

PLANNING COMMISSION MINUTES
April 17, 2001

Present: Chairman Paul Summers, Vice Chairman Dick Dresher, Mark Green, Dean Thurgood, Al Hess, Lois Williams, City Council Representative Gordon Thomas, City Attorney Rusty Mahan, City Engineer Paul Rowland, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Paul Summers welcomed all members. Dick Dresher made a motion for approval of minutes for April 3, 2001 as written. Al Hess seconded the motion and voting was unanimous.

Site Plan

1. Consider preliminary and final site plan approval for a new commercial office building at 1500 South 500 West, Smoot Commercial, developer.

Fred Cox, architect, Sharman Smoot, developer, were present. Paul Rowland explained that Smoot Commercial has purchased the parcel on the northeast corner of 1500 South and 500 West and would like to construct a new commercial building on the parcel. The site is currently occupied by a home and Mick's Floral. The site would be completely cleared for the structure.

The proposed building would be 7,543 square feet in size and runs north and south along 500 West. Parking would be provided at both ends of the building with the majority being on the north end. There would be on driveway entry on 1500 South and one on 500 West. The new curb cut on 500 West will require UDOT approval.

A review of the landscape plan shows the required street trees in the parkstrip along 1500 South. These should be moved to inside the sidewalk to be on the subject property. All other landscaping meets the ordinance requirements. Parking is being provided at a level which meets the professional office requirement of 1 space per 400 square feet of gross floor area but does not meet the 1 space per 200 square feet of net for retail uses or medical or dental offices. This will be enforced administratively through the business license approval. The new use is not adjacent to any residential uses so it does not require any special fencing although the existing fence on the east and south property lines adjacent to the office building to the east will remain.

Sharman Smoot mentioned that there are 2 or 3 other complexes in Salt Lake that are similar to this one and they are excited about this project. Mainly professional offices will be in the building and could have some retail. Fred Cox mentioned that the businesses will be limited because of the available parking. There could be up to 5 entrances to the building depending on the tenants.

Paul Rowland explained that there will not be an entrance on the south side of the building because of the four parking stalls and not enough room for cars to turn around. There will be a

car entrance coming off of 1500 South. Staff recommends the Planning Commission send a favorable recommendation to the City Council for preliminary and final site plan approval with the following conditions:

1. Move all street trees along 1500 South to inside the sidewalk rather than in the parkstrip.
2. Correct site plan grading problems as per the City Engineer's review.
3. Label all site improvements including curbing, gutters, walks, etc.
4. New building must use sewer lateral for the existing building. If the existing building is on a septic tank, they make all arrangements with UDOT to bore under HWY 89 to tie into the sewer main line.
5. 8" min. site drain pipe. Storm drain must have clean-out boxes at all bends and grade breaks.
6. All improvements on the adjacent property east must be protected during construction.
7. Provide 7" wide utility easement along west, south and north property lines.
8. Payment of all Building Permits fees, sewer impact fee and water impact fee. Storm Drain fee is waived if proof of proper onsite storm water detention is designed and constructed.

Blaine Gehring mentioned that he was asked about the four other trees on 1500 South. Is Staff going to require the street trees and the four other trees? It was asked if condition #1 be modified for the trees?

Paul Rowland mentioned that the parkstrip is only 3 or 3½ feet wide. With the sidewalk being so narrow the roots from the trees will push up the sidewalk and breaking up the curb and gutter. The tree on the corner cannot be there for sight problems. Street trees on 1500 South need to be moved back and the pine trees removed for clear vision of the intersection.

Sharman Smoot would like to have the sewer connection come off of 1500 South rather than 500 West if possible. Mr. Rowland has some concerns that the property has been connected to septic tanks, if this is the case the sewer laterals will have to be located and used. The laterals should be available, if not Mr. Rowland prefers that the sewer connection come off of 500 West.

Dick Dresher noticed that there is a 10' Bountiful utility easement running through the property. Fred Cox mentioned that it is recorded as an easement with the county. Talking with Bountiful Power this is a recording mistake, there is no utility easement located there. Mr. Rowland mentioned that since this is recorded with a title company it does exist whether there are utilities

in it or not and will have to be vacated.

Mark Green made a motion for preliminary and final site plan approval for a new commercial office building at 1500 South and 500 West subject to the conditions outlined by Staff with the modification of #1 and the addition of #9 and #10 as follows:

1. Eliminate the street tree closest to 500 West along 1500 South and move the other two street trees inside of the sidewalk to replace the two Austrian pines.
9. Release of overhead power easement required.
10. All existing street improvements to be brought up to city standards.

