron Duncan

4. [SPEX-01-19-5593](#) Firefly Forest Subdivision (Special Exception Requests)
3392 E. Deer Hollow Circle
[Community #29 - The Dell]

Commissioner Dave Bromley stated because he lives in the area of the proposed subdivision and attended the last neighborhood meeting held in 2018, he recused himself from the prior FireFly Forest application that came before the Planning Commission. He asked the Planning Commission members if they felt comfortable with him sitting in on this item. The Planning Commission members all agreed that they were comfortable with him sitting in on this item.

Mike Wilcox introduced this item to the Planning Commission.

Bruce Baird, Attorney, representing the applicant, gave the history on the property. He also showed (on the monitor) where the proposed home would be placed and the proposed road. He also stated the City Engineer objects to four of the special exception requested. He presented all four of the special exceptions to the Planning Commission.

Commissioner Dave Bromley asked about the written information that was provided from Bruce Baird. He asked for a better understanding on how he determined that each exception should be granted.

Bruce Baird replied he took the requirements of the code and tried to compare them to the last time this item came before the Planning Commission. He also tried to address the specific standards that are in the code. He also stated he tried to explain why and how the standards were met.

Commissioner Dave Bromley and Bruce Baird had discussion on the exceptions.

Lance & Robyn Platt, Applicants, reflected on the last time this item came to Planning Commission. They gave an overview of the proposed item. They spoke on how much they love Sandy City and how they would be great neighbors.

Commissioner Dave Bromley asked if the neighbors (the Guo family) are on board with the proposed project.

Lance Platt stated he reviewed the application with the Gue family and they are on board with this project.

Mike Wilcox gave an explanation of staffs recommendation and/or suggestion motion.

The Chair opened this item to public comment.

Robert Wilson asked if curb and gutter are being proposed.

Mike Wilcox stated the applicants are not proposing curb and gutter.

Robert Wilson stated he did not receive notice for this meeting until the day of the meeting. He also stated making the road wider would impede on others lawn.

Trent Pierce stated he received notice on this item yesterday. He read an email from a surrounding neighbor, Kirk Olsen. He stated he does not support this item.

Aaron Rust asked for clarification on the 27 foot minimum width paved surface.

Mike Wilcox stated the applicants are seeking an exception for both curb and gutter and for the road widths. The only proposed road widths are the areas shown on the screen in yellow. Code requires 27 feet of asphalt all the way to Wasatch Blvd.

Mike Wilcox read an email from Kelly Powers. Mr. Powers is in opposition of this proposal.

Bruce Beard responded to all of the public comments.

Trent Pierce stated he is confused on when the the property was purchased. He also stated he and Mr. Platt had a discussion in his home about the road. He was told by Mr. Platt that if he didnt agree with the turn around on his property, then he would put a 27 foot road with curb and gutter through his front yard and make him pay for it.

The Chair closed this item to public comment.

The Planning Commission and staff had discussion on the items that staff is not recommending for approval.

Commissioner Cyndi Sharkey asked where a potential secondary access would come from.

Mike Wilcox used the map on the screen to show the second point of access (possibly a connection to Lone Springs Circle).

The Planning Commission and staff had a brief discussion on access and curb and gutter.

Robert DeKorver, Sandy City Fire Marshal, stated he had the opportunity to sit with the development team and staff. He also stated as a Fire Marshal, the State Legislature has tied his hands in the fact that the Development Code reads differently from the Fire Code. So, as a Fire Marshal, he considers this proposed project to meet the International Fire Code. As a fire fighter, it would concern him to get a fire engine to this proposed development. To address the parking issue, the Fire Code states 20 feet of unobstructed access. If this is the case, there has to be a provision added that there must be no parking on the street.

Commissioner Dave Bromley asked the Fire Marshal if he felt comfortable sending fire fighters to the proposed area to fight fires.

Robert DeKorver stated the way that it stands now, he would not feel comfortable sending fire engines to this area because it would take time to turn around to get out of this area.

It would not be safe at this point.

