
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: November 14, 2003

SUBJECT: Petition No. 400-02-35 – Joseph and Kathleen Knowlton.
Request to rezone properties located at approximately 1665 East Kensington Ave. from Open Space to Residential R-1/5,000

AFFECTED COUNCIL DISTRICTS: If approved, the ordinances will affect Council Districts 5 and 6

STAFF REPORT BY: Janice Jardine, Planning Policy Analyst

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Community and Economic Development – Planning Division
Greg Mikolash, Principal Planner

NEW INFORMATION:

On October 21, 2003, the Council received a briefing from the Administration regarding the proposed rezoning. Issues and questions discussed by Council Members are summarized below.

- A. Process for any future development of the property:
 - 1. Council action is only required for the rezoning request.
 - 2. Demolition or remodeling of the existing structure would require building permit review and approval.
 - 3. Subdivision or planned development proposals would require Planning Commission review and approval prior to issuing site development and building permits. (Number of new housing units would be determined by the maximum density permitted in the residential zoning classification.)
 - 4. Designation of the exact location of the Emigration Trail Corridor identified in the Open Space Plan trail would require a plan specific approval process with the Planning Commission.
 - 5. The burden would be on the developer or builder to establish that floodplain issues have been addressed to satisfy Federal and City regulations.

- B. Future development, subdivision/planned development issues relating to:
 - 1. Steep slopes
 - 2. Access
 - 3. Loss of open space
 - 4. Potential impacts and protection of sensitive areas

- C. Input from affected Community Councils.

- D. Public process and notification during the 1995 citywide Zoning Rewrite project.
 - 1. Information provided in notice.
 - 2. Zoning of the property prior to 1995.
 - 3. Zoning of the surrounding properties in this area.

- E. Instances since the 1995 Zoning Rewrite project when the City has changed residentially zoned properties to Open Space. Council staff is aware of one rezoning in 1999, where property in the Sugar House Business District located on the north side of Hidden Hollow owned by the Redevelopment Agency was rezoned from a commercial zoning classification to Open Space.
- F. Floodplain issues:
1. Steps or processes that may be used to allow development in floodplain areas.
 2. The Federal Emergency Management Agency (FEMA), City Public Utilities and other technical requirements regarding exceptions and design criteria for construction in flood hazard areas and possible development of the properties.
 - a. Chapter 18.68.100 of the City Code, *Floodplain Hazard Protection* provides specific criteria and requirements for new construction and substantial improvements of residential structures within floodplain hazard areas. *Planning staff indicated that Public Utilities administers this section of the City Code and would need to address specifics regarding purpose, interpretation and application of the requirements. Council staff has asked that someone from Public utilities be in attendance at the Council meeting to respond to questions.*
 - b. *Council staff received information from the Salt Lake office of the U. S. Department of Housing and Urban Development (HUD) regarding regulations for flood hazard exposure and residential Federal Housing Administration (FHA) mortgage insurance. Federal requirements permit mortgagees to obtain an Elevation Certificate that is completed in accordance with HUD regulations from builders as an alternative to a final Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) for property improvements located in a Special Flood Hazard Area designated by the Federal Emergency Management Agency. Under this approach the lowest floor of the structure must be built in compliance with federal regulations. Flood insurance is still required for property improvements located in a Special Flood Hazard Area.*

POTENTIAL OPTIONS:

If the property is to be rezoned, there are several key decisions to be made by the Council prior to having an ordinance prepared:

1. Does the Council wish to rezone all of the property, or only that portion that is above the floodplain?
2. What zoning classification would the Council like to apply:
 - a. Residential R-1/5,000 as requested by the petitioner. ***(This zoning classification permits single-family lots with a minimum of 5,000 sq. ft. each and 50 feet of frontage on a dedicated public street or a planned development conditional use. A planned development in this zoning classification requires a minimum of 20,000 sq. ft. and these two parcels contain approximately 39,839 sq. ft.)***
 - b. Residential R-1/7,000. ***(This zoning classification permits single-family lots with a minimum of 7,000 sq. ft. each and 50 feet of frontage on a dedicated public street or a planned development conditional use. A planned development in this zoning classification requires a minimum of 20,000 sq. ft. and these two parcels contain approximately 39,839 sq. ft.)***
 - c. Residential R-1/12,000 as recommended by the Planning Commission. ***(This zoning classification permits single-family lots with a minimum of 12,000 sq. ft. each and 50 feet of frontage on a dedicated public street or a planned development conditional use. A planned development in this zoning classification requires a minimum of 5 acres. In***

addition, the Planning Commission recommendation would only rezone that portion of the property which is located above the base flood elevation of the FEMA 100-year floodplain, approximately .1696 acres or 7,388 sq. ft. The property in question does not meet the planned development 5-acre minimum.)

