

**PLANNING COMMISSION MINUTES**  
**May 15, 2001**

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

Absent: Al Hess and Dean Thurgood.

Paul Summers welcomed all members and those present. Mark Green wished to express his full respect for the Staff and saw no technical errors with the minutes but has some comments about additions and changes to the minutes. Mr. Green feels that the minutes are inadequate and one sided concerning the lot in Maple Hills Phase Two. Mr. Green feels that the minutes reflect explicitly in detail the disapproval of Staff. There is nothing written stating the lengthy discussion and the reasons that Mr. Green approved the site plan for this lot. Mr. Green wants the lengthy discussion and the reasons for approval written, exactly word for word, in those minutes.

Mark Green made a motion to have the minutes for April 17, 2001 amended to have a more accurate set of minutes that describes what was discussed including both sides of the argument before approval. Gordon Thomas seconded the motion and voting was unanimous.

**Subdivisions**

1. Consider preliminary and final subdivision approval of the Schulthies Subdivision, 3100 South 200 West.

Joel and Shane Anderson, representing Craig and Shelley Preece, were present. Paul Rowland explained that this proposed subdivision is located on the west side of 200 West and 3100 South, and is a division of a property previously made up of lots 16, 17 and 18 of the old Val Verda Subdivision. The development splits off three lots with 14,210 s.f., 10,988 s.f. and 10,800 s.f. All three 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 three is currently occupied by a house with a steep sloping down hill driveway.

Lot one is a corner lot and can front on either 3100 South or 200 West, with the other two lots fronting 200 West, which is a paved street without curb and gutter or 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 are available in the existing street, however, considerable work will be required to install curb and gutter along the frontage. A bond will be required for the construction of the curb and gutter, sewer laterals and pavement repair.

There is a problem with the old 200 West Street, long before it was annexed onto the city, the street improvements appear to have been constructed about four feet east of where they should have been. When the four houses along the east side of the street and the five houses along the west side were constructed, they were built to match the asphalt, not the dedicated right of way. The four houses on the east have curb and gutter along their frontage. The house on lot three and the house just south (Moss property) were built prior to annexation and are way below the street level. New curb and gutter will be required along the frontage of the subdivision and is scheduled to be installed at a new house currently under construction on lot 19.

The City attorney mentioned that if the city participates in changing the grade of a road, impacts on the

fronting properties will need to be absorbed by the city, even if the houses were built way too low or in the wrong location. If the curb and gutter and walks were to be installed per our standard 50 ft. street cross section, the Moss house and possibly the house on lot three, would be inaccessible, and the city would need to purchase the houses.

The road is what it is and can't be changed. In order to retain access into the properties, the new road will need to be built to a sub-standard cross-section or deal with the houses. The finished road will have 26 ft. of paved asphalt surface with 24" curb and gutter on the west side. The Bountiful standard is 30 ft. of asphalt with curb and gutter. Because the road is narrowed by about one lane, the west side of the street will be painted red and posted as NO PARKING. Twenty-four feet leaves enough room for two cars to pass, or one car to pass a parked car. It does not allow enough room for a car to pass two cars parked on opposite sides of the street.

Since lot three of the subdivision already has a house on it, no additional utilities will be required, however new water and sewer services are needed on lots one and two. These utilities, and any other underground utility that may cause a conflict needs to be installed prior to the construction of the curb and gutter.

Joel Anderson explained that the intent for this subdivision is for the Schulthies to provide a lot for their daughter Shelley to build a home, which will be on lot two. The burden of all expenses will be Shelley's responsibility.

Paul Rowland mentioned that he was expecting a construction drawing showing the road, curb and gutter but has not yet received it from Balling Engineering. Mark Green would like to know exactly where the asphalt is located. Mr. Green asked if it would be possible to move the right-of-way to the east side? Mr. Rowland mentioned that the right-of-way on the west side cannot be moved because there is an existing house on lot three. To move the right-of-way to the east would have to be the responsibility of the Schulthies to replace all existing curb and gutter and modify the driveways. Mr. Green feels that to move the right-of-way four feet to the east is a reasonable option for the three lots. Mr. Rowland mentioned that moving to the east side creates an access problem because the existing driveways are on a slope.

Rusty Mahan explained that this is a subdivision of an existing lot that does not involve the street. To impose such a great burden on the developer to have them install curb on private property, to Mr. Mahan's knowledge, has not been done by the City. Mr. Mahan mentioned that the three lots will need to be vacated from Val Verda Subdivision before being recorded as Schulthies Subdivision.

Mark Green would like to have the street widened starting with lot #2 and extend to 3100 South. He has some concerns with having such a narrow street on 200 West entering onto 3100 South which is the required 30 feet and a very busy street. Mr. Rowland disagrees with this because it would cause a choke in the road. The road is what is it and will have to remain as such.

