
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: December 14, 2010

SUBJECT: Proposed Ordinance – Dedication of Private Streets to Public Ownership

STAFF REPORT BY: Jennifer Bruno, Deputy Director

AFFECTED COUNCIL DISTRICTS: City-wide

**ADMINISTRATIVE DEPT:
AND CONTACT PERSON:** Community and Economic Development
Wayne Mills, Senior Planner

FOLLOW-UP INFORMATION/CLARIFICATION

At the Council's public hearing on December 7, 2010, comments included a request to clarify language in the ordinance that an attorney representing the Capitol Park Homeowner's Association deemed vague, with regard to what signatures were required to submit a petition. Currently the ordinance states: "The petition must be signed by property owners representing 100% of the total lineal front footage of the street." Both the City Attorney's Office and Council Attorney have interpreted this to mean that 100% of residents that have an ownership interest in the street must sign the petition. In the case of the Capitol Park HOA, this would mean 100% of the property owners within the Capitol Park Homeowner's Association must sign a petition, including those that front the street. Since the street is the common property of the HOA, each property owner, whether or not they front the street, has an ownership interest in the street, and therefore each owner would need to sign on to the petition.

POTENTIAL MOTIONS:

1. ["I move that the Council"] Adopt the proposed ordinance codifying a City-wide policy and establishing a process for considering requests to turn private streets into public streets.
2. ["I move that the Council"] Not adopt the proposed ordinance.

The following information was provided previously for the Council Work Session on October 5, 2010 and again for the Council's Public Hearing on December 7, 2010. It is provided again for your reference.

KEY ELEMENTS:

- A. The Administration has forwarded an ordinance that would codify a City-wide policy and establish a process for considering requests to turn private streets into public streets.
- B. There are approximately 25 miles of private streets in Salt Lake City. The City occasionally receives a request to turn convert these private streets to public ownership. In doing so, the City would take responsibility for on-going maintenance of these streets.
- C. Because of the potential budget impact, in 2007 the Council requested the Administration draft a policy with a list of criteria to consider a request by a group of private property owners to turn a private street into a public one (see attached letter from the Council, dated June 5, 2007).

- D. As a result of the Council's request, the Administration convened a working group consisting of staff representing Engineering, Public Utilities, Attorney's Office, Planning, Transportation, and Streets and Sanitation. Council Staff also attended these meetings. The working group formulated a policy and ordinance that attempt to address funding issues, minimum design standards, utility issues, and other objectives that may be considered if a street should be considered for public ownership.
- E. Key Elements from the Administration's transmittal are as follows:
1. There are generally three types of private streets (see attached map):
 - **Category 1** - Private streets created prior to any formal subdivision or regulatory process. In many instances property owners do not realize they are on a private streets, as these are typically not gated or maintained differently. In some cases the ownership of the street property is assigned to the abutting property owner (to the middle of the street), and in other cases the "ownership" is simply lost, as it was never deeded to the City or the abutting property owners. These are primarily located in older areas of the City.
 - *Note: in most cases property owners abutting these types of private streets are not aware that they live on a street for which they bear the responsibility of maintenance, because there was no HOA set up to pass along information as properties changed hands.*
 - Because of the confusion and lack of documentation of ownership, the City has in some cases made repairs if they are a threat to the safety of residents. In some cases, these streets have been converted to public ownership through the SAA process, and the City has been reimbursed for some of these costs.
 - **Category 2** - Private access ways that are located in condominiums and apartment projects, and typically provide internal circulation only. Maintenance is the responsibility of the private property owners (through HOAs or other maintenance agreements).
 - **Category 3** - Private Streets created in the subdivision or planned development process, as currently regulated by City code. Some of these are located in gated communities, and some do not have gates. Since 1997, the Zoning Ordinance requires funding mechanisms to maintain the private infrastructure (these are usually covered through and HOA, although the City has no ability to track or enforce the HOA's responsible management of funds).
 - Current City code states that all lots must front a public street.
 - Therefore private streets are typically only created when the developer of a Planned Development needs to create a street within the development that does not meet the standards to be considered a public street.
 - It is highly likely that property owners abutting these types of private streets are aware that their HOA is responsible for the ongoing maintenance and repair of the street, as they would be paying dues into an HOA for this purpose.
 - Requests for transfer of ownership from these types of private streets typically come because the HOA does not wish to continue paying to maintain the street.
 2. Private Utilities -

- i. In some cases utilities were constructed to City standards under private streets, and are publicly owned and maintained by the City through agreed-upon easements.
 - ii. In other cases, utilities were not constructed to City standards and are considered private (to be maintained by abutting property owners). In the past few years, streets where this has occurred have pursued an SAA after the emergency repair was made, thereby contributing to the costs of upgrading the utilities and street, generally following the process outlined below in Key Element F.
 3. There have been a handful of instances in recent years of private streets that fall into Category 1 being dedicated to public streets (generally following the process outlined in the proposed ordinance). Planning Staff cannot recall any instances of private streets that fall into Category 3 being dedicated to public ownership, as the costs of bringing these streets up to City standards are usually prohibitive, and some (such as grade) are not feasible to change.
- F. The ordinance does not guarantee that the City will take over a street. It merely outlines a process and criteria that details how the City could review a request, so that all request are treated equitably. Key elements of the proposed ordinance are as follows:
1. In order for the street to be considered for public ownership:
 - Underground utilities must meet City standards;
 - The street surface must meet current City standards or an acceptable degree of compliance;
 - The street must have at least 16 feet of clear paved width (not including parking);
 - The grade of the street must meet current City street grade standards; and
 - Deteriorated private property features abutting the street are removed, repaired, or replaced by the property owner(s) to ensure public safety.
 2. Private Streets in a platted subdivision (Category 3) will not be considered for public ownership unless there is a compelling public interest.
 3. The City will consider the dedication of a private street only if it is demonstrated that the street dedication achieves at least one of the following:
 - The street currently provides, or can provide with improvements:
 - a. Access to open space, public facilities/uses or other public amenities
 - b. Mid-block pedestrian access
 - c. An improvement to the surrounding pedestrian or vehicular circulation pattern
 - d. An identified planning goal as noted in the adopted master plan for the neighborhood
 - Dedicating the private street will encourage reinvestment in the community
 - Dedication of the street will improve the public health, safety, and general welfare.
 4. Salt Lake City will not pay for required street improvements. Property owners may pursue funding through the CDBG, Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs through the routine processes for allocation of these funds. If City funds are requested through the CIP or SAA process, the project will be considered routine, and the Council will be able to weigh the priority of the project along with other City projects. The ordinance states that City funds will not be used to fund improvements to streets created in a platted subdivision.

5. The City may repair water and sewer lines in an emergency on the basis that the utility owners will reimburse the City, to be determined by the Mayor.
 6. The City will not “split” the ownership of utilities and streets unless there is a compelling public benefit.
 7. In order to accept a private street created in a planned development, the planned development must be amended. The City will not share the cost of improving a private street created in a planned development.
 8. The City will make a reasonable effort to inform new residents that their street or water line is private when they sign up for water service.
 9. Property owners representing 100% of the total lineal front footage of the private street must sign a petition for the City to consider dedicating the private street.
 10. The City will not take ownership of a street that does not allow public access.
 11. The City will not take ownership of a street that is targeted for potential redevelopment.
 12. The City must be able to safely and efficiently provide services along the street.
 13. No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to the property owners when a private street is dedicated.
 14. Private alleys are excluded from the ordinance.
- G. An open house was held on April 15, 2010. The Attorney representing the Capitol Park Homeowners’ Association (CPHA) was the only attendee. The attorney then sent a letter to the Planning Division outlining their concerns (see letter in packet).
- H. The Planning Commission held a public hearing on the proposed ordinance on June 9, 2010 and voted unanimously to recommend a favorable recommendation to the City Council.
- a. *Note: Because this ordinance is creating a new section in Title 14 – Streets, Sidewalks and Public Places, the Planning Commission is not required to review the ordinance. However, they reviewed the ordinance at the request of the Mayor, and held a public hearing.*
 - b. Attorneys representing the Capitol Park Homeowners’ Association (CPHA) spoke in opposition certain parts of the ordinance.
 - i. The attorney representing the CPHA stated concern with section 14.54.020 subparagraph C, which provides that the petition for conversion must be signed by 100% of the total lineal footage of the street. He stated that this was vague and could give one property owner the right to “veto” a petition. (Note: a subsequent letter to the City Council was sent clarifying this concern – see attached).
 - ii. The attorney representing CPHA then cited concerns with Page 2, Subparagraph 2, Subsection D, third sentence, which provides that there are certain City Standards that the City will not consider waiving or reducing such as grade or service width, as they relate to health, safety, and the ability to provide services. The attorney indicated that in some instances, when property owners have not been able to afford to make repairs, the City has paid, and that this presents an equity issue. Planning staff noted that this only occurred on an emergency basis, as approved by the Mayor.
 - iii. The CPHA is a planned development approved in 1995, contains a private street as a part of the development. The CPHA has submitted an application to the City to dedicate this street to public ownership.

