

**MINUTES OF THE CITY OF HOLLADAY
PLANNING COMMISSION MEETING**

Tuesday, February 1, 2022

6:00 p.m.

City Council Chambers

4580 South 2300 East

Holladay, Utah

ATTENDANCE:

Planning Commission Members:

Ann Mackin, Vice-Chair

Martin Banks

Chris Layton

Alyssa Lloyd

Karianne Prince

Dennis Roach

City Staff:

Jonathan Teerlink, Community Development Director

Jayne Blakesley, City Attorney

Crystal Nichols, Business License Official

WORK SESSION

In the absence of Chair Howard Layton, Vice-Chair Ann Mackin called the Work Session to order at approximately 5:30 p.m.

1. Open and Public Meetings Training.

City Attorney, Jayme Blakesley, presented the Open and Public Meetings Training. He stated that everything the Planning Commission does as a public body must be properly noticed at least 24 hours in advance and on the agenda before action can be taken. A quorum is a simple majority. To go into a closed session, two-thirds of the Commission must be present. Meetings can be held electronically but must be noticed as such and there must be an anchor location where the public can attend. Members of the body can join electronically via telephone or Zoom. All meetings must be recorded and minutes must be kept for each meeting. Mr. Blakesley explained that there are exceptions where meetings would not need to be recorded but they are rare. No decisions can be made in a closed session.

The roles and responsibilities of the Planning Commission were next addressed. He explained that courts defer to the actions of cities and are slow to overturn a city action. In a situation involving a legislative decision made by a City Council, the courts will not intervene unless it is arbitrary, capricious, or illegal. For a legislative decision, the standard is reasonably debatable. Other decisions would be administrative such as an application for a project within an existing zone. Those types of decisions would be recommended based on compliance with the ordinance. There are also limitations on what can be considered. The Planning Commission can only consider factors before them or where there is supporting evidence.

Legislative and administrative decisions were discussed. Mr. Blakesley reported that cities are a sub-jurisdiction under the State and have powers offered by the State that regulate all land use

decisions according to the Land Use Development and Management Act (“LUDMA”). LUDMA authorizes the City to use its land use standards as long as they are consistent with law and mandate the following:

- A Planning Commission;
- An appeal authority; and
- A process for considering land use applications.

Utah has strong respect for individual property rights and LUDMA reflects that. There are aspects of State Code that are in favor of the applicant or the landowner rather than the City or the land use authority. Cities may regulate private property but once written and established, land use regulations are binding. Land use ordinances must be plainly written to be enforceable. If there is any ambiguity, the courts will rule in favor of the landowner. Process matters a great deal under LUDMA. There are also land use and hearing requirements that must be adhered to. It was noted that a tie goes to the applicant or property owner. When discussing roles and responsibilities, the land use authority is the appeal authority.

Mr. Blakesley explained that a legislative body is the only body that can enact a land use regulation. The land use authority applies the plain use of the land use regulation when making a decision. These are administrative decisions that can, in some circumstances, be decided by the Planning Commission or staff.

Conditional uses are legally rightful uses as long as certain conditions are met and applied. The City is limited in terms of the factors that can be considered. The Planning Commission cannot deviate from that list. If there is a restriction that the courts cannot plainly understand, they will interpret in favor of the landowner or applicant. Specific circumstances were discussed. Mr. Blakesley stated that there must be a quorum to hold the meeting and then a majority of the composition of the Planning Commission to advance any particular motion. If only four members are present at the public meeting, all four would have to vote in favor of a motion to move it forward.

The terms “arbitrary” and “capricious” refer to something that is not supported by substantial evidence found on the record. Best practices were discussed. Mr. Blakesley stressed the importance of the Planning Commission understanding the nature of the decisions they are making. Mr. Blakesley commented that the Planning Commission should follow procedural requirements exactly and document their decisions in writing. In the event of a challenge, decisions that have a robust record are most likely to be upheld. The decision must be based on the evidence and reasons that are allowed for in City Code. For legislative decisions, public hearings should be considered an opportunity to learn. He encouraged the Commission to make a decision and then bring to bear what they hear during the public hearing as well as their own judgment and preferences. Administrative decisions are different. Sometimes a public hearing will be held on an administrative decision and there may be people who do not like what the Code allows, however, discord and opposing viewpoints cannot be considered as one of the criteria. In those circumstances, it is necessary to isolate the Code, what it provides for, and determine whether the

application fits within what is allowed. Whenever reasonable, Mr. Blakesley encouraged the Commission to delegate decisions to staff.