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

Exceptions:

1. Allow the road cross-section to include only 24 ft. or up to 26 ft. of asphalt as described above. The street posted with "NO PARKING" on the west side of the road.

Conditions:

1. Payment of the following fees: (as determined by the City Engineer and the Power Department)

- Storm water impact fee
- Subdivision checking fee
- Subdivision recording fee
- Bond processing fee
- Power fees as required

The subdivision is served by South Davis Water and South Davis Sewer, and arrangements will need to be made with these utilities to pay for the new services.

2. Post a subdivision improvement bond to cover the costs of the sewer laterals, the curb and gutter and any asphalt patching.
3. Make necessary corrections to the plat map.
4. Supply the City with a current title report and sign a subdivision development agreement with the City.

Gordon Thomas made a motion for preliminary and final approval of the Schulthies Subdivision subject to the conditions 1-4 and the exception outlined by Staff. An addition to the conditions and exceptions as follows:

Conditions:

5. Vacation of the three lots out of the Val Verda Subdivision.

Exceptions:

The street posted with "NO PARKING" on west side of street and curb be painted red. When construction plans are submitted the Staff look at the possibility of widening the road on lots #1 & #2 to 30 feet.

Mark Green is uncomfortable with having such a narrow street. Rusty Mahan explained that in this situation there is a legal issue. In the Constitution you cannot take property from someone without compensation. In this case, where you impair access, there is a statute in State Law that if there is a public road and there is an approved access and the city changes the grade so the road is higher than the driveway the City is responsible because the city has taken away the use of their house. The City annexed this area into the City with the road as it is. The City has to accept as it is.

Lois Williams seconded the motion and voting passed by majority vote. Mark Green voted nay.

### **Zoning Ordinance Amendments**

1. Consider a zone change from R-1-6.5 to R-3-13 for Heritage Management, Inc., at 523 N. Main Cory Bell, Vice President of Heritage Management, was present. Blaine Gehring explained that Heritage Management owns and operates the nursing home at 523 N. Main along with a home and property at 563 N. Main. They would like to extend the nursing home but need a small piece of property from the Davis School District to square up the overall site. It is this small parcel that they are purchasing from the school district that is the subject of this zone change.

The property being purchased is currently part of the Bountiful Junior High school play field. It measures 79.3 feet by 104.5 feet (8,307.75 square feet). The expansion would be adjacent to the remaining play field area which fronts out to Main Street. The zone change will not change the area in any way nor impact negatively any existing residential uses in the neighborhood.

Staff recommends the Planning Commission send a favorable recommendation for the zone change from R-1-6.5 to R-3-13 for this small parcel to allow for the expansion of the nursing home.

Cory Bell mentioned that a purchase agreement for this piece of property has been done. There is no big hurry to start the project.

Mark Green made a motion for approval a zone change from R-1-6.5 to R-3.13 for Heritage Management at 523 N. Main as recommended by Staff. Gordon Thomas seconded the motion and voting was unanimous.

2. Consider amendments to the Zoning Ordinance Dealing with the Foothill Overlay Zone.

Blaine Gehring explained that over the past few years the City has had problems with part of the Foothill Overlay Zone as it refers to building on unusable ground, which lots are exempt from the Foothill Ordinance, and what and how many exceptions should be granted in specific cases. These situations have prompted a recommendation to amend some provisions in the Zoning Ordinance to better clarify the ordinance and its application.

First, Staff has had people challenge the use of the word building in its context in the Foothill provisions. In Section 14-13-108 it states that: "Building must be done on usable land only. Land with slopes of thirty (30) percent or greater is considered unusable land." What builders, architects and attorneys have said is that the word "building" in this context means a structure and thus no structures may be placed on ground over 30% slope. It does not refer to excavating, grading, retaining walls, etc. The city has maintained that it includes all of those things because the word "building" is used as a verb not a noun. This has not satisfied them and they have continued to argue the interpretation. Staff is making the recommendation that the following amendments be made to clarify that section:

1. Amend Section 14-3-102 in the definitions Chapter of the ordinance to read as follows:

**14-3-102 DEFINITIONS**

**BUILDING:** (a) A permanently located structure for the shelter, housing, or enclosure of any person, animal, article or chattel. When any portion thereof is completely separated from every other portion thereof by a division wall or fire wall, without openings, each such portion shall be a separate building. The term building shall not include any form of vehicle, even though immobilized. Where this Chapter requires, or where special authority granted pursuant to this Chapter requires, that a use shall be entirely enclosed within a building, this definition shall be qualified by adding and enclosed on all sides. (b) The act of altering an existing structure or existing terrain. It includes excavating, modifying, or in any way altering unimproved ground for any purposes.