Commissioner Dave Bromley and the Fire Marshal had a brief discussion on safety in this area,

Ryan Kump, City Engineer, stated he wanted to explain his position on this item. He explained that the Fire Marshal decision was bound by the International Fire Code without appendices. The Sandy City Code has a stricter requirement that is based on the International Fire Code's appendices. He also stated this proposed item is not an ideal situation. It is bad and severely underbuilt. He went on to explain the issues with the water lines. He stated all though what the applicants are proposing today is much better than their last proposal, he can not stand behind a subdivision that is severely underbuilt and is safety risk.

Commissioner Cyndi Sharkey and the City Engineer had a brief discussion on the annexation on this property.

The Planning Commission had discussion on the findings for this item.

A motion was made by Michael Christopherson, seconded by Cyndi Sharkey, that the Planning Commission determines that the preliminary subdivision and Sensitive Area Overlay zone reviews area are complete for the Firefly Forest Subdivision, located at approximately 3392 E. Deer Hollow Circle, and that the waivers and special exception requests be approved, with the clarification that the asphalt width be a minimum of 20 feet or the amount of width required by the Fire Code and that the access be unobstructed subject to findings that will be prepared by staff based on the discussion from this meeting and presented at a subsequent meeting for review, comment, and approval and subject to the 14 conditions listed in the staff report. The motion carried by the following vote:

Yes: 5 - Cyndi Sharkey
 Jamie Tsandes
 Michael Christopherson
 Cory Shupe
 Ron Mortimer

No: 2 - Dave Bromley
 Jeff Lovell

Absent: 2 - Monica Collard
 Cameron Duncan

- 5. [SUB-12-18-5](#) Firefly Forest Subdivision (Preliminary Review) - 1 New Lot
[580](#) 3392 E. Deer Hollow Circle
 [Community #29 - The Dell]

A motion was made by Michael Christopherson, seconded by Cyndi Sharkey, that the Planning Commission determines that the preliminary subdivision and Sensitive Area Overlay zone reviews area are complete for the Firefly Forest Subdivision, located at approximately 3392 E. Deer Hollow Circle, and that the waivers and special exception requests be approved, with the clarification that the asphalt width be a minimum of 20 feet or the amount of width required by the Fire Code and that the access be unobstructed subject to findings that will be prepared by staff based on the discussion from this meeting and presented at a subsequent meeting for review, comment, and approval and subject to the 14 conditions listed in the staff report. The motion carried by the following vote:

Yes: 5 - Cyndi Sharkey
Jamie Tsandes
Michael Christopherson
Cory Shupe
Ron Mortimer

No: 2 - Dave Bromley
Jeff Lovell

Absent: 2 - Monica Collard
Cameron Duncan

Administrative Business

6. [19-143](#) Planning Commission minutes from April 18, 2019

A motion was made by Cory Shupe , seconded by Cyndi Sharkey , that the Planning Commission approve the meeting minutes from April 18, 2019. The motion carried by the following votes:

Yes: 5 - Cyndi Sharkey
Michael Christopherson
Cory Shupe
Jeff Lovell
Ron Mortimer

Absent: 2 - Monica Collard
Cameron Duncan

Sandy City Development Report

Director's Report

James Sorenson gave the Director's Report.

Adjournment

Meeting Procedure

1. Staff Introduction
2. Developer/Project Applicant presentation
3. Staff Presentation
4. Open Public Comment (if item has been noticed to the public)
5. Close Public Comment
6. Planning Commission Deliberation
7. Planning Commission Motion

In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to 2 minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed 5 minutes to speak. Comments which cannot be made within these time limits should be submitted in writing to the Community Development Department prior to noon the day before the scheduled meeting.

Planning Commission applications may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. No agenda item will begin after 11 pm without a unanimous vote of the Commission. The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regular scheduled meeting.

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, or if you have any questions regarding the Planning Commission Agenda or any of the items, please call the Sandy City Planning Department at (801) 568-7256

EXHIBIT C

(Findings and Conclusions Dated May 9, 2019)

MEMORANDUM

May 9, 2019

To: Planning Commission
From: Community Development Department
Subject: Firefly Forest Subdivision SPEX-01-19-5593
(Community #29) 2 Lots
3392 E. Deer Hollow Circle 3.039 Acres
Zoned R-1-40A, SAO Zone

A copy of the applicant's materials were provided at the May 2, 2019 Planning Commission meeting and are not included in this report in the interest of saving paper. An electronic version is available by request.