BUDGET RELATED FACTS:

- A. *Cost estimate to upgrade private streets* - Using estimates originally prepared in 2002, it could cost an estimated **\$23 million** to upgrade all private streets in the City (not including

utilities). It is important to note however, that this is a ballpark figure, and the final cost for each street would be dependent on the particular circumstances that need to be addressed on that street.

- B. ***Cost estimate to upgrade private utilities*** - In 2008, the Public Utilities department estimated that the total cost to upgrade all private utilities (Water, Sewer, Drainage) is **\$24 million**. Additionally, the Public Utilities department raised the policy concern that if the City paid with Public Utilities fees to upgrade these facilities, they would also have to consider private utilities in the County service area. The cost to upgrade private facilities in the County service area is an additional \$56 million.
- C. ***Previous Conversions*** - In 2008 the Council funded the matching funds for an SAA to take over Lyman Court, which was a private street in Category 1. The property owners voted unanimously to pay \$100,000 towards the \$200,000 project. The Council voted on appropriating the matching funds during the FY 2008 regular CIP process. It is now a public street.
- D. If the City takes over a private street, it then becomes the responsibility of the City to maintain. The Administration is finalizing an estimate as to what an average rule of thumb would be for yearly street maintenance costs per mile, and will have this for the Council's discussion.

MASTER PLAN AND POLICY CONSIDERATIONS:

- A. A majority of the private streets in Salt Lake City lie within the boundaries of the Central Community Master Plan (2005). Although there are no statements specific to private streets within the community, Residential Land Use Policy 1.4 may be relevant to this policy conversation – Preserve the character of the inner block courts.
- B. Recent city planning efforts have focused on breaking up the large scale 10-acre blocks in the City. Although many of these private streets in Category 1 are dead end streets, and do not necessarily connect through a typical 10-acre block, the Council may wish to consider how these streets could aid in pedestrian connectivity when considering a CIP/SAA application. This policy consideration seems to be addressed with the following section of the proposed ordinance:
 - N. *The City will consider the dedication of a private street only if it is demonstrated that the street dedication achieves at least one of the following:*
 - 1. *The street currently provides, or can provide with improvements:*
 - i. *Access to open space, public facilities/uses or other public amenities*
 - ii. *Mid-block pedestrian access*
 - iii. *An improvement to the surrounding pedestrian or vehicular circulation pattern*
 - iv. *An identified planning goal as noted in the adopted master plan for the neighborhood*
 - 2. *Dedicating the private street will encourage reinvestment in the community*
 - 3. *Dedication of the street will improve the public health, safety, and general welfare.*
- C. The Council's adopted growth policy states: It is the policy of the Salt Lake City Council 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;

4. Forestalls negative impacts associated with inactivity.

MATTERS AT ISSUE:

- A. The Council may wish to consider that, due to the current state of the budget, the number of possible private street conversions may be very limited.
- B. The Administration has proposed a policy for considering the conversions of private streets to public streets in the form of an ordinance. The ordinance states in section 14.54.030 that “The Mayor is authorized to adopt additional, consistent administrative procedures necessary to implement this policy.” The Council may wish to amend the ordinance to additionally state that all administrative procedures shall be in writing and easily available to the public.

CHRONOLOGY:

- | | |
|-------------------|--------------------------------------|
| • April 15, 2010 | Open House on proposed ordinance |
| • June 9, 2010 | Planning Commission hearing |
| • August 24, 2010 | Ordinance received in Council Office |

SALT LAKE CITY CORPORATION

OFFICE OF THE CITY COUNCIL

June 5, 2007

Dear Mayor Anderson:

Based on a situation raised by a constituent, Council Members have been meeting with Administrative staff from Planning and Public Utilities to discuss various issues surrounding the idea of having the City take ownership of private streets and their utilities - more specifically the issue of private utilities within these subdivisions. Administrative Staff has been extremely cooperative in outlining the various policy implications and budgetary issues.

The Council's Private Streets subcommittee would like to request a recommendation from the Administration on whether an amendment to the Private Streets Policy (previously transmitted to the Council) may be in order to more specifically address the issue of dedicating private utilities within a Private Subdivision to public ownership.

The following are concerns that have been highlighted specific to a constituent request that the subcommittee would like addressed in any policy transmitted:

- Whether or not the private utility is fed by City utilities (this opens up the issue of who is "at fault" if a private utility were to fail);
- Whether or not access is sufficient to a private utility (gated vs. non-gated subdivisions)
- Setting up a list of criteria that a Private Subdivision must meet before requesting the City take over utilities
- An updated cost analysis of taking over and upgrading, as necessary, private utilities to City standards based on the criteria mentioned above. This cost analysis could contemplate scenarios of full to partial City financial responsibility (i.e. through an SID process).
- Whether it is good long-term City policy to require that all new private subdivisions have utilities built to City standards
- Whether the city should change its policy and take ownership of all utilities in private subdivisions (existing and in the future.)

Council Members Carlton Christensen -District One; Van Turner -District Two, Council Chair 2007
K. Eric Jergensen -District Three; Nancy Saxton -District Four; Jill Remington Love -District Five, Council Vice-Chair 2007
David L. Buhler -District Six, Søren Simonsen -District Seven

451 SOUTH STATE STREET, ROOM 304, SALT LAKE CITY, UTAH 84111

TELEPHONE: 801-535-7600 FAX: 801-535-7651

WWW.SLCGOV.COM/COUNCIL EMAIL: COUNCIL.COMMENTS@SLCGOV.COM



The Council subcommittee requests that the Administration review these policy implications and budget issues and forward formal recommendations to the Council.

Sincerely,



Van Turner
Salt Lake City Council Chair
District Two

VT/jb

cc: City Council Members
Sam Guevara, Mayor's Chief of Staff
Lyn Creswell, Chief Administrative Officer
LeRoy Hooten, Public Utilities Director
Jeff Niermeyer, Public Utilities Deputy Director
Ed Rutan, City Attorney
Louis Zunguze, Community Development Director
George Shaw, Planning Director
Doug Wheelwright, Planning Deputy Director

HIRSCHI STEELE & BAER^{PLLC}
ATTORNEYS AT LAW

JUSTIN R. BAER
justin@hsblegal.com

September 3, 2010

Via email only to council.comments@slcgov.com

Salt Lake City Council
451 S. State Street, Room 304
P.O. Box 145476
Salt Lake City, UT 84114-5476

Re: Dedication of Private Streets to Public Ownership
Proposed Ordinance: Title 14, Chapter 14.54

To Members of the Salt Lake City Council:

This firm represents Capitol Park Homeowners Association (the "Association"), an association of homeowners located in the Avenues. The purpose of this letter is to provide comments regarding the proposed ordinance Title 14, Chapter 14.54, Dedication of Private Streets to Public Ownership.

For several years the Association has attempted to work with Salt Lake City for the dedication of various private streets owned by the Association. On December 11, 2008, the Association filed a subdivision amendment application with the planning department (No. PLNSUB2008-00902) to effectuate the dedication. Upon advice of staff within the planning department, on April 14, 2009, the Association also filed an application to amend a planned development (PLNSUB2009-00445). After working with the planning department to try and move these applications forward, the Association was informed that draft policies had been created upon the request of the City Council for the purpose of providing guidance regarding the dedication of private streets. It is our understanding that the subject proposed ordinance is the result of those draft policies.

On June 9, 2010, the proposed ordinance was presented to the Salt Lake City Planning Commission. This firm provided various comments suggesting changes to the proposed ordinance on behalf of the Association, and although the Planning Commission appeared to agree with our comments, the Commission made the recommendation that the City Council pass the proposed ordinance without amendment. After listening to a recording of the Planning Commission hearing, we believe that the proposed ordinance contains an ambiguity that should be clarified.