He cautioned the Commission against taking site visits or considering things that are not on the record. The record supports and buttresses the decision made. If it is based on something that cannot be pointed to in the record, it can be difficult to support if the decision is challenged. Conversations with developers that do not take place on the record should be avoided. Text communications during a meeting should also be avoided. All conversations must be part of the record of the public meeting. Pre-meeting commitments should also be avoided.

Chair Mackin commented that it is beneficial to visit sites individually rather than as a group.

Mr. Blakesley explained that the Commission is subject to the Municipal Officers and Employees Ethics Act, which prohibits certain behaviors on their part. Certain responsibilities come with public service. Someone from their office is always available to advise on ethics issues. They can also confer with the Planning Commission Chair.

CONVENE REGULAR MEETING – Public Welcome and Opening Statement by Commission Chair.

In the absence of Chair Howard Layton, Vice-Chair Ann Mackin called the Regular Meeting to order at 6:00 p.m. and read the Commission Statement.

PUBLIC HEARING/ACTION ITEM

1. **Zone Map Amendment – 5661 South Highland Drive – Rezone from R-1-43 to R-2-8. Review and Recommendation to City Council on Proposal by Applicant, Silicon Slopes, LLC, to Amend the City of Holladay Zone Map for Approximately .66 Acres from the Current R-1-43 Zone (one home per acre) to the R-2-8 Zone (one home per 5,000 square feet).**

Community Development Director, Jonathan Teerlink reported that the above matter was on a previous agenda but delayed by the applicant. There were issues with noticing tonight's meeting in that the wrong date was listed. Staff had since corrected the notice. The matter is a legislative action for the Commission to make a recommendation on a rezone to the zoning map. The applicant is requesting to maintain the residential use but at a higher density. Mr. Teerlink explained that the Highland Drive Master Plan ("HDMP") contains specific guiding language with one of the main points being to consider transitional zones that are residential in nature but no more than the equivalency of five units per acre. A chart of applicable zones was provided that would be equivalent to five units per acre. Comments received via email were provided to the Commission and the applicant.

Commissioner Layton asked about other density options between the two zones. Mr. Teerlink stated that between R-1-34 and R-2-8 the next zone down is R-1-21 at one-half acre (15,000 square feet), R-1-10 at 10,000 square feet, R-2-10, and then R-2-8. It was acknowledged that in an effort to increase density there are numerous levels.

Chair Mackin opened the public hearing.

The applicant, John Hill, identified himself as the owner of Silicon Slopes, LLC a small construction business he started one year ago. After retiring from the military, he created Silicon Slopes Commercial Construction. He wanted a business that was synonymous with the state he served in. He felt that sometimes he is misrepresented. It has always been his dream to develop and build something. He hoped to build something that is beautiful and benefits the community.

Mr. Hill reported that there were various proposals for the property but his intent is to provide housing for middle-class families. He was requesting a rezone of the property at 5661 South Highland Drive from R-1-43 to R-2-8 and believed his request matches the density in the immediate vicinity. The subject property is surrounded by similarly zoned properties. When reviewing the Master Plan, he wanted to make sure that the request for a rezone matches Segment B of the HDMP that was approved in 2017. Mr. Hill was sensitive to his immediate neighbors and wanted to help address the housing concerns that exist and develop a well-thought-out project.

Commissioner Prince drove by the property earlier in the day and noticed that for-sale signs are posted. She asked about the status of the property. Mr. Hill stated that they have been under contract to purchase the property since September. As part of their due diligence, they were looking into what can be done with the property.