3. Does the Council wish to require a restrictive covenant be placed on the property to note that:
 - a. A substantial portion of the property may be located in the floodplain.
 - b. A substantial portion of the property may not be developable.
4. Does the Council wish to include a condition that the rezoning not become effective until a subdivision or planned development is approved by the Planning Commission and site development and building permits are issued?
5. Do not adopt the proposed ordinance.
6. Other options identified by Council Members.
7. Any combination of the above.

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

KEY ELEMENTS:

- A. This is a request to rezone two properties (owned by the petitioners) adjacent to the petitioner's home at 1665 Kensington Avenue. This action would facilitate completion of a pending sale option for the petitioner's home and the two adjoining parcels. The Administration's transmittal notes that the intent of the petitioner is to sell the land at residentially appraised value to a potential buyer for the purpose of constructing up to three single-family dwellings.
 1. The petitioners have indicated that the Open Space zoning was a mistake or mapping error that occurred during the 1995 citywide Zoning Rewrite project, that they received no notice of the zoning change and wish to reinstate the residential zoning for the two properties. (The City did a mailing to every property owner regarding the 1995 Zoning Rewrite. Prior to 1995, the properties were zoned Residential R-2 that allowed single-family and duplex residential uses.)
 2. This petition has generated significant community interest due to the proximity of the parcels to Wasatch Hollow Park. Some members of the public have perceived that this property is public open space adjacent to the park, rather than private property.
- B. An ordinance has been prepared based on the recommendation and conditions specified by the Planning Commission. Key elements are summarized below. (Please see the ordinance in the Administration's paperwork for details.)
 1. The property owner is entitled to develop the portion of the property which is located above the base flood elevation of the Federal Emergency Management Agency (FEMA) 100-year floodplain.
 2. If at some future date the property owner is able to demonstrate that the remainder of the property is not within the 100-year floodplain, or that the property is otherwise developable notwithstanding its location below that 100-year floodplain, the City Council is willing to reconsider the zoning of the remainder of the property.
 3. The proposed change of zoning for the portion of the property, which is above the 100-year floodplain, is appropriate for the development of the community in that area.

4. The intent is to rezone the portion of the property which is located above the base flood elevation of the Federal Emergency Management Agency (FEMA) 100-year floodplain as determined by a licensed engineer.
 5. The rezoning is conditioned upon the submission of information and/or documentation by the property owner sufficient to determine and map the location of the base flood elevation of the Federal Emergency Management Agency (FEMA) 100-year floodplain on the property.
 6. The ordinance shall become effective on the date of its first publication and shall be recorded with the Salt Lake County Recorder.
 7. The City Recorder is instructed not to publish or record the ordinance until the condition identified above (#5) has been met, as certified by the Salt Lake City Planning Director.
 8. Ordinance time limit – 1 year from the date that the ordinance is signed. City Council may extend the time period for satisfying the condition.
- C. Surrounding land uses include Emigration Creek to the east, Wasatch Hollow Park and the Wasatch Presbyterian Church to the south, and single-family dwellings to the west and north. (Please refer to the maps in the Planning staff report for details.) The Administration's transmittal indicates that the larger of the two parcels consists of approximately 25,700 sq. ft. and the smaller parcel contains approximately 13,939 sq. ft. both are currently zoned Open Space.
1. The purpose of the Open Space district is to preserve and protect areas of public and private open space and exert a greater level of control over any potential redevelopment of existing open space areas. (Sec. 21A.32.010 – General Provisions)
 2. The purpose of the Residential districts is to provide a range of housing choices to meet the needs of Salt Lake City's citizens, to offer a balance of housing types and densities, to preserve and maintain the city's neighborhoods as safe and convenient places to live, to promote the harmonious development of residential communities, to insure compatible in-fill development, and to help implement adopted plans. (Sec. 21A.24.010 – General Provisions)
- D. The Zoning Ordinance identifies the following general standards to be considered when reviewing requests to rezone properties or amend the text of the Zoning Ordinance. The Zoning Ordinance notes that a decision to amend the text or zoning map is committed to the legislative discretion of the City Council and is not controlled by any one standard. (Sec. 21A.050.050 – Standards for General Amendments)
1. Whether the proposed amendment is consistent with the purposes, goals, objectives and policies of the City's adopted master plans.
 2. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property.
 3. The extent to which the proposed amendment will adversely affect adjacent properties.
 4. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts, which may impose additional standards.
 5. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and wastewater and refuse collection.
- E. On January 22, 2003, the Planning Commission identified findings of fact for 4 of the 5 criteria to be considered for rezoning requests as specified in the Zoning Ordinance and voted to forward a recommendation to the City Council to rezone the properties from Open Space to R-1/12,000 for the area of land above the base flood elevation of the Federal Emergency Management Agency (FEMA) 100-year floodplain as determined through survey by a licensed engineer (rather than R-1/5,000 as requested by the petitioner to better match the existing density of the property). (Note, the petitioner elected not to retain a private engineering firm to conduct a study, although that was required by the Planning Commission. Please see the attached letter from the petitioner's attorney. In order to process the petition, the City Surveyor completed an initial survey working with Public Utilities.) In addition, the Planning Commission noted that the property below the 100-year floodplain would