INTRODUCTION

This matter involves an application by Lance and Robyn Platt requesting preliminary subdivision and Sensitive Area Overlay review for a proposed two-lot subdivision. The subject property is 3.039 acres in size and consists of one existing lot and two parcels. The subject property is located within an area referred to as the Sensitive Area Overlay Zone (SAO). The applicants requested several waivers and special exceptions associated with the application. The proposed subdivision plat does not comply with the Sandy City Land Development Code (referred to herein as the "LDC") unless the waivers and special exceptions are granted. The Sandy City Planning Commission is composed of residents of Sandy City who are empowered, among other things, to decide whether to grant the requested waivers and special exceptions pursuant to the LDC. The Planning Commission adopted conditions numbered 1 through 14 as found in the staff report for this application dated April 26, 2019 (referred to herein as the "staff report"), as amended in the May 2, 2019 Planning Commission meeting. The determinations and findings herein are subject to those conditions.

DETERMINATION AND FINDINGS

A. Determination and Findings (LDC 15A-21-02, 15A-21-10). The Planning Commission determines that the waiver of curb, gutter, parkstrip and sidewalk is approved, subject to the conditions referenced above, based on the following findings:

1. The Planning Commission finds that the City Engineer has provided a recommendation, which the Planning Commission has considered, as supported by the following evidence found in the record: Page 5 of the staff report states, “The City Engineer supports the waiver of sidewalks and parkstrips. . . . The waiver of curb and gutter requirements are not supported by the City Engineer.” The City Engineer’s recommendation is attached as an exhibit to the staff report, and the City Engineer provided comment at the Planning Commission meeting.

2. The Planning Commission finds that the Planning Commission evaluated applicable criteria in accordance with the LDC, including the following: the number of homes within the subdivision, the length of a cul-de-sac, the precedence of adjoining improvements, the configuration of lots, and where the only other alternative is a private road design. This finding is supported by the following evidence in the record:

a. The Planning Commission evaluated the number of homes not only within the Firefly Forest Subdivision but also within the surrounding neighborhood. Page 1-2 of the staff report, and the exhibits to the staff report, describe and show the proposed two-lot subdivision. The staff report and its exhibits describe and show both the new lot (on which the Applicant intends to build a new home) and the existing home to remain. The staff report also describes the reason for the existing home to be included in the subdivision. During the Planning Commission meeting it was determined that these two homes will be located on a private street named Firefly Circle. The Planning Commission also clarified and discussed the number of existing homes in the neighborhood located on the existing Deer Hollow Circle, which is proposed to be thirteen homes (twelve existing and one proposed new).

b. The Planning Commission evaluated the length of Firefly Circle, from the end of Firefly Circle to Wasatch Boulevard. Page 4 of the staff report states, “Beginning at

Wasatch Boulevard, the overall length of Deer Hollow Circle is approximately 1400 feet. The proposed Firefly Circle connects to Deer Hollow Circle at a point that is 950 feet from Wasatch Boulevard and is approximately 450 feet long, making it 1400 feet in length overall.” The Planning Commission discussed and evaluated the length, which is similar to the existing Deer Hollow Circle.

c. The Planning Commission evaluated the precedence of adjoining improvements. It was presented by testimony of the residents of the neighborhood that sidewalk, parkstrip, curb and gutter improvements were not typical of or expected in the neighborhood. Page 5 of the staff report states, “Sidewalks and parkstrips do not exist in the adjoining developments. . . .The area has an existing rural aesthetic where there is not a formal separation of pedestrians and automobiles.”

d. The Planning Commission evaluated the configuration of lots. Page 5 of the staff report states, “The lots are large and homes are spaced far away from one another.” Members of the Planning Commission also stated that they had visited the proposed subdivision location.

3. The Planning Commission finds that evaluation of whether “the only other alternative is a private road design” is not applicable to this request. The proposed Firefly Circle would connect to the existing Deer Hollow Circle, which is already private road. The determination by the Planning Commission in this instance is whether to allow the existing 950 feet of private road to remain in its existing condition and whether to allow an additional private road with the same configuration to extend approximately 450 feet further.