Commissioner Roach stated that the rezone is shown going up to Pheasant Way. It was clarified that what appears to be the rezone is just a text box and the rezone does not extend that far.

Rick Clark gave his address as 2270 East Pheasant Way. He thanked the Planning Commission Members for their service to the community and Mr. Hill for his service to our Country and State. Mr. Clark expressed opposition to the proposed zone change. He noted that a petition was circulated around the neighborhood and signed by 50 to 60 people. The petition addressed being able to control rights-of-way on the street. Mr. Clark wanted to make sure that does not present a problem. He stated that the number of signatures obtained shows the level of concern for the proposed rezone.

Mr. Clark stated that Mr. Hill described the neighborhood meeting as “cordial and pleasant”. Mr. Clark agreed that it was cordial but perhaps not pleasant since Mr. Hill is proposing to significantly alter the character of the neighborhood. The parcel to be rezoned serves as one-half of the gateway into the Pheasant Way neighborhood. Discussion has centered around whether to modify the property as a Highland Drive or Pheasant Way property. It has a Highland Drive address but he considered it to be a Pheasant Way property. The only time any of the neighbors on Pheasant Way have been referred to was in the comment that at some time in the future they would like it to be a PUD.

Mr. Clark stated that the traffic studies that are cited in the staff report reference traffic along Highland Drive and predict that increased traffic from the proposed project will be negligible. However, the additional cars on Pheasant Way will result in approximately a 10% increase in traffic. He referenced the rezone standards and stated that the request does not meet the

requirements. Mr. Clark stated that paying a high price for a property should not be a justification to do whatever a developer wants to with a piece of property. He asked that the Commission recommend denial of the rezone request.

Tom Nelson gave his address as 2155 Pheasant Way and stated that the street began in 1928 as a private lane leading to his parent's home that was built on his grandfather's dairy farm. His mother named the street and he is the only living person that has called Pheasant Way home throughout his life. The developer and staff provided studies related to the north-south traffic on Highland Drive. He noted that Highland Drive is owned by at least six separate municipalities. He addressed the one-mile stretch of road that is the only portion of Highland Drive that is a City street. He noted that the east-west traffic in the community is critical. Mr. Nelson addressed the commuting travel associated with the intersection at Highland Drive, Pheasant Way, and Pheasant Circle. It is a single intersection because the two are only one-half block apart and serious activity at either one would extend well beyond the other.

Mr. Nelson stated that Highland Drive was one of the first streets in the community up Big Cottonwood and was established in 1849. In the pioneer times, it was the only north-south street serving the community and fed several lanes to the east and west. It was the only access to the property east as the Big Cottonwood Creek created a natural barrier on the east and north of the community. Later, in the early 1900s, Cottonwood Lane extended north and a bridge was constructed to connect Walker Lane. Ultimately, this left the area between Walker Lane and Fardown Avenue with only one access, which was Highland Drive. Today there are 60 homes with only one access street.

Annette Wells gave her address as 2011 Pheasant Way and stated that her understanding was that the developers want to have an entrance off of Pheasant Way and have a Pheasant Way address. She stated that doing so will create problems. Ms. Wells stated that the existing area is single-family homes with R-1-43 zoning and no curb, gutter, or sidewalk. She stated that the rural features will be changed as a result of the proposed project.

Ms. Wells stated that *Brooke and Chad Iverson* were unable to be present but asked her to speak on their behalf. The Iversons asked that the burden be on the party requesting the rezone. They were concerned that residents are losing faith in zoning laws. They were also concerned about the site issues. The developer indicated that the development would include features such as curb, gutter, sidewalk, and water retention. Pheasant Way is a country estate neighborhood. Changing one property to allow for such features would require the City provide the same for the entire neighborhood to remain harmonious.

Lynette Casper gave her address as 2227 Pheasant Way and commented on the zone creep. She stated that the proposed rezone will impact not only this property but the entire Pheasant Way neighborhood and set a precedent where the surrounding areas will be open to something similar. She stated that what is proposed does not comply with the Highland Drive Master Plan.

