
MEMORANDUM

DATE: August 5, 2003

TO: Council Members

FROM: Janice Jardine
Land Use Policy Analyst

SUBJECT: Petition No. 400-03-07 – Amending the Site Development Ordinance regarding the approval of subdivisions in Foothill Zoning Districts

CC: Rocky Fluhart, Dave Nimkin, DJ Baxter, Ed Rutan, Lynn Pace, LeRoy Hooton, Jeff Niermeyer, Alison Weyher, David Dobbins, Louis Zunguze, Roger Evans, Enzo Calfa, Brent Wilde, Doug Wheelwright, Ray McCandless, Jan Aramaki, Marge Harvey, Lehua Weaver, Gwen Springmeyer, Annette Daley

POTENTIAL OPTIONS:

1. Close the public hearing.
2. Close the public hearing and continue Council action to a future date.
3. Continue the public hearing and Council action to a future date.
4. Adopt the proposed ordinance.
5. Do not adopt the proposed ordinance.
6. Request that the Administration provide additional analysis of issues identified by Council Members and identify options for Council consideration.
7. Hire outside counsel and/or consultant with land use/foothill development expertise to work with the Administration and Council office to provide an analysis of the issues and identify an array of options for Council consideration.
8. Create a Council subcommittee to review the issues and make a recommendation to the full Council.
9. Any combination of the above.
10. Adopt a motion requesting that the Planning Commission process an amendment that would consolidate the Zoning Ordinance and Site Development Ordinance to eliminate inconsistencies.
11. Other options as identified by Council Members.

If the Council does not act on the ordinance on August 7th and does not anticipate acting in the near future, the Council could clarify for the Administration whether it anticipates that the case that is currently pending will be processed by the Administration prior to the Council's formal vote.

The following information was provided previously. It is provided again for your reference.

Given limited time for Council staff review on this issue a staff report was not prepared. The following includes a brief summary of key issues relating to the proposed amendment and questions Council Members may wish to discuss with the Administration.

KEY ELEMENTS:

- A. This action is intended to correct a discrepancy between the City's Site Development Ordinance and the Zoning Ordinance relating to minimum lot size and developable area requirements in foothill zoning districts. The Administration notes this issue was raised by the City Attorney's office during a review of a proposed foothill subdivision located at 1085 East North Bonneville Drive.
- B. The Administration's transmittal notes "The discrepancy must be corrected to reasonably limit a potential takings claim exposure for the City." A letter dated January 15, 2003 from the City Attorney's office to the Acting Planning Director notes that based on the existing requirements in the Site Development and Zoning Ordinances "...foothill property with a slope in excess of 30 percent may not be included to calculate the minimum lot size unless the property owner owns a minimum of five acres to be able to obtain planned development approval. Under such circumstances, the application of the City's ordinances would clearly deny the property owner of all reasonable and economic use of their property. It is well established under existing case law that if a City denies all reasonable economic use of private property, the municipality has taken the property for which compensation would be required. See Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)." Please see the attached letter from the City Attorney's office for additional details. **Attachment A**
- C. The Site Development Ordinance states "Undevelopable area shall not be used to determine the minimum lot size as required by the underlying zone, unless specifically approved by the Planning Commission through the plan development review process." (Sec. 18.28.30.B.11.c.) The planned development conditional use section of the Zoning Ordinance specifies that the minimum planned development size for foothill districts is 5-acres. (Table 21A.54.150.E.2.)
- D. The Administration has provided the following example, a lot in the FR-2 zone may have the zone required lot area of 21,780 square feet, but in order to enter the Planned Development review process to count slopes over 30% toward the lot minimum, 5 acres are required.
- E. In a related matter, on January 22, 2003, the Planning Commission granted preliminary subdivision approval of a one lot .35-acre foothill subdivision located at 1085 East North Bonneville Drive in the Foothill Residential FR-3 zoning district. The Planning Commission decision was appealed to the Land Use Appeals Board. On April 2, 2003, the Land Use Appeals Board approved a motion to overturn the Planning Commission decision recommending that the subdivision request be remanded back to the Planning Commission until such time that the City Council has made a decision on the conflict with the ordinances. Please refer to the attached Land Use Appeals Board minutes for additional details. **Attachment B**
- F. Options presented to the planning Commission by Planning staff developed over several meetings included:
 - 1. Follow the City Attorney's recommendation to remove language from the Site Development Ordinance that refers to the planned development process.