Dean Thurgood seconded the motion and voting was unanimous.

2. Consider preliminary and final site plan approval for a single family building parcel located outside of an approved subdivision at 2225 S. Wood Hollow Way, Walt Gasser, owner.

Dick Dresher excused himself from this item because Mr. Gasser is a client. Walt Gasser, developer, Layne Forbes, attorney, were present. Rusty Mahan explained that the City has the Foothill Ordinance which has a division that the Planning Commission has not had to deal with before. It is required that when a subdivision is developed in the Foothill Zone it is approved by the Planning Commission and the City Council. This property is metes and bounds property outside of the subdivision. When building on land that is not in a subdivision there is a provision in the Foothill Ordinance providing for the same review of the lot that is given to a subdivision. Lots in a subdivision or outside the subdivision have to be reviewed by the Planning Commission and City Council. This process has not been done before on an individual lot until now. This is similar to a one lot subdivision.

Paul Rowland explained that when the Maple Hills Phase 2 Subdivisions were approved in the mid to late 70's, several large areas that were included as part of the subdivision were not designated as building lots, rather "Condominium Areas". Over the past 25 years, these areas have been divided up into individual building parcels and for the most part built on. This parcel is the last piece in this particular condo area to have a house built on it. The zoning ordinance requires that all building in the foothill area that is on lots or parcels which are not part of an approved subdivision, require a review and approval by the Planning Commission and City Council.

The parcel, which sits at the edge of the canyon dropping down to Mill Creek, meets all of the requirements of the Foothill Overlay Zone for minimum size, frontage, building pad size etc., There is no question that this is an acceptable building lot. Mr. Gasser is requesting three exceptions to the Foothill requirements pertaining to height of cut, depth of fill, and building on undevelopable ground in order to accommodate the house which he has planned for the lot.

The proposed site plans shows 3,285 s. f. of fill excess of 10', 1,660 s. f. of cuts in excess of 10' and 3,220 s. f. of encroachment into ground over 30% in slope. Exceptions for these items are routinely granted for roads only in new subdivisions. All lots are required to have a building pad which will accommodate a home with grading, without building or excavating in ground over 30% and without having cuts and fills in excess of 10 feet. In reviewing site plans for individual homes on approved building lots, the Building Department has not and cannot grant any exception to the Foothill requirements.

When granting exceptions to the Foothill requirements, two findings need to be made by the Planning Commission and City Council. The first finding is that the exception shall not be detrimental or injurious to the property or improvements adjacent thereto. Staff does not find any evidence that there will be injury to adjacent property. The second finding is that the exception shall not be detrimental to the general well being of the neighborhood.

There are two things to be considered here. The first is the question of when does an exception become more of a rule than an exception. Exceptions have been reviewed in the past as minor adjustments that are necessary to allow for development without going outside the intent of the ordinance. When the exceptions became so great that they became more than an exception, Staff has consistently recommended against such exceptions. These exceptions are way beyond what would be a minor adjustment in each case - cuts, fill and use of the 30%+ slopes approach an estimated 20% of the area or 8,165 total square feet.

Second, if this area were an approved subdivision lot, this request would be going before the Board of Adjustment for a variance rather than being considered as an exception. It would not be a single variance but three variances to three separate requirements in the ordinance. Staff believes that the same rules should apply in reviewing this exception as would apply for the Board of Adjustment for a variance. There are some very specific findings that need to be made based on State Law for a variance to be granted. Among those are a unique hardship of difficulty associated with the property not generally found on other similarly located properties. Also, that the hardship must not be self-created and must not be for economic relief. This is a vacant parcel of property which meets all of the parcel requirements of the zoning ordinance, including the foothill requirements. By proposing construction on the site, the owner is creating any problems with the lot and the need for the exception. Based on State Law, the Board of Adjustment would have to reject this request. The same should apply here. There is a detrimental effect happening to the well being of the neighborhood from this exception in that every other lot in the subdivision has been held to the foothill requirements. Mr. Gasser should be held to the same standard.

Walt Gasser, applicant, disagrees with the City in regards to his property being described as metes and bounds. This property is part of the subdivision. The property tax notice states that this property is in Maple Hills Subdivision Plat C. It may be called the condo area, but is still in the subdivision. Mr. Gasser feels that what he is trying to do will not impact the City.