Kris Standiford gave his address as 1992 Pheasant Way and stated that his property is just under one acre in size. He was concerned about a loss of privacy, potential parking issues, and increased traffic. He stated that the proposed project will also decrease his property value.

Landon Beales gave his address as 2146 Pheasant Lane where he has resided for the last 52 years. He raised his family in the area and enjoys the neighborhood immensely. He did not want to see it change for the worse. He agreed with the previous comments. He remarked that access from Pheasant Way onto Highland Drive is very dangerous. There are 60 homes above Highland Drive on Pheasant Way and four lanes that feed into it. There is increased risk with new development. He suggested that there be careful planning going forward.

Madeline Miguel gave her address as 2102 Pheasant Way. She was new to the neighborhood and purchased her home in late 2019. She did not feel there was any gatekeeping taking place and stated that her lot is .6-acre in size. Even though her lot is under one acre she has been warmly welcomed into the neighborhood.

George Frioux gave his address as 1990 East Pheasant Circle on the corner of 5600 South and Highland Drive. He stated that the developer plans to install a gate system to allow people to come and go from the Planned Unit Development (“PUD”). His concern was that when turning right onto Pheasant Way if someone were to back up or wait to get through the gate, it could be hazardous. While a gate sounds prestigious, it will be problematic. Mr. Frioux was astonished by the applicant continuing to push the same plan that was introduced initially. The neighbors all asked for an alternative, which he has not provided. Mr. Hill wants to maximize the density on the property, which is the highest offered in the City. Mr. Frioux had received several calls from developers asking if they would be interested in selling their property to do something similar to what is proposed. They are not interested in selling but recognize there is great interest in the area. He strongly urged the Commission to recommend denial of the request.

David Wells gave his address as 2011 Pheasant Way and has owned his property since 2011. He stated that there is a lot of emotion around this request and what it will invite in the future. Mr. Wells stated that the only reason he has heard for the developer’s request is economic. The proposed asking price of \$1.25 million seemed high to him. The only way that works economically for a buyer is to develop it with as much density as possible. He did not consider economics to be a justifiable reason to change the zoning. Mr. Wells also did not feel that it is a distressed property. It is unkempt perhaps and does not have a landscaping buffer like many other properties along Highland Drive. Alternatively, he felt that changing the zoning will harm him and his neighbors. In his opinion, changing the zoning diminishes his property value more than simply being close to Highland Drive. Mr. Wells agreed that what is proposed will set a bad precedent. He asked that the Commission look more closely at the rights and interests of residents who want to remain in the neighborhood.

Andy White gave his address as 5690 South Pheasant Lane. He recalled that at the first meeting there were two developers. He wanted to better understand who the second developer is. Mr. White read the general guidelines that state that zone changes can occur if there is a significant reason. He did not consider the desires of a single developer to be adequate.

Tony McQuinn gave his address as 2163 East Pheasant Lane and stated that he purchased the property two years ago. It is a wonderful neighborhood with great neighbors. He has a special needs daughter and wants a quiet neighborhood where she can live out the rest of her life and get safely to a bus stop. He was concerned that there will be parking near the bus stop, which would create a safety hazard for his daughter. He asked that the Commission recommend denial of the request.

Randy Casper gave his address as 2227 Pheasant Way stated that he has lived in his home for over 20 years. They have a beautiful backyard with trees, however, behind his home, a huge new home is going in and all of the trees were removed. He had no control over that. He noted that the residents do have control over this proposal. Mr. Casper stated that this area is unique and the more it is divided up, the more that is lost.

Candice Frioux gave her address as 1990 East Pheasant Circle, which faces Highland Drive. She wanted the Commission to understand that many of the area residents have spent a lot of money and worked hard to make their properties beautiful. She did not consider living on Highland Drive to be a negative. She stated that her property is over one acre in size. Making a dangerous change like the one proposed allows for more influence in the neighborhood. She found it offensive that Mr. Hill has been in business for one year but wants to change the dynamics of the neighborhood. She keeps her property beautiful but gets a notice from the City for the slightest infraction. A nearby property on the corner has a fence on the street and does not have a landscaped front yard but the City has not addressed the problem. She found it interesting that the City is considering a rezone to a poorly maintained property that has not been properly managed. She suggested that the property owner be required to maintain the property as the other neighbors have.