remain zoned Open Space until it is determined that the floodplain elevation is incorrectly depicted or an exception is granted to construct in the floodplain in accordance with City Code 18.68 and Federal Emergency Management Agency (FEMA) regulations.

- F. Issues discussed at the Planning Commission meeting included:
1. Public process and notification during the 1995 citywide Zoning Rewrite project.
 2. The Federal Emergency Management Agency (FEMA), City Public Utilities and other technical requirements regarding exceptions and design criteria for construction in flood hazard areas and possible development of the properties.
 3. Loss of open space, master plan compliance and potential subdivision issues.
 4. Neighborhood impacts and compatibility relating to noise, traffic, lighting, density and building scale.
 5. Adequate public utilities and services relating to sewer, water, storm water, emergency vehicle access, snow and garbage removal.
 6. Potential environmental impacts and protection of sensitive areas relating to steep slopes, potential flooding, loss of wetlands and riparian habitat, etc.
 7. Various residential zoning classifications that could address potential development and neighborhood compatibility.
- G. The Administration's transmittal and Planning staff report provide a detailed, technical discussion regarding to the proposed rezoning and issues relating to establishing an accurate floodplain elevation boundary specified as a condition of rezoning by the Planning Commission. Major points are summarized below. (Please refer to the Administration's paperwork for additional details.)
1. The Planning staff report indicates that due to a variety of issues, Planning staff was not able to make findings of fact relating to the criteria to be considered for rezoning requests as specified in the Zoning Ordinance. (Please refer to the following sections in the Planning staff report for details: Pgs. 3-5 – Identification and Analysis of Issues, pgs. 5-8 – Code Criteria/Discussion/Findings of Fact)
 2. Development issues relate to:
 - a. Driveway access limitations due to steep slope topography,
 - b. Restricted driveway access for fire and emergency vehicle protection,
 - c. Storm water detention capacity,
 - d. Water supply, sanitary sewer and fire hydrant availability,
 - e. Flood control of Emigration Creek during high water periods,
 - f. The boundary location of the petitioner's properties located in Federal Emergency Management Agency's (FEMA) floodplain hazard areas and designated floodways
 - g. Discrepancies between Public Utilities data and private engineering data provided by the potential buyer's engineer in establishing the base flood elevation level along Emigration Creek.
 3. Chapter 18.68.100 of the City Code, *Floodplain Hazard Protection* provides specific criteria and requirements for new construction and substantial improvements of residential structures within floodplain hazard areas. Residential structures are required to have the lowest floor (including basements) elevated to or above the base flood elevation. In addition, nonresidential structures, utility and sanitary facilities are required to be designed and constructed in compliance with applicable building codes and flood-proofing methods certified by a registered engineer or licensed architect. (Please refer to page 4 of the Planning staff report for details.)
 4. The petitioners have indicated they are reluctant to submit documentation to the Planning office substantiating the developable limits of the property because they are not developing the property.
 5. The Attorney's office has directed that the owners are entitled to residential zoning unless the property is determined to be undevelopable.
 6. The properties proposed for rezoning are landlocked and currently only accessible by foot from the petitioner's single-family residence.