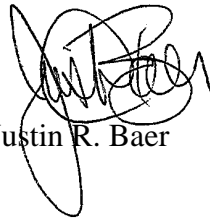
The proposed ordinance requires that a petition be signed and presented to the City before the City will consider a dedication of private streets. Section 14.54.020(C) of the proposed ordinance provides that “[t]he petition must be signed by property owners representing 100% of the total lineal front footage of the street.” This language could be interpreted two different ways. Our original reading of this language seemed to require that all homeowners living along the frontage of the street sign the petition, regardless of who actually owned the street. We therefore made comments to the Planning Commission suggesting that the language of the proposed ordinance be modified to require that all owners of the street sign the petition.

However, the Planning Commission appeared to interpret this provision as requiring that 100% of the owners of the street sign the petition (rather than residents living along the street but not having an ownership interest in the street). Using the recording of the Planning Commission meeting pertaining to this ordinance, we created an unofficial transcript of the discussion among the members of the Planning Commission regarding the street ownership. The transcript is attached for your review. It is clear from a review of the Planning Commission’s discussion that the Planning Commission agreed that the ordinance should require all the owners of the street to sign the petition. However, rather than proposing an amendment to the ordinance, the Planning Commission interpreted the phrase “property owners representing 100% of the total lineal front footage of the street” as requiring all owners of the street to sign the petition (rather than people simply owning property abutting the street).

In order to avoid ambiguity in the proposed ordinance, we request that Section 14.54.020(C) of the proposed ordinance be modified to require that “[t]he petition must be signed by all owners of the street.” We believe that this change will reflect the intent of the ordinance without creating confusion regarding who should sign the petition.

I would be happy to discuss this matter if you have further questions. Thank you.

Sincerely,
HIRSCHI STEELE & BAER, PLLC



Justin R. Baer

cc: Stan Penfold, *via email only to stan.penfold@slcgov.com*
Wilf Sommerkorn, *via email only to wilford.sommerkorn@slcgov.com*
Wayne Mills, *via email only to wayne.mills@slcgov.com*
Angela Hasenberg, on behalf of the Salt Lake City Planning Commission, *via email only to angela.hasenberg@slcgov.com*

Planning Commission Hearing, June 9, 2010

(6:30:23) Council member: Since an HOA in this situation would own the street, the HOA owns street, so there's only one owner of the street, and however the HOA in their CCRs decides to vote as a body, I would think that if they voted to dedicate the street, then that's the way they would do it. You wouldn't be asking each individual person on the street, you would be the homeowners association as the owner would say yes or no if they wanted to do the street. And so however the homeowners association decides to make that decision, it's up to the CCRs.

Council member: Good point, thank you.

Council member: Is that clear enough in here, do you think?

Council member: I think so.

Council member: I think it covers it.

Council member: We're going from no policy to a policy, and it's a good start, and I personally am not willing to give on public safety, actually, so I'm ready to make a motion.

[motion made to pass on favorable recommendation to City Council to adopt the ordinance, discussion as follows:]

Council member: Do we want to modify that issue about ownership, so it's 100% of property owners versus residents on the street, do we need to clarify that?

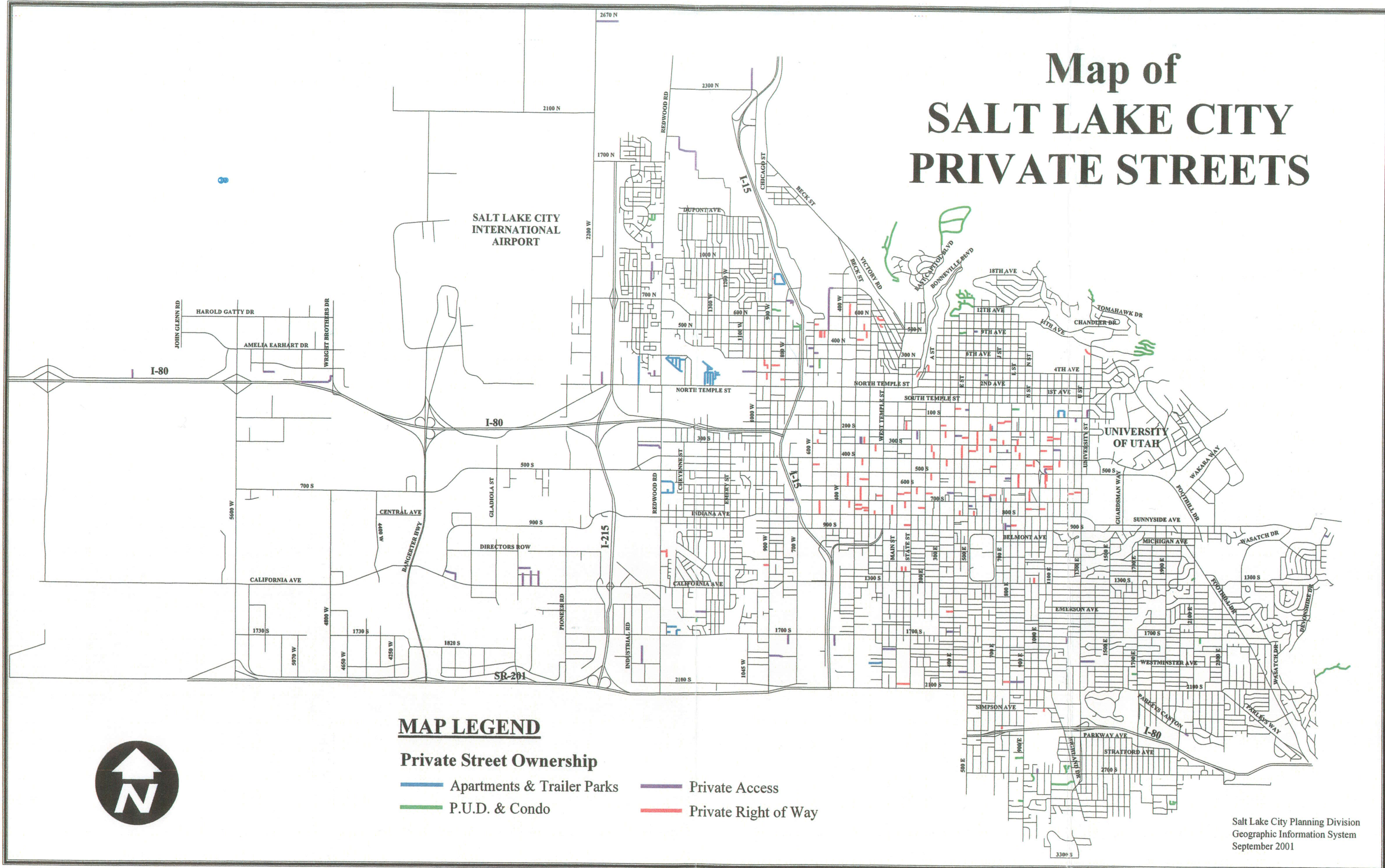
Council member: No, I think it's pretty clear personally, but if you think it does, I'm ok with that.

Council member: Do you wish to offer an amendment to that?

Council member: Well, is it in there?

Council member: Yeah, it says "property owners" on there. It says, "petition must be signed by property owners representing 100% of the total linear footage of the street."

Map of SALT LAKE CITY PRIVATE STREETS



MAP LEGEND

- Private Street Ownership**
- Apartments & Trailer Parks
 - P.U.D. & Condo
 - Private Access
 - Private Right of Way



SALT LAKE CITY CORPORATION

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
OFFICE OF THE DIRECTOR

RALPH BECKER
MAYOR

FRANK B. GRAY
DIRECTOR

MARY DE LA MARE-SCHAEFER
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.
DEPUTY DIRECTOR

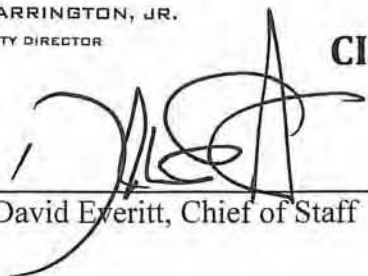
RECEIVED

AUG 23 2010

CITY COUNCIL TRANSMITTAL

Salt Lake City Mayor

Date Received: **SCANNED TO:** Mayor
SCANNED BY: JT
DATE: 8/23/10



David Everitt, Chief of Staff

Date Sent to City Council: 08/24/2010

TO: Salt Lake City Council **DATE:** August 20, 2010
J.T. Martin, Chair

FROM: Frank Gray, Community & Economic
Development Department Director

Wilf Sommerkorn, Planning Director

SUBJECT: Proposed Ordinance - Dedication of Private Streets to Public
Ownership

STAFF CONTACT: Wayne Mills, Senior Planner, 801-535-7282,
wayne.mills@slcgov.com

DOCUMENT TYPE: Ordinance

FINDINGS AND MOTION: The proposed ordinance was presented to the Planning Commission in a public hearing on June 9, 2010. Based on the information presented in the Staff Report and at the public hearing, the Planning Commission voted unanimously to transmit a favorable recommendation to the City Council to adopt the proposed ordinance with no recommended changes.