2. Remove language from the Site Development Ordinance that requires the planned development review process and establish review standards for Planning Commission consideration.
 3. Remove language from the Site Development Ordinance that specifies slopes greater than 30% cannot be counted toward the zone required minimum lot size and consider evaluating rezoning foothill property to require larger lot minimums, if appropriate.
 4. Require the City Attorney's office to determine on a case-by-case basis whether or not to waive the minimum planned development size based on a determination of a substantial risk of successful taking claim and based on the Attorney's determination the application would be reviewed by the Planning Commission under one of the following options:
 - a. Zoning district and subdivision regulations, or
 - b. Planned development analysis without meeting the minimum lot size requirement for a planned development
 5. Amend the Zoning Ordinance minimum planned development size to require a 2-lot minimum project size equivalent to enter the planned development process in all residential zoning districts.
 6. Not amend the existing language in the Site Development Ordinance, but add a new section that would create a process that allows the Planning Commission the discretion to review parcels:
 - a. that do not meet the minimum project size for a planned development, and
 - b. to include slopes over 30% toward meeting the minimum zoning required lot area of the underlying zone based on specific minimum criteria. (Please refer item G. below for the specific criteria.)
- G. The Planning Commission is recommending Option 6 above with the following additional criteria.
1. Undevelopable area shall not be used to determine the minimum lot size as required by the underlying zone, unless specifically approved by the Planning Commission through the planned development review process.
 2. For independently owned parcels that do not meet the minimum project size for a planned development, the Planning Commission may count sloped over 30% toward meeting the minimum zoning required lot area of the underlying zone where the planning commission finds that:
 - a. The parcel fronts on an existing dedicated public street.
 - b. The parcel has a minimum of 1,500 square feet of net buildable area. The net buildable area shall not include any areas of 30% or greater slope or the required zoning setbacks or the portion of the transitional area that lies within the required 10 foot minimum setback or 20 foot average setback from the proposed development limit line, as defined by the Salt Lake City Zoning Ordinance.
 - c. The parcel has city sewer and water services that are located or can be extended to access the lot directly for the street.
 - d. The applicant must present a construction plan, acceptable to the Planning Director, which demonstrates the ability to manage staging from construction in manner that will not impact transitional or steep slope areas.
 - e. The proposed development on the parcel is compatible with the surrounding neighborhood and will not have a material net cumulative adverse impact on the neighborhood or the City as a whole.

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

- A. The proposal would amend the text of the Site Development Ordinance only. Because the issue is a result of a conflict between the Site Development and Zoning Ordinances, Council Members may wish to consider:
 1. Amending the Zoning Ordinance Planned Development and Foothill Residential zoning districts sections to include reference to the new requirements in the Site Development Ordinance.

2. Current practices used by the Administration to ensure review of existing ordinances, building and fire codes for compatibility with proposed amendments.
 - a. The Planning staff report notes:
 - o As the proposed revisions do not impact city infrastructure or operations, review by other City departments is not necessary.
 - o New foothill development proposals will be reviewed on a case-by-case basis as applications are filed and will be reviewed by the Planning Commission. The amended site development and zoning ordinances will not affect roadways, parks, and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.
 - b. It is Council staff's understanding that Public Utilities has current data regarding a foothill development boundary in which Utilities can reasonably provide services for water and sewer. Council Members may wish to ask whether this has been addressed in this process and, if not, whether it could add value to the review process.
 - c. Is it anticipated that the City's watershed could be impacted? If so, were the City Boards or Commissions such as the Public Utilities Advisory Committee or Metropolitan Water Board involved in the review process? What type of comments or input was received?
- B. Due to the significant interest and concern about foothill development, Council Members may wish to discuss whether or not current minimum notification requirements are adequate to ensure broad public participation or whether any additional notification or follow-up is desirable.
 1. Community Council Chairs were notified as required, but no Community Council presentations were requested or conducted. The Planning staff report notes that notices were mailed to all Community Council chairpersons requesting input on the City Attorney's recommendation. Staff received no comments. Following the comment period, staff developed a second option but since it had not been included with the original notice to Community Councils, the City Council staff recommended that an open house be held to gather input. Following that recommendation, an open house was held on April 29, 2003. The proposed ordinance changes were discussed at length. The options are derived from comments brought up at the open house and discussions with the City Attorney's Office.
 2. Prior to the Planning Commission meetings and after the open house meeting, Planning staff developed additional options that were presented to the Planning Commission. Planning staff indicated to Council staff that additional input from Community Councils and other interested parties was not requested after the open house. Notice of the Planning Commission meeting was mailed to Community Council Chairs and people attending the open house.
 3. The Planning staff report notes the Liberty Wells Community Council is concerned that the notification and meeting schedules for the comment period and open house did not coincide with their regularly scheduled meetings. Section 21A.10.020.4 of the Zoning Ordinance, however, only requires a 14 day notification period for ordinance amendments. Nothing specific towards this issue was mentioned in the letter.
 4. The Administration's transmittal letter notes:
 - a. The Planning Commission first reviewed this petition on May 28, 2003. The Planning Commission heard comments from the public, closed the public hearing and continued the item until June 11, 2003 to allow the Planning Staff time to prepare revised language as directed by the Planning Commission. Several concerns were raised by adjoining neighbors as indicated in the attached Planning Commission minutes, e-mails and letters.