Liane Stillman gave her address as 2149 Pheasant Way. She was asked to speak on behalf of two neighbors, *Mike Rosas* who resides at 1989 Pheasant Way, and *Nina Johnston Buehler* who lives at 2120 Pheasant Way. Ms. Stillman stated that one of the major reasons for the City's incorporation was to be able to have its own Planning and Zoning Board and professional staff. Land use decisions would be made by those who have to live here. The goal was to preserve neighborhoods. The City first adopted a General Plan that included the preservation of neighborhoods. The current General Plan specifies that new development must be of high quality and compatible with the surrounding neighborhood. It also stresses the need to support stable neighborhoods. Ms. Stillman distributed a map from the current General Plan and identified the subject property that has a designation of Low-Density Residential Protected ("LDR-P"). The objectives of the district are as follows:

- Preserve the existing one-half acre lot development patterns;
- Preserve the mature tree canopy;
- Preserve the ambiance created by single-family development; and
- Ensure that new development is appropriately accommodated through utilizing unclaimed density by subdivision and not by rezone.

Ms. Stillman stated that the General Plan is the future map of the City. The current map was adopted in 2016 and is projected to be the vision for the City for the next 10 years. It provides an overall picture of how the City is expected to grow. Preservation of neighborhoods was identified as one of the overriding principles. She hoped that the Planning Commission consider what the neighbors want and the preservation of neighborhoods as the overriding consideration.

Landon Beales stated that his yard has been a common shortcut from Oakwood School to the rest of Pheasant Way for many years. It is used to avoid the intersection of Pheasant Way and Highland Drive. If the proposed rezone is approved, the result will be a terrible bottleneck.

There were no further public comments. The public hearing was closed.

Mr. Hill stated that his company is new because he spent the last 17 years serving his country in the military. He was sorry that the project has been a source of concern for his neighbors. He addressed the various questions raised. With regard to traffic in and out of Pheasant Way, he stated that there are actually two points of access on Pheasant Way and Pheasant Circle. The rezone request is due to growth. The first developer divided the parcel into seven lots. Growth is something that all have to accept. Services have to be paid for and one way to do that is through tax revenue, which the new homes will generate.

Mr. Hill had looked at the homes along Highland Drive and stated that he originally proposed six homes but has since reduced the density to five, which is the point at which it makes sense economically for him. What is proposed is 4,000 to 4,300 square-foot homes with two-car garages. Each unit will accommodate four cars with two in the garage and two in the driveway. This level of parking was expected to accommodate guest parking. He pointed out that it is safer to locate the entrance on Pheasant Way.

Mr. Hill stated that there is a strong argument that growth has occurred and that R-1-43 zoning is the minority. The average proposed lot size is .10-acre, which is similar to others on Highland Drive. The home will add value to the area and the revenue generated will benefit the City. His intent was to create a beautiful development that is of value to the community.

Commissioner Banks asked if the opportunity to provide ingress and egress off of Highland Drive had been fully exhausted. It sounded like the City Engineer suggested that that would be advisable. If the Commission were ultimately to decide that the request for six units is too much and was to consider something less, at what point would this project be infeasible.

Commissioner Layton was concerned with egress onto Highland Drive or Pheasant Way and stated that more than vehicular circulation, the issue was whether this is the right place for a rezone. His intent was to find zones similar to others in the area but that have their own access to Highland Drive and can better accommodate higher density. The proposal as to effectively take the entryway into an elegant neighborhood with larger homes and eliminate one corner of the gateway to develop smaller, more dense housing. His opinion was that what is proposed takes away from the neighborhood. He suggested that they find places for increased density because growth is needed.

He, however, considered the proposed development to be in the wrong place and in the wrong zone.