RECOMMENDED ACTION: That the City Council hold a briefing and schedule a public hearing

BUDGET IMPACT: None

BACKGROUND/DISCUSSION:

Issue Origin

There are approximately 25 miles of private streets in Salt Lake City. The City occasionally receives requests from property owners along a private street to dedicate the street to public

ownership. The City Council requested that the Administration draft a proposed policy to guide decisionmakers when reviewing private street dedication proposals.

Proposed Ordinance

At the request of the City Council, a work group was organized to develop the proposed policy. The work group consisted of City staff representing the Engineering Division, Department of Public Utilities, City Attorney, Planning Division, Transportation Division, Streets and Sanitation Division, and City Council staff. The proposed policy attempts to address funding issues, minimum design standards, underground utility issues, and objectives that the street must meet to be considered for public ownership. The policy is proposed to be an adopted ordinance. Details of the proposed ordinance are included in the attached Planning Commission Staff Report (see Exhibit 1).

PUBLIC PROCESS: The Planning Commission conducted a public hearing on the proposed ordinance on June 9, 2010. Two attorneys, representing the Capitol Park Homeowners' Association (CPHA), spoke in opposition to parts of the ordinance. The Capitol Park planned development was approved in 1995 with a private street and the CPHA has made application to the City to amend the planned development and dedicate the private street to public ownership. The attorneys representing the CPHA reiterated the points that were made in a letter to the Planning Staff. The letter and Planning Staff's comments on each point are included in the attached Staff Report (see Exhibit 1).

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**1. PLANNING COMMISSION
STAFF REPORT**

PLANNING COMMISSION STAFF REPORT

PROPOSED ORDINANCE

TITLE 14, CHAPTER 14.54 – DEDICATION OF PRIVATE STREETS TO PUBLIC OWNERSHIP

June 9, 2010



Planning and Zoning Division
Department of Community and
Economic Development

Applicant: Salt Lake City Council

Staff: Wayne Mills
801-535-7282
wayne.mills@slegov.com

Tax ID: N/A

Current Zone: N/A

Master Plan Designation: N/A

Council District: All

Community Council: All

Lot Size: N/A

Current Use: N/A

**Applicable Land Use
Regulations:** None

Notification

- Notice mailed on May 28, 2010
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites May 28, 2010

Attachments:

- A. Map of Salt Lake City Private Streets
- B. Proposed Ordinance – Dedication of Private Streets to Public Ownership
- C. Letter from Capitol Park Homeowners' Association

Request

The City Council has requested that the Administration draft a policy regarding the dedication of private streets to public ownership. At the request of the City Council, a work group was organized representing various City Departments and Divisions. The work group developed a draft policy that is proposed to be adopted as an ordinance in the City Code.

The proposed ordinance would not be an amendment or addition to the Zoning Ordinance, but would be an addition to Title 14 – Streets, Sidewalks, and Public Places – of the City Code. It is being presented to the Planning Commission for discussion and, if the Planning Commission chooses to do so, a recommendation to the City Council.

Staff Recommendation

It is the Planning Staff's opinion that the Planning Commission review the proposed policy and transmit a favorable recommendation to the City Council to adopt Chapter 14.54 – Dedication of Private Streets to Public Ownership.

Background

There are approximately 25 miles of private streets in Salt Lake City. The various types of private streets include (see Map of Salt Lake City Private Streets, Attachment A):

- **Private Access:** Adjacent property owners own the street, usually to the centerline. These streets are located in older residential areas of the City and were not created through a formal subdivision process. In most cases there is no recorded documentation referring to maintenance responsibilities.
- **Private Right-of-Way:** Adjacent property owners do not own the street; however, they have a right-of-way easement over the street. These streets are located in older residential areas of the City and were not created through a formal subdivision process. In most cases the streets were developed by the original property owner and developer of the adjacent residential lots. The ownership of the roadway was never dedicated to the City or transferred to the abutting property owners. In most cases there is no recorded documentation referring to maintenance responsibilities.
- **Condominium/Apartment and Mobile Home Park Private Roadways:** These streets provide driveway access or internal circulation within the development. In most cases, access is for residents of the development only and the streets do not provide through access to adjacent public streets. Maintenance of these streets is handled through homeowners associations or other mechanisms internal to the development.
- **Planned Development Roadways:** These streets were created through the Planned Development Subdivision process and were approved as private streets at the request of the developer because they do not meet a particular City standard. Some of these streets are located in gated communities, which do not allow public access. Others were created to allow additional development opportunities, such as additional buildable lots. Since 1997, the Zoning Ordinance requires funding mechanisms, the costs of which are shared between the property owners in the development, to maintain the private infrastructure.

The City occasionally receives requests from property owners along a private street for the City to take ownership of the street. In many instances, especially when the street is a private right-of-way or private access (see above), the property owners are unaware that the street is private and contact the City to repair defects. The City then explains that the street is not publicly owned and will not make the repairs. This has been confusing for the property owners because the City, in some cases, has repaired the street in the past. The property owners also claim that they pay the same taxes for municipal services as everyone else in the City and should receive the same benefits. In the case of property owners in Planned Developments, they are often aware that the street is private but would like the City to take over the street because they no longer want to maintain the street through their homeowners' association.

There are additional concerns related to underground utilities along private streets. In some cases, the utilities were constructed to City standards and are publicly owned. In others, the utilities are private and substandard. There have been incidents in the past where a substandard private main utility line has failed and has created a health and safety problem for the residents along the street. The residents were not able to pay the cost of the improvement through a private contractor, so the City has had to repair the private line.

There have been a number of private streets, specifically private rights-of-way and private accesses, which have been improved and dedicated to the City. In most cases, the property owners applied for Community Development Block Grant (CDBG) funding for the street improvement design. The City then took ownership of

the street and either applied for additional CDBG funds or established a Special Assessment Area (SAA) for construction of the street improvements. The Planning Division is unaware of any streets created in a Planned Development that have later been dedicated to the City.

The City has not had a policy or guidelines that the decision makers can use when reviewing requests to dedicate private streets to public ownership. In order to dedicate the street to public ownership, it must meet minimum safety standards. Improving the street to meet these standards can be costly and on-going maintenance of the roadway may diminish resources needed to maintain existing public infrastructure. In response to this issue, the City Council requested that the Administration draft a proposed policy to guide decision makers when reviewing requests from property owners to dedicate a private street to public ownership.

Proposal

At the request of the City Council, a work group was organized to develop the proposed policy. The work group consisted of City staff representing the Engineering Division, Department of Public Utilities, City Attorney, Planning Division, Transportation Division, Streets and Sanitation Division, and City Council. The proposed policy attempts to address funding issues, minimum design standards, underground utility issues, and objectives that the street must meet to be considered for public ownership. The policy is proposed to be an adopted ordinance (see Attachment 2). The following is a bullet point summary of the policies in the proposed ordinance:

- The City will not make a pro-active effort to dedicate private streets to public ownership.
- Private streets created in a platted subdivision will not be considered for public ownership unless there is a compelling public interest.
- Property owners representing 100% of the total lincal front footage of the private street must sign a petition for the City to consider dedicating the private street.
- In order for the street to be considered for public ownership:
 - Underground utilities must meet City standards;
 - The street surface must meet current City standards or an acceptable degree of compliance;
 - The street must have at least 16 feet of clear paved width (not including parking);
 - The grade of the street must meet current City street grade standards; and
 - Deteriorated private property features abutting the street are removed, repaired, or replaced by the property owner(s) to ensure public safety.
- Salt Lake City will not pay for required street improvements. Property owners may pursue funding through the CDBG, Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs through the routine processes for allocation of these funds. The CDBG, CIP, and SAA programs will not be used to fund improvements to streets created in a platted subdivision.
- The City may repair water and sewer lines in an emergency on the basis that the utility owners will reimburse the City.
- The City will not split the ownership of utilities and streets unless there is a compelling public benefit.
- The City will not share the cost of improving a private street created in a planned development. In order to accept a private street created in a planned development, the planned development must be amended.
- The City will make a reasonable effort to inform new residents that their street or water line is private when they sign up for water service.
- The City will not take ownership of a street that does not allow public access.
- The City will not take ownership of a street that is targeted for redevelopment.
- The City must be able to safely and efficiently provide services along the street.