2. Amend Section 14-13-108 to read as follows:

**14-13-108 REQUIREMENTS FOR BUILDING IN THE FOOTHILL OVERLAY ZONE**

A. The following rules shall apply for building in the Foothill Overlay Zone:

1. Single family dwelling and institutional uses and their accompanying site improvements and accessory structures shall be located. Building must be done on usable land only. Land with slopes of thirty (30) percent or greater is ~~considered~~ unusable land and cannot be used for any purpose.

Second, the definition of usable land is actually a definition of unusable land and is confusing. Section 14-13-103 needs to be amended as follows for better clarification of the definition of usable land:

#### **14-13-103 SPECIAL TERMS**

The following special terms and definitions shall be used in the interpretation and construction of this Chapter:

**AVERAGE SLOPE:** The words “average slope” shall mean and be determined by the use of the following formula:

$$S = \frac{.00229 (I) (L)}{A}$$

**USABLE LAND:** ~~That land within a lot no part of which has slope exceeding thirty (30) percent.~~ Land with a slope of less than 30%. All land with a slope of 30% or greater is unusable for any purpose.

Third, when the foothill ordinance was adopted, as with any ordinance, the City recognized that there would be circumstances where some minor adjustments would need to be granted. A provision to grant exceptions to the ordinance was adopted. Staff has argued several times, when does an exception become the rule? If the number or extent of any exceptions become significant as to the overall scope of a particular project or development, then the very purpose and intent of the ordinance is compromised. Why have an ordinance or requirement in the first place if exceptions are granted which are far in excess of what could be considered minor adjustments? The City needs to maintain some discretion, but also needs to have it understood that exceptions are to be just that, minor adjustments, and not a general rule. Staff recommends that Section 14-13-106 H. be amended as follows:

#### **14-13-106 DEVELOPMENT STANDARDS**

H. Exceptions

Exceptions to be requirements and provisions in this Section may be approved by the City Council, provided that the developer or owner of such development can demonstrate to the satisfaction of the City council that the requested exceptions:

3. Shall be minor in their overall scope and not represent a major department from the purposes and objectives of this Chapter.

Last, the Foothill ordinance has been in place since 1977. Most of the lots that were approved prior to the ordinance have been built on. It is very confusing and hard to say to one person they have to follow the provisions, and which ones they must follow, and to others they don't have to. Staff feels that it is time the exception for lots approved prior to the foothill ordinance be repealed and deleted from the ordinance.

Where there are extenuating circumstances, such as lack of a 5,000 square foot buildable pad on ground less than 30%, they can be properly and adequately dealt with by the Board of Adjustment. In this way, the Board of Adjustment would deal with adjustments to only one or two requirements. All other foothill requirements would be met, whereas under the exemption these lots are released from *all* the foothill requirements. Section 14-13-104 should be amended as follows:

#### **14-13-104 SCOPE AND APPLICATION**

- C. ~~The provisions of this overlay zone shall have no application to Subdivisions, Planned Unit Development, or other construction projects which have been granted preliminary approval prior to April 6, 1977.~~

Rusty Mahan explained that in 1977 when the Foothill Ordinance was adopted subdivisions that had been previously approved were exempted. These subdivisions have been exempted for the past 25 years. The City is proposing to end that exemption. It will only apply to the few undeveloped lots left within those subdivisions. If a property owner comes in and can't build under the Foothill Ordinance they can go to the Board of Adjustment. This will eliminate the total exemption that may exist.

Paul Rowland explained that Chelsea Cove, New Port Heights and Granada Hills are in the Foothill Zone, but approved before 1977 so they are exempt from the ordinance. The results from this is that some lots have been granted exemptions because your subdivision was approved before 1977 but your neighbor's was granted approval after 1977 and he has to meet the letter of the law (follow the ordinance). This causes problems with property owners saying "You let them do it, why can't I?" They are not held to the same law.

Rusty Mahan mentioned that everybody holding undeveloped land is subject to the possibility that the governing body will change the laws and zoning and/or the building codes. Property owners have had the land for 25 years and done nothing with it. They now will be subject to the current Foothill Ordinance. If there are any problems the property owners can apply with the Board of Adjustment.

There was a discussion about the function of the Board of Adjustment. If someone has a lot that is unbuildable the City would recommend applying with the Board of Adjustment to grant a variance for reasonable exceptions, not excessive exceptions.

Lois Williams made a motion to send to the City Council approval for the amendments to the Zoning Ordinance dealing with the Foothill Overlay Ordinance. Gordon Thomas seconded the motion and voting was unanimous.

Rusty Mahan made a proposal to the Planning Commission to consider changing the Planning Commission Meetings to one meeting per month. This would be on a trial basis for four to six months. If the Commission still agrees after the trial period, it can be made permanent. The City Council has changed their meetings from four to two meeting per month.

Lois Williams made a motion to approve having Planning Commission Meeting on the third Tuesday of every month. Gordon Thomas seconded the motion and voting was unanimous.

Meeting adjourned at 8:15 p.m.

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