Commissioner Roach thanked those who commented for their civility. He referred to the HDMP, which speaks to lower density and larger lots. Along Highland Drive, there are few established neighborhoods remaining that face Highland Drive. To him, this did not feel like the right place for what is proposed, particularly since it feeds into the Pheasant Way neighborhood. He stated that the HDMP speaks specifically against what is proposed based on the number of units that already exist. He considered the proposed density to be far too high for the area.

In response to a question raised, Mr. Teerlink stated that the subject property is .667-acre in size, which is 28,700 square feet. Chair Mackin asked if it is possible to develop five homes on the parcel. Mr. Teerlink stated that the calculation shows a 5.7 yield but that does not take into account site plan development conditions, driveways, and access roads, which typically reduce the available acreage. Five units per acre pencils just barely but does not apply site plan development standards, which have not been reviewed by staff. If the General Plan maximum of five units per acre were applied, it would equate to a maximum of three units.

Commissioner Layton referenced language specifying the need to thoroughly evaluate the impact of residential development on the existing residents. He stated that there is a lot to consider when upzoning residential areas.

Commissioner Lloyd acknowledged that she is an advocate for density where it is appropriate but questioned the appropriateness of what is proposed. As she drove the area, she did not realize the limited egress from the existing neighborhood. She also noticed that there is increased density on a significant portion of Highland Drive, which she supports. The subject property, however, is obviously an entrance to a very established, stable, neighborhood. To allow such significant growth at the entrance would have a negative impact on the neighbors.

Commissioner Prince considered the issue to be whether the property was to have its exit and entrance on Highland Drive as a self-contained unit. If that were the case, she would view it differently. With the access onto Pheasant Way, it seems more congruent with the neighborhood.

Commissioner Banks asked Mr. Hill if it would be feasible for him to develop three units. Mr. Hill stated that at that density, the risk would be too high. Mr. Hill was also asked if he had explored the option of having access off of Highland Drive rather than Pheasant Way. He stated that they have not performed any independent studies. Access off of Highland Drive was thought to create more problems than from Pheasant Way. If the project moves forward, Mr. Hill offered to conduct additional studies as needed. Mr. Teerlink noted that Highland Drive is City-owned to approximately 6200 South where it transitions to the Utah Department of Transportation (“UDOT”).

Commissioner Lloyd was concerned about item A, which specifies that the proposed amendment is consistent with the goals, objectives, and policies of the General Plan. It specifically states that the subject property is an area that has been carved out to be preserved. She felt that was

intentional. Chair Mackin pointed out that the General Plan also states that there is to be a maximum density of five units per acre. The proposed density exceeds that. Commissioner Layton remarked that there are spot zones and high-density areas nearby. The question was whether this is the appropriate place for something similar to occur or if there are other parcels of land in a different zone with access off of Highland Drive that would be better suited for greater density.

Commissioner Banks moved to recommend DENIAL to the City Council of the application from Silicon Slopes, LLC to amend the Holladay Zoning Map for .66 acres of land located at 5661 South Highland Drive from R-1-43 to R-2-8 based on the following:

Findings:

1. ***The application is not consistent with the goals, objectives, and policies of the General Plan.***
2. ***The application is not harmonious with the overall character of the existing development in the immediate vicinity.***
3. ***The extent of the application may adversely impact some of the immediately abutting properties.***
4. ***The adequacy of the roadway nearby that is both Pheasant Way and alternatively, Highland Drive is not sufficient to serve the proposed application.***

Commissioner Lloyd seconded the motion. Vote on motion: Commissioner Prince-Aye, Commissioner Roach-Aye, Commissioner Banks-Aye, Commissioner Lloyd-Aye, Commissioner Layton-Aye, Chair Ann Mackin-Aye. The motion passed unanimously.

ADJOURN

Commissioner Lloyd moved to adjourn. The motion passed with the unanimous consent of the Commission.

The Planning Commission Meeting adjourned at approximately 7:55 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the City of Holladay Planning Commission Meeting held Tuesday, February 1, 2022.

Teri Forbes

Teri Forbes
T Forbes Group
Minutes Secretary

Minutes Approved: **May 3rd 2022**