- No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to the property owners when a private street is dedicated.
- The City will consider the dedication of a private street only if it is demonstrated that the street dedication achieves at least one of the following:
 - The street currently provides, or can provide with improvements:
 - Access to open space, public facilities/uses or other public amenities
 - Mid-block pedestrian access
 - An improvement to the surrounding pedestrian or vehicular circulation pattern
 - An identified planning goal as noted in the adopted master plan for the neighborhood
 - Dedicating the private street will encourage reinvestment in the community
 - Dedication of the street will improve the public health, safety, and general welfare.

Comments

Public Comments

The Planning Division conducted an open house meeting on April 15, 2010 to solicit public comment on the proposed ordinance. Notification of the open house was sent via the Planning Division e-mail listserve. One person, an attorney representing the Capitol Park Homeowners' Association (CPHA), attended the meeting. The Capitol Park planned development was approved in 1995 with a private street and the CPHA has made application to the City to amend the planned development and dedicate the private street to public ownership. The attorney representing the CPHA submitted a letter on April 23, 2010 commenting on the proposed ordinance (see Attachment 3). The following points were made in the letter:

1. The standard "compelling public interest" is an unreasonably high standard for considering the dedication of private streets that were created in a platted subdivision.

Staff Comment: The developers of private streets consciously did so in order to circumvent certain City street standards. When these streets are dedicated to public ownership, the City will be held liable and will be responsible for maintaining the street. Therefore, it is the opinion of Staff that the standard should be high when considering the dedication of a private street that was created in a platted subdivision.

2. The policy should not require 100% of the property owners along the street to sign a petition to dedicate the street, but should require 100% of the owners of the street.

Staff Comment: The language in the proposed ordinance states, "Existing private streets may be considered for public ownership when requested by property owners abutting the private street. That request will come in the form of a Private Street Dedication Petition. The petition must be signed by property owners representing 100% of the total lineal front footage of the street. By signing the petition, the petitioners agree it is their intent to dedicate the street to public ownership". The property owners along a private street may or may not have fee title ownership to the street, but could have prescriptive rights to use the street. Staff is of the opinion that the language remains as proposed to ensure that all individuals that have a legal interest in the street are in favor of dedicating the street to the City.

3. There should not be a provision that city standards will not be waived. Instead, applicants should be given the same opportunities to obtain a variance as contained in the current city ordinances pertaining to variances.

Staff Comment: Comment #3 is referring to Section D(2) of the proposed ordinance. This section states, "The street surface features meet current City standards or are brought in an acceptable degree of compliance... There are certain City standards that the City will not consider waiving or reducing (grade, surface, width), as they relate to health and safety and ability to provide services." The ordinance further states that a street must have at least 16 feet of clear paved way, not including parking and that the grade of the street must meet current City street grade standards. The proposed language was developed by representatives from the Engineering and Transportation Divisions to ensure that the City can adequately provide services.

The attorney representing the CPHA states that applicants should be able to apply for a variance for relief from the current street standards (see attached letter) and references Section 21A.18 of the Zoning Ordinance. Section 21A.18 is the section of the Zoning Ordinance that allows property owners to request a Variance from zoning regulations. A Variance is defined as, "a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure under this title and authorized according to the procedures set forth in chapter 21A.18 of this title" (Chapter 21A.62 – Definitions, SLC Zoning Ordinance). As stated in the definition, a Variance can be granted from regulations pertaining to the size or area of a lot or the size, area, bulk or location of a building. A Variance cannot be granted from City street standards. In the case of private streets created through the Planned Development process, relief was granted to the developer by allowing the construction of a private street that does not meet City standards with the provision that the property owners maintain the street, not the City.

City Department Comments

Representatives from the Engineering Division, Department of Public Utilities, City Attorney, Planning Division, Transportation Division, Streets and Sanitation Division, and City Council Staff participated in the development of the proposed ordinance. Planning Division Staff also forwarded the proposed ordinance to Fire, Police, Building Services, and Property Management. There were no comments received.

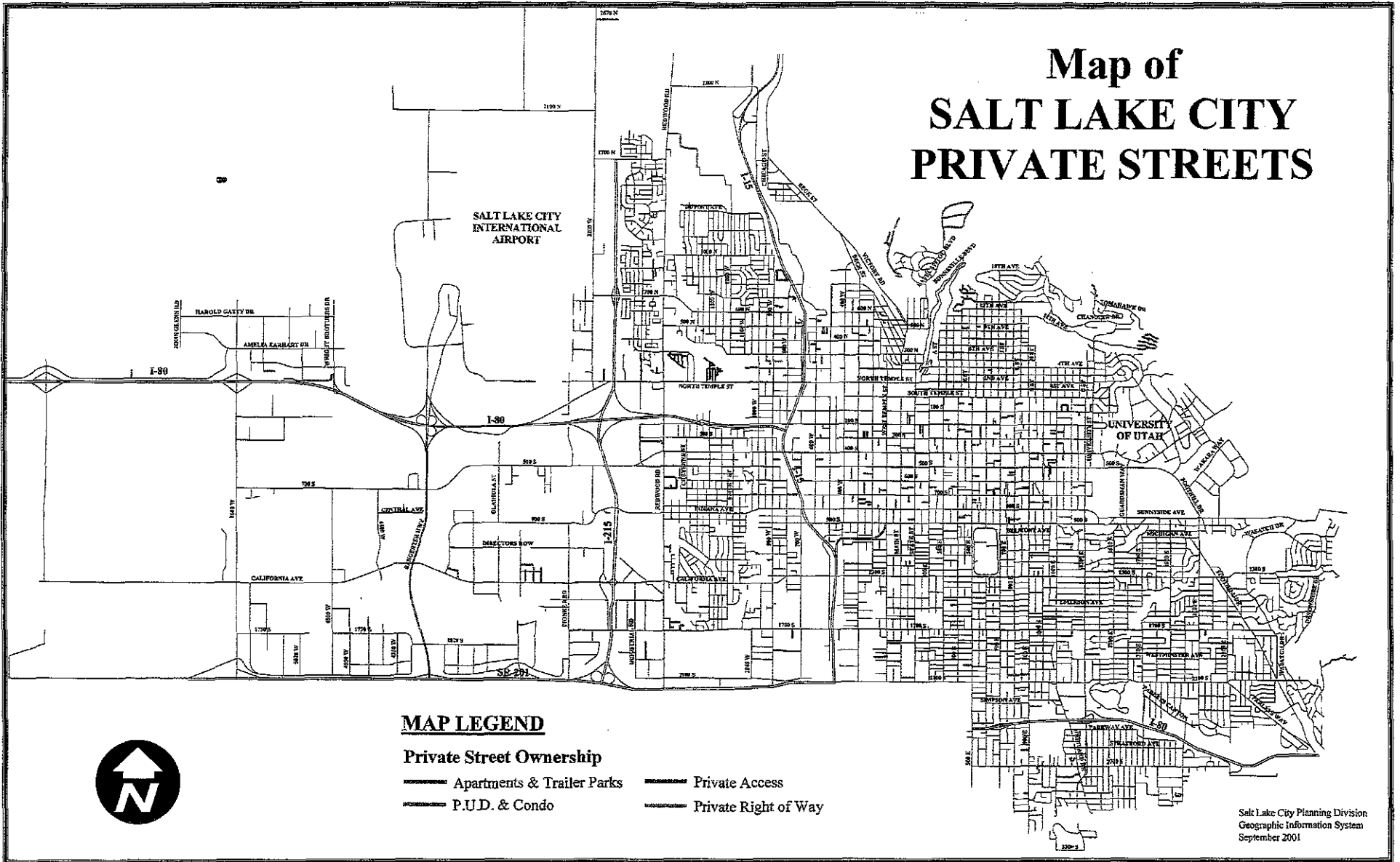
Analysis and Findings

The proposed ordinance is not an amendment or addition to the Zoning Ordinance, but is an addition to Title 14 – Streets, Sidewalks, and Public Places – of the City Code. There are no specific standards for the Planning Commission to consider when reviewing the proposed ordinance. The policies in the proposed ordinance were developed by representatives from all pertinent City departments and divisions in an effort to ensure that the dedication of an existing private street is in the best interest of the City. The policies in the proposed ordinance address issues that have been encountered through the review of previous requests to dedicate private streets, such as minimum design standards, underground utility issues, and objectives that the street must meet to be considered for public ownership. It is the opinion of the Planning Staff that the Planning Commission transmits a favorable recommendation to the City Council to adopt Chapter 14.54 – Dedication of Private Streets to Public Ownership.