4. The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by adding only one new home in the neighborhood where there are only twelve existing homes.

5. The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by extending the private road network 450 feet resulting in a cul-de-sac similar in length to the existing cul-de-sac and serving only one new lot from the extension.

6. The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by following precedent because there is no existing curb, gutter, sidewalk or

parkstrip along Deer Hollow Circle.

7. The Planning Commission finds that waiving curb, gutter, sidewalk and parkstrip is supported by having large lots and homes spaced far away from each other and retaining the rural aesthetic.

B. Determination and Findings (LDC 15A-21-21). The Planning Commission determines that the special exception for lots without public frontage is approved, subject to the conditions referenced above, based on the following findings:

1. The Planning Commission finds that the following evidence in the record supports granting the special exception for lots without public frontage: Page 6 of the staff report states, “There is no reasonable way to extend a public road to the proposed development. As the existing main access road is a private street, this continuation of private roads and lots without public frontage is acceptable. The lots meet the minimum lot width frontages on the proposed private street, Firefly Circle.”

C. Determination and Findings (LDC 15A-21-10). The Planning Commission determines that the special exception for fewer than two points of access is approved, subject to the conditions referenced above, based on the following findings:

1. The Planning Commission finds that the City Engineer and Fire Marshal provided recommendations, which the Planning Commission has considered, as supported by the following evidence found in the record:

a. The City Engineer presented a Memorandum of Recommendations to the Planning Commission dated April 26, 2019, which is attached as an exhibit to the staff report. The City Engineer also explained his recommendation verbally at the Planning Commission meeting.

b. The Fire Marshal presented a letter to the Planning Commission dated April 24, 2019, which is attached as an exhibit to the staff report. The Fire Marshal also explained his recommendation verbally at the Planning Commission meeting.

2. The Planning Commission finds that there are thirty or fewer lots accessed from

the single ingress/egress, as supported by the following evidence found in the record: As discussed above, there are 12 existing and one proposed new lot accessed from the single ingress/egress of Deer Hollow Circle as accessed from Wasatch Boulevard. This is fewer than thirty and meets that requirement of the LDC.

3. The Planning Commission finds that 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, as supported by the following evidence found in the record:

a. The City Engineer's recommendation is attached as an exhibit to the staff report, and the City Engineer provided comment at the Planning Commission meeting.

b. The Fire Marshal's recommendation is attached as an exhibit to the staff report, and the Fire Marshal provided comment at the Planning Commission meeting.

4. The Planning Commission finds that the proposed project meets one or more of four additional conditions found in LDC 15A-21-10, as supported by the following evidence found in the record: The proposed Firefly Forest Subdivision has one or more hammerheads or other approved turn-arounds. Although all buildings are not equipped throughout with automatic sprinkler systems, the applicants propose fire sprinklers for the only proposed new building.

D. Determination and Findings (LDC 15A-21-11, 15A-15-04). The Planning Commission determines that the special exception for less than twenty-seven feet of asphalt width is approved, subject to the conditions referenced above, based on the following findings:

1. The Planning Commission finds that the Planning Commission considered a recommendation from the City Engineer and Fire Marshal, as supported by the following evidence found in the record:

a. The City Engineer presented a Memorandum of Recommendations to the Planning Commission dated April 26, 2019, which is attached as an exhibit to the staff report. The City Engineer also explained his recommendation verbally at the Planning Commission meeting.

b. The Fire Marshal presented a letter to the Planning Commission dated April 24, 2019, which is attached as an exhibit to the staff report. The Fire Marshal also explained his recommendation verbally at the Planning Commission meeting.

c. The Planning Commission considered the recommendations and finds that this meets the requirements of the LDC.

2. The Planning Commission finds that existing site conditions do not necessitate a 27-foot wide road, and that a 20-foot wide road for fire access is sufficient, as supported by the following evidence found in the record: The Planning Commission visited the site to see the site conditions, topography, foliage, and the existing improvements. Page 7 of the staff report states, “The site is located in the high bench area where there are steep slopes, geologic hazards, and forest fire risks.” These risks were also explained to the Planning Commission by the City Engineer and Fire Marshal in their verbal presentations. The Planning Commission discussed and considered steep slopes, geologic hazards, and fire risks.