- b. Given concerns raised after the June 11, 2003 Planning Commission meeting and a request from a concerned neighboring property owner to re-open the hearing, staff inquired whether the Planning Commission would consider re-opening the public hearing process at its June 25, 2003 Planning Commission meeting. The Planning Commission, by a majority vote, decided not to re-open Petition No. 400-03-07 pertaining to the Salt Lake City Site Development Ordinance. It was the Commission's view that there were no procedural or substantive missteps made in its review of said Petition. The Commission felt that it had given adequate opportunity for public comment and that it gave due consideration to all view points presented. The Planning Commission directed staff to forward its recommendation to the City Council for review and action.
- C. The proposed text change contains specific criteria that require a construction plan, acceptable to the Planning Director, which demonstrates the ability to manage staging for construction in a manner that will not impact transitional or steep slope areas. Given the controversial nature of foothill developments, Council Members may wish to consider requesting that additional criteria be added that addresses the minimum requirements for construction staging. For example, Council Members may wish to clarify whether the Administration would intend to allow staging on adjacent private or public property or adjacent 30% slopes with a revegetation commitment or in the public right of way (street, sidewalk, park strip). Further, Council Members may wish to consider whether it would be prudent to include criteria in the ordinance. This would provide advanced notice to property owners, contractors and the public of what the minimum standards are.
- D. The Planning staff report and Planning Commission minutes discuss Planning staff research relating to standards for establishing minimum planned development project sizes. *(This was an issue raised at the Planning open house. Please see the attached meeting notes for details. Attachment C)* The Planning Commission minutes note that Planning staff received information from the American Planning Association's Planners Advisory Service. The minutes state "...research found about 12 zoning ordinances that had some restriction on entering a planned development process that was based on a project size. This would suggest that it is a relatively uncommon practice." Council Members may wish to consider initiating a Legislative Action requesting that the Administration reevaluate the minimum project size for planned developments specified in the Zoning Ordinance and provide options for Council consideration.
- E. Council Members Jergensen and Lambert received a briefing from Planning staff and the City Attorney's office on Monday, June 23rd. As a result of the briefing with Administrative staff, Council Members Jergensen and Lambert requested that additional language be drafted for Council consideration that would reference the "current development limit in the foothills" as an item to be considered by the Planning Commission under "the net cumulative impact" condition in the proposed ordinance. The City Attorney's office indicated to Council staff that they will provide alternative ordinance language for Council consideration prior to the Council's briefing on this issue. (Please see the attached ordinances, **Attachment D** – Planning Commission Recommendation and **Attachment E** – Alternative ordinance language requested by Council Members Jergensen and Lambert)
- F. Council Members may wish to discuss with the Administration steps taken to address issues that continue to be raised relating to the proposed text change. Please see the attached letter from Dona and James DiSario and Dennis L. and Dianne R. Nielson to Mayor Anderson and Council Member Jergensen (**Attachment F**) and the Planning staff report, Section 8 – "Materials Distributed to the Planning Commission and Planning Staff" for details. Ms. DiSario has indicated that she would like a written response to many questions she and others have raised.