7. The City owns an unimproved 66-foot right-of-way (1700 East) located directly east of the petitioner's property. This section of 1700 East has never been constructed as a street due to constraints created by Emigration Creek.
 8. Wasatch Hollow Park (located to the south of the petitioner's properties) was expanded and improved by the City in the early 1990's (implementing recommendations in the East Bench Community and Open Space Master Plans).
- H. The public process included review by the Wasatch Hollow, Bonneville Hills and Sugar House Community Councils and the Mayor's Open Space Advisory Committee. Written notification of the Planning Commission hearing to property owners within an approximate 366-foot radius of the proposed rezoning was also completed. As noted by the Administration, numerous e-mails and letters have been submitted to the Planning Division voicing concern about the rezone request. (Please refer to the Planning staff report, Exhibit A and E for details and written correspondence.) In addition, Council Members and the Council office have been contacted by the petitioners, residents and interested parties regarding the proposed rezoning request.

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

Council Members may wish to request additional information from the Administration regarding the following items in order to have a full understanding of the issues relating to the rezoning and potential residential development.

- A. Recent information submitted by the petitioner's attorney indicates that two additional properties, one with a house located on it, not owned by the petitioner are also zoned Open Space. In addition, there appears to be portions of other privately-owned properties at the southern end of the park and a portion of property owned by the Wasatch Presbyterian Church that are zoned Open Space. (Please see the attached map and page 4 of the Memorandum in support of Zoning Application No. 400-02-35 submitted by David K. Broadbent, Holland & Hart LLP, attorneys for Joseph S. and Kathy Knowlton for details.) The Council does not have the option of expanding the petition but the Planning Commission could have elected to do so at the start of the process. The disadvantage to that approach is that it may have been unfair to Mr. and Mrs. Knowlton since they paid the petition fee. The Council should be aware that there could be a future petition for the other properties that remain zoned as Open Space.
- B. The Administration's paperwork contains written correspondence from the Wasatch Hollow, Bonneville Hills and Sugar House Community Councils and the Mayor's Open Space Advisory Committee. In addition, numerous e-mails and letters have been submitted to the Planning Division voicing concern about the rezone request. The Planning staff report also notes that a community meeting was held at the City and County Building where several City Department representatives were present to discuss the conceptual development proposal for the properties. *Council Members may wish to ask the Administration to provide an overview of the issues and comments raised at the Community Council meetings, how they were addressed and whether it is the Administration's perception that community issues have been resolved.*
- C. Currently, the Administration does not have a mechanism in place to notify individuals who write to the Administration about a land use issue, attend open houses or subsequent public hearings including the City Council hearing. *Does the Council wish to urge the Administration to expand the notification to include those who have attended previous hearings?*
- D. Given that the Planning Commission advanced the petition on the condition that an engineering study be provided to determine the floodplain elevation, and the petitioner elected not to provide that, the Council may wish to add a condition to the ordinance that the petitioner is required to reimburse the

City for survey work performed by City staff so that this petition could move forward. This action would ensure that the general taxpayer population is not covering costs that lead to the benefit of one property owner, and would help ensure that precedence is not set that would cause petitioners to decline to provide information with the expectation that the cost for professional/technical documentation will be borne by the City taxpayers.

- E. In the past, some Planning Commission recommendations and ordinances prepared for zoning requests have included a condition that specifies that the ordinance rezoning the property would not become effective until development plans have been approved and a building permit issued. *Council Members may wish to consider requesting that the City Attorney's office prepare an ordinance that specifies the rezoning would not take place until development plans have been approved and a building permit issued.* The Planning staff report notes:
1. The petitioners requested that the Planning Commission process the rezoning petition prior to planned development and subdivision application and approval.
 2. The petitioners have indicated they are reluctant to submit documentation to the Planning office substantiating the developable limits of the property because they are not developing the property.
 3. Typically, technical information is provided with the Planned Development and Subdivision processes.
 4. Standard practice by the Planning Division is to package all the information and applications together for Planning Commission consideration.