3. The Planning Commission finds that fire access and water availability support granting a special exception from the 27-foot width requirement, and that a 20-foot wide road for fire access is sufficient, as supported by the following evidence found in the record: The April 24, 2019 letter from the Fire Marshal to the Planning Commission states, “improvements the applicant has shown . . . to mitigate any concerns with fire department response and water supply. The applicants have improved the area for fire response by adding an additional hydrant, . . . provided for 20 feet of road access to their property and provided for two fire department turn-a-rounds.”

4. The Planning Commission finds that the number of lots supports granting a special exception from the 27-foot paved width requirement and that a 20-foot road for fire access is sufficient because there are only twelve existing lots and only one additional lot for a total of thirteen lots in the entire neighborhood accessed from Deer Hollow Circle and Firefly Circle.

5. The Planning Commission finds that the subdivision can meet the requirements for lot dimensions and frontage regardless of road width, so this factor neither weighs against nor supports granting a special exception from the 27-foot paved width requirement, as supported by

the following evidence found in the record: Lot dimensions and frontage were presented in the staff report and also in an exhibit attached to the staff report. Page 3 of the staff report states, “The proposed plat conforms to these dimension standards of the zone.” The Planning Commission discussed the existing conditions of the existing private street, Deer Hollow Circle, the configuration of the proposed Lot 2 where the existing house is located, and the new Firefly Circle proposed to serve Lot 1 and Lot 2. The Planning Commission also noted that the lots are larger and have sufficient driveways to avoid street parking.

6. The Planning Commission finds that the Planning Commission considered storm drainage, that less paved width will cause less stormwater runoff from the road and thus supports granting a special exception from the 27-foot paved width requirement. As found in the record, the Planning Commission considered flood control and storm drain. They discussed the existing storm drain system in the area, where it is located, and how water is, is not, can be or cannot be directed to that existing infrastructure.

7. The Planning Commission finds that the Planning Commission considered public utilities, that additional pavement width is not necessary to support utilities and that utilities may be located in a 20-foot wide road and this consideration neither weighs against nor supports the special exception. The existing waterline in Deer Hollow Circle was discussed as well as potential for the waterline breaking. The storm drain was discussed as stated above. Water for fire suppression was also discussed.

8. The Planning Commission finds that the special exception from the 27-foot paved width requirement is supported under LDC 15A-15-04, as supported by the following evidence in the record: Page 7 of the staff report states that visual aesthetics are important in the SAO as stated in LDC 15A-15-04 and that a narrower road assists with limiting cuts and fills in the SAO.

E. Determination and Findings (15A-15-04). The Planning Commission determines that the special exception for length of cul-de-sac over 600 feet in the SAO is approved, subject to the conditions referenced above, based on the following findings:

1. The Planning Commission finds that the Planning Commission considered a recommendation from the City Engineer and Fire Marshal, as supported by the following

evidence found in the record:

a. The City Engineer presented a Memorandum of Recommendations to the Planning Commission dated April 26, 2019, which is attached as an exhibit to the staff report. The City Engineer also explained his recommendation verbally at the Planning Commission meeting.

b. The Fire Marshal presented a letter to the Planning Commission dated April 24, 2019, which is attached as an exhibit to the staff report. The Fire Marshal also explained his recommendation verbally at the Planning Commission meeting.

2. The Planning Commission finds that geographical constraints prevent a connection that is not greater than six hundred feet, as supported by the following evidence found in the record: The existing Deer Hollow Circle is approximately 1400 feet long, and the existing turn-off point to reach the existing Lot 2 house is over 900 feet long.

3. The Planning Commission finds that public safety will be improved above existing conditions, as supported by the following evidence found in the record: While the applicants are adding 450 feet of additional private street, further increasing the length over the six hundred feet that is allowed, the applicants are increasing the width to twenty feet and adding turn-arounds for fire apparatus. The April 24, 2019 letter from the Fire Marshal to the Planning Commission states, “The applicants have improved the area for fire response by adding an additional hydrant that will service two lots, provided for 20 feet of road access to their property, and provided for two fire department turn-a-rounds.”