Attachment A



Map of Salt Lake City Private Streets



Map of SALT LAKE CITY PRIVATE STREETS



MAP LEGEND

Private Street Ownership

-  Apartments & Trailer Parks
-  P.U.D. & Condo

-  Private Access
-  Private Right of Way

Attachment B

Proposed Ordinance – Dedication of Private Streets to Public Ownership

Chapter 14.54
DEDICATION OF PRIVATE STREETS
TO PUBLIC OWNERSHIP

Sections:

14.54.010	Purpose
14.54.020	Policy
14.54.030	Administrative Procedures

14.54.010 Purpose

The purpose of this chapter is to establish policy and procedures for the dedication of private streets to public ownership. Private alleys are excluded from this policy.

14.54.020 Policy

It is the policy of Salt Lake City Corporation that:

- A. The City will not make a pro-active effort to bring private streets into public ownership unless there is a compelling public interest;
- B. Private streets created as part of a platted subdivision will not be considered for public ownership unless there is a compelling public interest;
- C. Existing private streets may be considered for public ownership when requested by property owners abutting the private street. That request will come in the form of a Private Street Dedication Petition. The petition must be signed by property owners representing 100% of the total lineal front footage of the street. By signing the petition, the petitioners agree it is their intent to dedicate the street to public ownership;
- D. Private streets will not be considered for public ownership unless:
 - (1) The underground utilities meet City standards or until the utilities are brought up to City standards;

- (2) The street surface features meet current City standards or are brought into an acceptable degree of compliance. Numerous factors will be considered through the petition process and the fact that the underground and surface standards are met does not guarantee that the street will be brought into public ownership. There are certain City standards that the City will not consider waiving or reducing (grade, surface, width), as they relate to health and safety and ability to provide services. Streets will not be considered for public ownership if they have less than 16 feet of clear paved way, not including parking. If the clear paved width, not including parking, is between 16 and 20 feet, the City will consider public ownership if there is a compelling public interest. Grade of the street must meet current City street grade standards; and
- (3) Deteriorated retaining walls and other private property features abutting the proposed public ownership are removed, repaired, or replaced by the property owners to ensure public safety;

E. Salt Lake City will not pay the cost of underground (utilities, etc.) or surface (curb, gutter, sidewalks, concrete, etc.) improvements to bring the street up to City standards. The burden is on the private street property owners to fund necessary improvements. Private street property owners may pursue funding options to upgrade the street to City standards through the City's Community Development Block Grant (CDBG), Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs) if the private street was not expressly created in a platted subdivision. City funds will not be expended on streets created as a part of a platted subdivision, on the policy basis that taxpayer funds should not be expended to address deficiencies in standards consciously chosen by the property developer. If directed by the

Mayor, the City may make repairs to water or sewer lines in an emergency situation involving a substantial risk to health or safety and on the basis that the owner will reimburse the City;

F. If matching funding is requested from the City through the CDBG or CIP programs, or through creation of a SSA, the request will be considered through the routine processes for allocation of those funds and will not be given priority;

G. The City will not agree to split the ownership of utilities and streets unless there is a compelling public benefit;

H. If a private street was created as part of a Planned Development, the City will not pay, or share the cost of repairing or improving the street. If the street was created through a Planned Development, an amendment to the Planned Development is required. There must be a compelling public interest proven for public ownership to be considered. The amendment process will be reviewed by the Planning Commission with a recommendation forwarded to the City Council;

I. The City has no affirmative duty to inform residents if their street or utility is private. However, as a courtesy, when a customer signs up for water service, the City will make a reasonable effort to inform the customer if their street or the water utility line is private;

J. The City will not take ownership of a street that does not allow public access;

K. The City will not take ownership of a street that is targeted for redevelopment as identified in a City master plan;

L. The City must be able to safely and efficiently provide services (fire protection, garbage collection, snow removal, etc.) along the street in order to dedicate a private street to public ownership;

M. No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to private street owners when a private street becomes publicly owned; and

N. The City will not consider the acceptance of an existing private street to public ownership unless it is demonstrated that the street dedication achieves at least one of the following objectives:

- (1) The street currently provides, or can provide with improvements:
 - i. access to open space, public facilities/uses or other public amenities
 - ii. mid-block pedestrian access
 - iii. an improvement to the surrounding pedestrian or vehicular circulation pattern
 - iv. an identified planning goal as noted in the adopted master plan for the neighborhood
- (2) Dedicating the private street to public ownership will encourage reinvestment in the community
- (3) Dedication of the street will improve public health, safety, and general welfare.

14.54.030 Administrative Procedures

The Mayor is authorized to adopt additional, consistent administrative procedures necessary to implement this policy.

Attachment C

Letter from Capitol Homeowners' Association

HIRSCHI STEELE & BAER^{PLLC}
ATTORNEYS AT LAW

DAVID P. HIRSCHI
dave@hsblegal.com

JUSTIN R. BAER
justin@hsblegal.com

April 23, 2010

Via email only to wayne.mills@slcgov.com

Wayne Mills
Salt Lake City Planning Division
PO Box 145480
Salt Lake City, UT 84114-5480

Re: Dedication of Private Streets to Public Ownership
Public Comments

Dear Mr. Mills:

This firm represents the Capitol Park Homeowners Association ("Association"). My client has asked me to provide you with the Association's comments pertaining to the proposed policies for the dedication of private streets to public ownership.

Generally, the Association supports the policies. As you know, for some time the Association has been requesting that the City accept dedication of the private streets in the Capitol Park Planned Development ("Capitol Park"). The Association has filed two separate applications with the City: PLNSUB2008-0092 Subdivision Amendment, requesting that the private streets in Capitol Park be dedicated to the City; and PLNSUB2009-00445 Planned Development Amendment, requesting that the Capitol Park Planned Development be amended to dedicate the private streets.

The Association has had significant involvement with the City pertaining to the issue of the dedication of private streets, so these comments to the proposed policies stem from personal experience as well as experience in attempting to dedicate private streets.

Proposed Section 14.54.020(B) provides, "Private streets created as part of a platted subdivision will not be considered for public ownership unless there is a compelling public interest." The Association believes that the standard "compelling public interest" is an unreasonably high standard for this situation. Typically, a "compelling public interest" stems from zoning laws, and has reference to whether a city can deny a building permit even if the permit application complies with applicable zoning regulations. *See Western Land Equities v. Logan*, 617 P.2d 388 (Utah 1980) ("We do not find the reasons given by the city for withholding

approval of plaintiffs' proposed subdivision to be so compelling as to overcome the presumption that an applicant for a building permit or subdivision approval is entitled to affirmative official action if he meets the zoning requirements in force at the time of his application.") A "compelling public interest" is a high standard to meet, and that could be difficult to attain for the dedication of private streets since most of the private streets throughout the City are small and impact only a fraction of the public. Therefore, the Association believes that the better standard to be to simply to say that there must be a "public interest," rather than a "compelling" public interest.

Section 14.54.020(C) provides that "[t]he petition must be signed by property owners representing 100% of the total lineal front footage of the street." This is an unreasonable requirement. The better standard should be "100% of the owners of the private street." It is conceivable that there are residents along private streets that have no ownership interest in the private street. In that situation, one resident living along a private street, even though that person has no ownership in the private street, could prevent the owners of the street from public dedication. Therefore, the better requirement is for 100% of the owners of each private street to approve the dedication. If there are situations where the owner is unknown, then perhaps the City could require approval from 100% of the residents along the street.

