



# Sandy City, Utah

10000 Centennial Parkway  
Sandy, UT 84070  
Phone: 801-568-7141

## Minutes Summary

### Board of Adjustment

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Thursday, May 11, 2023

6:30 PM

Council Chambers and Online

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Meeting procedures are found at the end of this agenda.

This Board of Adjustment meeting will be conducted both in-person, in the Sandy City Council Chambers at City Hall, and via Zoom Webinar. Residents may attend and participate in the meeting either in-person or via the webinar link below.

Register in advance for this webinar:

[https://us02web.zoom.us/webinar/register/WN\\_Ks7DE\\_ePSj-i2EesrEQ\\_5A](https://us02web.zoom.us/webinar/register/WN_Ks7DE_ePSj-i2EesrEQ_5A)

After registering, you will receive a confirmation email containing information about joining the webinar.

You can join the meeting with the following link:

<https://us02web.zoom.us/j/89879699138>

Or join via phone by dialing:

US: 253 215 8782 or 346 248 7799 or 669 900 6833 or 301 715 8592 or 312 626 6799 or 929 436 2866

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International numbers available: <https://us02web.zoom.us/j/89879699138>

Webinar ID: 898 7969 9138

Passcode: 892614

#### 4:00 PM FIELD TRIP

- Present** 3 - Regular Member Brian Jones  
Regular Member Tyler Brown  
Regular Member Jim Edwards
- Absent** 3 - Regular Member Bruce Bryner  
Regular Member Burke Staker  
Matt Hale (Alternate)

[23-175](#)

Field Trip Map

#### 5:15 PM EXECUTIVE SESSION - TRAINING

#### 6:15 PM REGULAR SESSION

Welcome

Pledge of Allegiance

## Introductions

**Public Meeting Item**

1. [BOA0309202](#) South Towne Center Mall Subdivision Plat Amendment  
[3-006495](#) Appeal to Review Alleged Error

10450 S State St.  
[Commercial Area, Community #9]

Mike Wilcox, Sandy City Planning Director, presented the staff report to the Board of Adjustment members.

Mike Wilcox asked for a determination of the completeness of the record.

Bruce Baird, attorney for South Town Mall, does not accept the completeness of the record. He stated that the Board does not have the correct plat. However, he did asks that the meeting continue despite his disagreement regarding the completeness of the record.

Tyler Brown, Board of Adjustment Chairperson, asks for clarification on whether the evidence is sufficient to move forward.

Bruce Baird states that he does want the meeting to continue despite his the fact that he feels the Board of Adjustment members were not given the correct plat.

Brian Jones, Board of Adjustment member, asked Mike Wilcox if the amended plat that Bruce Baird said was missing was actually included with the packet.

Mike Wilcox stated that it was and informed the board members on where in the packet it was located.

Jim Edwards, Board of Adjustment member, stated he did have both plats in the packet and feels like the record is complete.

Tyler Brown stated that the issue from Bruce Baird is incorrect and that the record is complete

**A motion was made by Brian Jones, seconded by Tyler Brown, that they determine that the record on this decision is complete and not deficient as demonstrated in the referenced materials that have been reviewed and that the matter can be reviewed on the record and not de novo.**

**Vote was unanimous.**

Bruce Baird, appellant, stated his case regarding the alleged error to the Board of Adjustment.

Duncan Murray, Special Counsel for Sandy City, stated that he feels that it should be clarified, due to statement brought up by Mr. Baird, on whether the city is just asking for the property to be dedicated or that the appropriate parties would pay for the cost of the street.

Mr, Baird objects and states who is paying for the road is a "side issue" and that the

main concern is the City Code which he feels is incorrect and unconstitutional.

Darien Alcorn, Sandy City Attorney, gave an explanation on what codes were used by the city staff to determine their decision. She also clarified on what aspects of the appeal that the Board is able to determine. She stated that Sandy City has never stated that a dedication was a synonym for a donation but that a claim of a "taking" is a separate appeal process through the Mayor's office which has already been started by Mr. Baird.

Tyler Brown opened the floor for public comment.

Rob Sepulveda, 10212 South 75 East, asked what the purpose of the road will be.

Tyler Brown explained that the Board is just meeting to determine whether the City made an error by saying that the appellants application was incomplete. They do not have any determination on what will be built in the future.

Duncan Murray stated that he recommended all comments from the public should be heard first before comments from Board.

Steve Van Maren, 11039 S Lexington Circle, believes the record is complete and that the applicant failed to recognize City Code 10-4-1.

Tyler Brown closed the public comment portion of the meeting.

Bruce Baird rebutted comments by the staff and expounded on his claim that the dedication is an illegal taking by the city.

Jim Edwards, Board of Adjustment member, asked outside counsel, Duncan Murray, if the Board had the right to determine constitutional issues..