Mr. Gasser presented a site plan and a chart explaining the percentage of and where the cuts, fill and 30% are located on the property. The home itself will not be on any ground of 30%. It is

level ground. The home is a two story with a walk out basement. In order for the home to fit, cuts will have to be made. Mr. Gasser wants the view of the canyon. Without the cuts there will be no view. Mr. Gasser has tried to fit the home to comply with the ordinances but the home can't be built to conform with the ordinance. The home itself is not on 30% only the landscaping will disturb the 30% Slope. Mr. Gasser has invested a substantial amount of money for the engineered site plans.

Rusty Mahan explained the fact that the building is on less than 30% is insignificant. The law states that you cannot disturb any slope of 30%. Whether it is a building or landscaping you can't disturb that 30% slope. The distinction between a building and landscaping is not important.

Mr. Mahan mentioned to the Planning Commission that arguments can be made either way about this property being in or out of a subdivision. Mr. Mahan advised the Planning Commission that this property is not in a subdivision. When the City Council gave approval for this subdivision, the Planning Commission recommended final approval for Maple Hills Subdivision #2 subdivision portion only. The City Council also approved subdivision portion only. This excludes the condo area. Councilman Stahle recommended that approval for Maple Hills Subdivision #2 be approved with all lots be required to meet the 30% grade. Whether this lot is in or out of the subdivision it has to meet the 30% grade requirement.

Mr. Mahan has concerns about the precedence being set by giving any waiver. This lot has plenty of developable land to build a significant home. The home Mr. Gasser wants to build goes beyond what the lot can accommodate. As a result Mr. Gasser is cutting into undevelopable ground. It is not necessary to grant exceptions to this lot for a significant home to be built. It is necessary for this home for the view. If the view is why an exception is to be waived on lots the City can have problems with the Foothill ordinance. The need is self created.

Walt Gasser again disagreed with what was being said. Mr. Gasser feels that with the value of the land, it requires a large home. There needs to be some litigation. It can't be said that every thing applies to the ordinance. Mr. Gasser feels that the City did not want the condo area and condo area is in the subdivision and was discussed by the City before the Mayor and Mr. Balling (City Engineer) signed the plat.

Paul Rowland corrected Mr. Gasser saying that this subdivision was approved with a set of requirements and conditions that later became the Foothill Ordinance. Mr. Gasser still disagreed. Mr Mahan agreed with Mr. Rowland and mentioned again that a lot is subject to the ordinance.

Blaine Gehring suggested to the Planning Commission that since there are some contentions on this item to table this item until the issues are resolved.

Paul Rowland explained that the only exceptions to the Foothill Ordinance are not on building pads but only for public roads. Each lot in the foothill area is required to have a building pad of 5000 sq. ft. which this lot has. Mr. Rowland has reviewed the site plans for the last 15 years and

has never allowed a driveway steeper than 15%, a cut or fill greater than 10 feet, and not allowed to do any excavation or grading to any slope greater than 30%. In areas of the Foothill Zone the letter of the law has been followed and has been consistent for at least 15 years with the exception for a public road. This is a legal lot with plenty of room to build a home without the exceptions being granted. The configuration of this house with the desire of a walk-out basement requires exceptions. These exceptions have not been granted in any other proposal. Staff has to tell home builders that they have to design the home to fit the lot, not the lot to fit the home.

Staff recommends the Planning Commission send a recommendation to the City Council for preliminary and final building lot approval with the following conditions:

1. All regulations of the Foothill Ordinance be followed including the limitations for cuts, fills and non-use of ground over 30%.
2. Provide a corrected boundary survey that can be recorded at the recorder's office and County Surveyor's office.
3. Payment of the following fees.

Storm Water Impact Fee	based on \$2,100.00 per acre (when deed is corrected)
Water Connection	1-1" meter @ \$4,451.00
Sewer Impact fees	1 @ \$1,556.00
Power fees as determined by the Power Department.	
Building fees per the Uniform Building Code.	

There was a lengthy discussion on all the exceptions being proposed. Al Hess mentioned that if a motion is made based on the conditions outlined by Staff there is still the issue of Mr. Gasser's requests that needs to be addressed. Mr. Mahan explained that Staff's recommendation is for the approval of a building lot without the exceptions. If the Planning Commission wants to grant the exceptions that can be done. Someone needs to make a motion to grant the exceptions or grant it without the exceptions or to grant it with some but not all of the exceptions.