Section 14.54.020(D)(2) states, "There are certain City standards that the City will not consider waiving or reducing (grade, surface, width) as they relate to health and safety and ability to provide services." This requirement would remove any flexibility on the part of the City to consider public dedication for streets that may not strictly comply with the current City standards. With this provision in place, it is conceivable that streets in compliance when they were constructed cannot now be dedicated because the current standards are different. It is also conceivable that there exist private streets that are closer to city standards than many public streets, but those private streets would not be subject to dedication simply because they do not meet the current standards.

Although the Association understands the requirements to comply with city standards, it seems unreasonable that the City would not allow any "waiver" or "variance" of city standards in a dedication procedure. The City currently has ordinances pertaining to variances for new construction that give some flexibility under certain circumstances. Section 21A.18.010 of the Salt Lake City Ordinances states, "The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this title that create unreasonable hardships." Therefore, although current City ordinances provide a means to obtain a variance for "unreasonable hardships," the proposed dedication policies would prescribe no waivers or variances.

Rather than state that there will be no waiver as to standards, the policies should provide at least some of the flexibility that is currently contained in the City's ordinances pertaining to variances. Therefore, the Association suggests that the strict standard of "no waiver" be modified to provide that while there will be an emphasis on meeting current city standards, any


applicant for a dedication will have at least the same opportunity for a variance that is available in new construction. In other words, the dedication policies should at the very least contain policies similar to those in Title 21A, Chapter 18 of the Salt Lake City Ordinances pertaining to variances.

In sum, the Association has the following comments and requested changes to the proposed policies for the public dedication of private streets:

1. The standard should not be as high as a "compelling public interest," but should be something more attainable such as simply "public interest."
2. The policies should not require 100% of the property owners along the street, but should instead be 100% of the owners of the private street.
3. There should not be a provision that city standards will not be waived. Instead, applicants should be given the same opportunities to obtain a variance as contained in the current city ordinances pertaining to variances.

If you would like to discuss these suggestions, please feel free to contact me. Thank you.

Sincerely,
HIRSCHI STEELE & BAER, PLLC



David P. Hirschi
Justin R. Baer

2. ORDINANCE

SALT LAKE CITY ORDINANCE
No. ____ of 2010
(Enacting New Chapter 14.54 Relating to
Dedicating Private Street to Public Ownership)

An ordinance enacting new chapter 14.54 of the Salt Lake City Code relating to the policy for the dedication of private streets to public ownership.

WHEREAS, the City occasionally receives requests that private streets be dedicated to public ownership; and

WHEREAS, the City Council wished to adopt the policy and procedures for handling such requests.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. New chapter 14.54, Salt Lake City Code shall be, and hereby is, enacted to read as follows:

Chapter 14.54
DEDICATION OF PRIVATE STREETS
TO PUBLIC OWNERSHIP

Sections:

14.54.010	Purpose
14.54.020	Policy
14.54.030	Administrative Procedures

14.54.010 Purpose

The purpose of this chapter is to establish policy and procedures for the dedication of private streets to public ownership. Private alleys are excluded from this policy.

14.54.020 Policy

It is the policy of Salt Lake City Corporation that:

A. The City will not make a pro-active effort to bring private streets into public ownership unless there is a compelling public interest;

B. Private streets created as part of a platted subdivision will not be considered for public ownership unless there is a compelling public interest;

C. Existing private streets may be considered for public ownership when requested by property owners abutting the private street. That request will come in the form of a Private Street Dedication Petition. The petition must be signed by property owners representing 100% of the total lineal front footage of the street. By signing the petition, the petitioners agree it is their intent to dedicate the street to public ownership;

D. Private streets will not be considered for public ownership unless:

- (1) The underground utilities meet City standards or until the utilities are brought up to City standards;
- (2) The street surface features meet current City standards or are brought into an acceptable degree of compliance. Numerous factors will be considered through the petition process and the fact that the underground and surface standards are met does not guarantee that the street will be brought into public ownership. There are certain City standards that the City will not consider waiving or reducing (grade, surface, width), as they relate to health and safety and ability to provide services. Streets will not be considered for public ownership if they have less than 16 feet of clear paved way, not including parking. If the clear paved width, not including parking, is between 16 and 20 feet, the City will consider public ownership if there is a

compelling public interest. Grade of the street must meet current City street grade standards; and

- (3) Deteriorated retaining walls and other private property features abutting the proposed public ownership are removed, repaired, or replaced by the property owners to ensure public safety;

E. Salt Lake City will not pay the cost of underground (utilities, etc.) or surface (curb, gutter, sidewalks, concrete, etc.) improvements to bring the street up to City standards. The burden is on the private street property owners to fund necessary improvements. Private street property owners may pursue funding options to upgrade the street to City standards through the City's Community Development Block Grant (CDBG), Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs) if the private street was not expressly created in a platted subdivision. City funds will not be expended on streets created as a part of a platted subdivision, on the policy basis that taxpayer funds should not be expended to address deficiencies in standards consciously chosen by the property developer. If directed by the Mayor, the City may make repairs to water or sewer lines in an emergency situation involving a substantial risk to health or safety and on the basis that the owner will reimburse the City;

F. If matching funding is requested from the City through the CDBG or CIP programs, or through creation of a SSA, the request will be considered through the routine processes for allocation of those funds and will not be given priority;

G. The City will not agree to split the ownership of utilities and streets unless there is compelling public benefit;

H. If a private street was created as part of a Planned Development, the City will not pay, or share the cost of repairing or improving the street. If the street was created through a Planned Development, an amendment to the Planned Development is required. There must be a compelling public interest proven for public ownership to be considered. The amendment process will be reviewed by the Planning Commission with a recommendation forwarded to the City Council;

I. The City has no affirmative duty to inform residents if their street or utility is private. However, as a courtesy, when a customer signs up for water service, the City will make a reasonable effort to inform the customer if their street or the water utility line is private;

J. The City will not take ownership of a street that does not allow public access;

K. The City will not take ownership of a street that is targeted for redevelopment as identified in a City master plan;

L. The City must be able to safely and efficiently provide services (fire protection, garbage collection, snow removal, etc.) along the street in order to dedicate a private street to public ownership;

M. No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to private street owners when a private street becomes publicly owned; and

N. The City will not consider the acceptance of an existing private street to public ownership unless it is demonstrated that the street dedication achieves at least one of the following objectives:

- (1) The street currently provides, or can provide with improvements:
 - i. access to open space, public facilities/uses or other public amenities
 - ii. mid-block pedestrian access
 - iii. an improvement to the surrounding pedestrian or vehicular circulation pattern
 - iv. an identified planning goal as noted in the adopted master plan for the neighborhood
- (2) Dedicating the private street to public ownership will encourage reinvestment in the community
- (3) Dedication of the street will improve public health, safety, and general welfare.

14.54.030 Administrative Procedures

The Mayor is authorized to adopt additional, consistent administrative procedures necessary to implement this policy.

SECTION 2. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah, this _____ day of _____, 2010.

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 6-28-10
By [Signature]

(SEAL)

Bill No. _____ of 2010.
Published: _____.

3. CHRONOLOGY

CHRONOLOGY

Proposed Ordinance - Dedication of Private Streets to Public Ownership

April 15, 2010	Open house meeting on proposed ordinance
May 28, 2010	Mailed Planning Commission Notice of Public Hearing
May 28, 2010	Planning Commission Notice of Public Hearing posted on Utah Public Meeting Notice website
June 3, 2010	Staff report posted on Planning Division website
June 9, 2010	Planning Commission public hearing. Planning Commission voted unanimously to transmit a favorable recommendation of approval to the City Council
June 23, 2010	Planning Commission ratified minutes of June 9, 2010 meeting

**4. NOTICE OF CITY COUNCIL
HEARING**

NOTICE OF PUBLIC HEARING

Proposed Ordinance – Dedication of Private Streets to Public Ownership

The Salt Lake City Council is considering a proposed ordinance regarding the dedication of private streets to public ownership. As part of the study, the City Council is holding an advertised public hearing to receive comments regarding the proposed ordinance. During the hearing, anyone desiring to address the City Council concerning this issue will be given an opportunity to speak. The hearing will be held:

Date:

Time: 7:00 p.m.