Duncan Murray stated it is his opinion that there are different venues for different cases, but that the constitutionality questions before the Board are not appropriate at this venue. He states he is uncomfortable advising the Board to determine constitutional questions due to the fact that there are other mechanisms in place that have specific authority to address these exact, more specific, issues. There is also a pending decision from the Mayor's office regarding the constitutional questions and a decision from the Board would undermine that City Code. He states the Board of Adjustment cannot change the City Code and the Board of Adjustment is not the proper decision makers for this determination.

Tyler Brown stated that they are reviewing this issue under a correctness standard. The Board cannot overrule city's action without advice from legal counsel.

Mr. Murray clarified that he was only giving advice in just regards to constitutional taking.

Tyler Brown stated that the appellants argument is that the city made an error by preventing this plat amendment from advancing by enforcing an ordinance that is unconstitutional.

Bruce Baird, appellant, states that he feels that the outside counsel is incorrect. He does feel that the Board of Adjustment has the right to make a decision regarding a question of constitutionality.

Benjamin Mills, appellant attorney, feels that the Board of Adjustment needs to make

decision so they can proceed with the appeal process, if needed.

Tyler Brown, stated that he feels that asking the Board of Adjustment to determine the constitutionality of law seems beyond what the Board is trained or qualified to do. He said that they are there to determine whether there was an error by the land use authority.

Brian Jones agreed that the Board is there to determine if there was an error. They are not there to determine the constitutionality of the law or city ordinance. He feels that the city staff followed the city code and did not make an error.

Jim Edwards agreed that the Board is there to determine the alleged error only and that the appellant has the legal right to appeal any Board decision with district court.

Duncan Murray stated that the Board is correct that the appellant has a right to appeal to a higher court. He said that a district court does have the right to make those decisions regarding constitutionality.

Jim Edwards asked Mr. Baird why he was stating that he wanted the City to make a decision when, per Mr. Edwards understanding, the city had already made a decision by asking South Town Mall to submit the transportation plan.

Mr. Baird responded that they made submit a plat that shows the road and includes that statement that it is illegal but didn't feel that need to do that when the case law states that the Board could consider an error under advise of counsel.

**A motion was made by Tyler Brown, seconded by Brian Jones, based upon the staff analysis of the appellants' letter requesting the appeal and the standard of review required, the Board of Adjustment determines that the staff did not err in making its decision that the application for an amendment to the South Towne Center Mall Subdivision plat is incomplete and that review of the preliminary plat cannot proceed further until the Monroe Street issue had been addressed. This conclusion is based upon the following findings:**

**Findings:**

- 1. The appellants have not shown that there is no reasonable basis to justify the action taken, and the determinations made were so unreasonable as to be arbitrary and capricious.**
- 2. Based on the findings and evidence cited in this staff report, the preliminary plat application for an amendment to the South Towne Center Mall Subdivision plat was processed as required by the Sandy Land Development Code.**
- 3. Therefore, the staff's decision was correct in its interpretation and application of a land use ordinance... The motion carried by the following vote.**

**Yes:** 3 - Brian Jones  
Tyler Brown  
Jim Edwards

## **Administrative Business**

- Present** 3 - Regular Member Brian Jones  
Regular Member Tyler Brown  
Regular Member Jim Edwards
- Absent** 3 - Regular Member Bruce Bryner  
Regular Member Burke Staker  
Matt Hale (Alternate)

1. Election of Chair and Vice Chair

**A motion was made by Tyler Brown, seconded by Jim Edwards that Brian Jones be elected as Chairperson of the Board of Adjustment. Vote was unanimous.**

**A motion was made by Brian Jones, seconded by Tyler Brown, that Jim Edwards be elected by Vice Chairperson of the Board of Adjustment. Vote was unanimous.**

- Yes:** 3 - Brian Jones  
Tyler Brown  
Jim Edwards
- Yes:** 3 - Brian Jones  
Tyler Brown  
Jim Edwards

2. Director's Report

Michael Wilcox, Planning Director, thanked the Board for their service. He also reminded the Board of Adjustment of the update to the General Plan.

- Present** 3 - Regular Member Brian Jones  
Regular Member Tyler Brown  
Regular Member Jim Edwards
- Absent** 3 - Regular Member Bruce Bryner  
Regular Member Burke Staker  
Matt Hale (Alternate)

**Adjournment**

**A motion was made that this Adjournment.. The motion carried by the following vote:**

- Yes:** 3 - Brian Jones  
Tyler Brown  
Jim Edwards

## Meeting Procedure

1. Staff Introduction
2. Presentation by petitioner or appellant
3. Staff Presentation
4. Public Comment related to the petition, appeal or request
5. Close Public Comment
6. Response by petitioner or appellant
7. Questions by applicant, staff, and other by the Board
8. Discussion of the issue by the Board
9. Motions and decisions by the Board

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.

Board of Adjustment applications may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Board of Adjustment feels there are unresolved issues that may need further attention before the Board is ready to make a motion. No agenda item will begin after 11 pm without a unanimous vote of the Board. The Board 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 Board of Adjustment Agenda or any of the items, please call the Sandy City Planning Department at (801) 568-7256