Paul Summers wanted to clarify what has been said from the Staff and Mr. Gasser. Paul Rowland's presentation indicated that in the past 15 years the City has not made this kind of exception. To be consistent, the Planning Commission needs to follow what has been done in the past. Mr. Mahan explained that the only exceptions that have been made, that he can remember, has been on a church that was presented on February 20, 2001. This is an institutional use not a residential use. The City has been consistent with the ordinance.

Paul Summers mentioned that what is being presented before the board are really judgement calls for the exceptions. The first exception "shall not be detrimental or injurious to the property or improvements adjacent thereto." The second finding is that the exception "shall not be detrimental to the general well being of the neighborhood." The board can approve as

recommended or can make the judgement calls as it relates to the exceptions. Mr. Mahan mentioned that they can grant some of the exceptions. It is not all of the exceptions or none of them, it can go in between. It could be granted with part of the exceptions but not all of them. Sometimes when items go before the Board of Adjustment only part of the variance is granted, not the full request.

Mark Green thinks that maybe, without deliberately doing it, he can think of several cases where the 30% grade issue has been maybe overlooked or granted a variance somehow in the process of obtaining a building permit to build a home. Mr. Green thinks that the City has granted a variance in similar circumstances. Mr. Green feels that the two findings are met exactly as written, "Shall not be detrimental or injurious to the property adjacent thereto." Mr. Green also feels that it does not impose an impact to the general welfare of the neighborhood.

Mark Green made a motion to recommend building lot approval with the conditions outlined by Staff with deleting item #1. Gordon Thomas seconded the motion.

Mr. Green made a modification to his motion to say that in no case shall the areas of 30% grade be encroached upon in excess of what has been depicted in the plans and that every effort be made to minimize those areas that are impacted. Gordon Thomas seconded the modified motion.

It was asked if the motion and discussion was directed at the 30% only and no concerns with the cuts? Paul Rowland and Rusty Mahan mentioned that it is cuts, fills, 30%, the whole thing. Mr. Green explained that his motion says Mr. Gasser cannot exceed what has been proposed. Mr. Mahan said that what has been proposed is the maximum of what Mr. Gasser can do. Mr. Green said that it needs to be clear that the maximum includes what Mr. Gasser has proposed. That would include the elevations etc. that have been submitted.

Dick Drescher abstained from voting. The motion passed unanimously.

Subdivisions

1. Consider preliminary and final approval of Pead Subdivision, 553 W. 3300 S., Gene and Julie Pead, owners.

Gene and Julie Pead, owners, were present. Blaine Gehring explained that this proposal is located on the south side of 3000 South at 553 West, and is all of lot 4 Block 4 Irfred Park Subdivision amended. The development splits the existing 30,012 square feet lot into two lots, one with 15,028 Square feet (0.345 acres) and one with 14,984 square feet (0 .344 acres). Both lots meet the minimum lot size requirements for the zone (R-1 6.5) and meet the minimum frontage requirements of 70.00 ft. Lot 1 will be a new, vacant lot. Lot 2 will have the existing house, a small garage and a shed which has been accessed by a driveway across what will be the new Lot 1. That driveway will now be abandoned and it is unclear as to what new access may be provided to the shed from Lot 2.

Both lots front on 3000 South, which is an improved street excluding sidewalk. Since there is no

sidewalk in the entire area, there is no compelling reason to require a short piece of walk in front of only one lot. All utilities and improvements are already in place. Because the street improvements are in place, no subdivision bond will be required. Since no detention is provided for the site, the developer will be required to pay the standard storm water impact fee of \$2,100.00 per acre x 0.689 acre = \$1,446.90. There will also be a \$200.00 checking fee, a \$50.00

Recording fee, and fees as charged by South Davis Water and South Davis Sewer.

Staff recommends that the Planning Commission send a favorable recommendation for preliminary and final approval of the Pead Subdivision with the following conditions:

1. Payment of the following fees:

Storm Water Impact fee:	\$1,446.90
Subdivision Checking fee:	200.00
Subdivision Recording fee:	<u>\$ 50.00</u>
Total	\$1,057.00

The water and sewer connection fees will be paid at the time of each individual building permit is issued.

The Peads were asked what will become of the existing driveway that will be abandoned and how will they access their shed. The Planning Commission was told that the shed is not used as a garage and a driveway will not be needed to access it.

Gordon Thomas made a motion for preliminary and final approval of Pead Subdivision, 553 W. 3000 S. subject to the conditions by Staff. Dean Thurgood seconded the motion and voting was unanimous.

Meeting adjourned at 8:50 p.m.