MASTER PLAN & POLICY CONSIDERATIONS:

- A. The Planning staff report notes:
1. The East Bench Community Master Plan (adopted in April 1987) future land use designations are not intended to be property specific and are fairly general as to the appropriate future land use for the two parcels indicating low-density residential and park land uses. (In addition, the Plan identifies a future park site at 1600 East and 1700 South noting that the City plans to develop a park along Emigration Creek north of 1700 South, access and frontage onto 1700 South must be obtained, property for access will have to be acquired from the adjacent Wasatch Presbyterian Church. The City developed Wasatch Hollow Park in the early 1990's with property donated by the Church.)
 2. The Open Space Master Plan Emigration Creek Corridor map notes that development along Emigration Creek at the Wasatch Hollow Park site may be difficult but is possible and purchase of residential properties for access points and small neighborhood parks is recommended. The map is not property specific other than identifying Wasatch Hollow as a future park site. The Plan also notes increased concerns of many residents and public officials regarding the need to:
 - a. Conserve the natural environment,
 - b. Enhance open space amenities,
 - c. Connect various parts of the City to natural environments,
 - d. Educate citizens on proper use of open space, and
 - e. Continued urban encroachment would be very damaging to the fragile ecosystem and scenic beauty.
- B. The Council has adopted housing and transportation policy statements that support creating a wide variety of housing types citywide and changing the focus of transportation decisions from moving cars to moving people. The Council's policy statements have been included in the City's Community Housing Plan and Transportation Master Plan.
1. Housing policy statements address a variety of issues including quality design, public and neighborhood participation and interaction, transit-oriented development, encouraging mixed-use

- developments, housing preservation, rehabilitation and replacement, zoning policies and programs that preserve housing opportunities as well as business opportunities.
2. Transportation policy statements include support of alternative forms of transportation, considering impacts on neighborhoods on at least an equal basis with impacts on transportation systems and giving all neighborhoods equal consideration in transportation decisions.
- C. The City's 1990 Urban Design Element includes statements that emphasize preserving the City's image, neighborhood character and maintaining livability while being sensitive to social and economic realities. Applicable policy concepts include:
1. Allow individual districts to develop in response to their unique characteristics within the overall urban design scheme for the city.
 2. Ensure that land uses make a positive contribution to neighborhood improvement and stability and building restoration and new construction enhance district character.
 3. Require private development efforts to be compatible with urban design policies of the city regardless of whether city financial assistance is provided.
 4. Treat building height, scale and character as significant features of a district's image.
 5. Ensure that features of building design such as color, detail, materials and scale are responsive to district character, neighboring buildings, and the pedestrian.
- D. The Council's growth policy notes that growth in Salt Lake City will be deemed the most desirable if it meets the following criteria:
1. Is aesthetically pleasing;
 2. Contributes to a livable community environment;
 3. Yields no negative net fiscal impact unless an overriding public purpose is served; and
 4. Forestalls negative impacts associated with inactivity.
- E. The City's Strategic Plan and the Futures Commission Report express concepts such as maintaining a prominent sustainable city, ensuring the City is designed to the highest aesthetic standards and is pedestrian friendly, convenient, and inviting, but not at the expense of minimizing environmental stewardship or neighborhood vitality. The Plans emphasize placing a high priority on maintaining and developing new affordable residential housing in attractive, friendly, safe environments.

CHRONOLOGY:

➤ **BACKGROUND**

The Administration's transmittal provides a chronology of events relating to the rezoning process. Key meeting dates are listed below.

➤ **KEY DATES**

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| • Aug. 28, Sept. 4, & Oct. 23, 2002 | Wasatch Hollow Community Council meetings |
| • September 23, 2002 | Community meeting with City representatives |
| • December 18, 2002 | Mayor's Open Space Advisory Committee meeting |
| • January 4, 2003 | Sugar House Community Council meeting |
| • January 15, 2003 | Bonneville Hills Community Council letter |
| • January 22, 2003 | Planning Commission meeting |

cc: Rocky Fluhart, Dave Nimkin, DJ Baxter, Ed Rutan, Lynn Pace, Rick Graham, Kevin Bergstrom, Alison Weyher, David Dobbins, Louis Zunguze, Brent Wilde, Doug Wheelwright, Greg Mikolash, Jan Aramaki, Lehua Weaver, Annette Daley

File Location: Community and Economic Development Department, Planning Division, Rezoning, Joseph and Kathleen Knowlton, 1665 Kensington Avenue