Place: Room 315 (City Council Chambers)*
Salt Lake City and County Building
451 S. State Street
Salt Lake City, UT

*Please enter building from east side.

If you have any questions relating to this proposal or would like to review the petition on file, please call Wayne Mills, Senior Planner, at 535-7282 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or via e-mail at wayne.mills@slcgov.com.

People with disabilities may make requests for reasonable accommodations no later than 48 hours in advance in order to attend this public hearing. Accommodations may include alternate formats, interpreters, and other auxiliary aids. The City & County Building is an accessible facility. For questions, requests, or additional information, please contact the ADA Coordinator at (801) 535-7971; TDD 535-6021.

5. MAILING LABELS

Terry Thomas
1848 Stallion Lane
Salt Lake City, UT 84116

Bill Davis
332 W. 1700 S.
Salt Lake City, UT 84115

Philip Carlson
1917 E. 2700 S.
Salt Lake City, UT 84106

Brad Bartholomew
871 N. Poinsettia Dr.
Salt Lake City, UT 84116

Thomas Mutter
228 E. 500 S.
Salt Lake City, UT 84111

Angie Vorher
1988 Sir James Dr.
Salt Lake City, UT 84116

Gary Felt, Council Chair
East Central Community
PO Box 521809
Salt Lake City, UT 84152-1809

Gordon Storrs
223 North 800 West
Salt Lake City, UT 84116

DeWitt Smith
328 E. Hollywood Ave.
Salt Lake City, UT 84115

Mike Harman
1044 West 300 South
Salt Lake City, UT 84104

Esther Hunter
1049 Norris Place
Salt Lake City, UT 84102

Randy Sorenson
1184 S. Redwood Dr.
Salt Lake City, UT 84104-3325

George Kelner
1000 Military Dr.
Salt Lake City, UT 84105

Katherine Gardner
606 De Soto St.,
Salt Lake City, UT 84103

Mark Brinton
1869 Logan Ave.
Salt Lake City, UT 84108

Jim Jenkin
212 5th Ave.
Salt Lake City, UT 84103

Pete Taylor
933 S. 2300 E.
Salt Lake City, UT 84108

Beverly Nelson
26 S. Wolcott St.
Salt Lake City, UT 84102

Ellen Reddick
2177 Roosevelt Ave.
Salt Lake City, UT 84108

D. Christian Harrison
336 W. Broadway, #308
Salt Lake City, UT 84101

R. Gene Moffitt
1410 Chancellor Way
Salt Lake City, UT 84108

Justin Baer
Herschi, Steele, & Baer
136 E. South Temple, Ste 1400
Salt Lake City, UT 84111

Wayne Mills
1023 Austin Ave.
Salt Lake City, UT 84106

6. PLANNING COMMISION

**Agenda
Minutes**

SALT LAKE CITY PLANNING COMMISSION MEETING AGENDA
In Room 326 of the City & County Building at 451 South State Street
Wednesday, June 9, 2010 at 5:45 p.m.

The field trip is scheduled to leave at 4:00 p.m. Dinner will be served to the Planning Commissioners and Staff at 5:00p.m., in Room 126. **Work Session**—The Planning Commission may discuss project updates and minor administrative matters. This portion of the meeting is open to the public for observation.

Approval of Minutes from Wednesday, April 14, 2010 and May 26, 2010

Report of the Chair and Vice Chair

Report of the Director: Request the Planning Commission initiate a petition to amend the Zoning Ordinance relating to the duties and authority of the Historic Landmark Commission.

Public Hearings

1. **PLNPCM2010-00146 - Redwood Road Surplus Property** - A request by Salt Lake City Property Management Division to surplus a property at approximately 650 South Redwood Road. The property is a former employee health clinic. The property is located in the CC (Commercial Corridor) zoning district and in Council District 2 represented by Van Turner. (Staff contact: Nick Britton at 801-535-6107 or nick.britton@slcgov.com).
2. **PLNPCM2010-00145 - Landfill Surplus Property** - A request by Salt Lake City Public Services to surplus a property located at approximately 1800 South 5800 West. The property is the eastern border of the Salt Lake City/County Landfill. The property is located in an OS (Open Space) zoning district and in Council District 2 represented by Van Turner (Staff Contact Nole Walkingshaw at 801-535-7128 or nole.walkingshaw@slcgov.com).
3. **Proposed Ordinance, Title 14, and Chapter 14.54** - a request by the City Council to develop a policy regarding the dedication of private streets to public ownership. (Staff Contact: Wayne Mills at 801-535-7282 or wayne.mills@slcgov.com).
4. **Hampton Inn/Foothill Dental mixed use project**—a request by Wade Olsen to develop a mixed use project to include a hotel, dental offices, and retail space on the properties at approximately 1345 and 1355 South Foothill Drive. The property is located in the CB zoning district within Council District 6 represented by J.T. Martin (Staff contact: Casey Stewart at 801.535.6260 or casey.stewart@slcgov.com).
 - a. **PLNPCM2010-00236 Conditional Use**- a request for conditional use approval for the proposed hotel use, hotel building height, and hotel building size.
 - b. **PLNSUB2009-00383 Planned Development and Conditional Building and Site Design Review** - a request for Planned Development and Conditional Building and Site Design Review approval for the Hampton Inn/Foothill Dental mixed use project. The applicant is requesting the Planning Commission modify the setback requirements for a proposed parking structure located along 2300 East and limitations on a dumpster location. The applicant is also requesting modification to design requirements for transparent glass along 2300 East.

Unfinished Business

PLNPCM2010-00096 North Temple Boulevard and Vicinity Rezoning: A request by the Salt Lake City Planning Commission regarding the adoption of the TSA Transit Station Area Zoning District and amending the official zoning map by rezoning certain properties along North Temple Boulevard and other properties in close proximity to the Airport Light Rail Line between approximately 300 West and 2400 West. The properties are located in Council District 1 represented by Carlton Christensen, District 2 represented by Van Turner and District 3 represented by Stan Penfold (Staff contact: Nick Norris at 801-535-6173 or nicknorris@slcgov.com).

Briefing Session

Westminster Mixed Use Planned Development – a briefing to discuss a request by Lynn Woodbury for a new mixed-use planned development to be located at approximately 2120 South 1300 East. The proposal is to construct a six story mixed-use development that will include 41 residential dwelling units and approximately 22,500 square feet of commercial space. The proposal includes a Planned Development, amendment to the Homestead Village Subdivision, and approval through the Conditional Building and Site Design Review process. The property is zoned CSHBD-1 Sugar House Commercial Business District. The property is located in City Council District Seven, represented by Søren Simonsen. (Staff contact: Michael Maloy at 801-535-7118 or michael.maloy@slcgov.com.)

Visit the Planning Division's website at www.slcgov.com/CED/planning for copies of the Planning Commission agendas, staff reports, and minutes. Staff Reports will be posted the Friday prior to the meeting and minutes will be posted two days after they are ratified, which usually occurs at the next regularly scheduled meeting of the Planning Commission. Planning Commission Meetings may be watched live on SLCTV Channel 17; past meetings are recorded and archived, and may be viewed at www.slctv.com

Commissioner Wirthlin made a motion in the matter of PLNPCM2010-00145 - Landfill Surplus Property based on the public hearing and the staff report, the Commission forwarded a favorable recommendation to the Mayor. With the following conditions:

1. That the applicant shall finalize the land acquisition with the Property Management Division.
2. That the applicant shall purchase the subject property for its fair-market value.

Commissioner Gallegos seconded the motion.

Commissioners Algarin, Dean, Fife, Gallegos, Wirthlin, and McHugh all voted "aye" the motion passed unanimously.

6:08:51 PM

Proposed Ordinance, Title 14, Chapter 14.54 - A request by the City Council to develop a policy regarding the dedication of private streets to public ownership. (Staff Contact: Wayne Mills at 801-535-7282 or wayne.mills@slcgov.com)

Chairperson De Lay recognized Wayne Mills as staff representative.

Mr. Mills stated that there are different types of private streets in the city. Private streets have been created prior to any formal subdivision or regulatory process and in many instances the property owners do not know that the streets are private. Sometimes the ownership goes to the middle of the street, and sometimes the ownership is lost. Other types of private streets include: private access ways that are located in condominiums and apartment projects, and private streets that were created in subdivisions or in planned developments.

Mr. Mills said that in order to create a private street today, it would have to be part of a planned development, because the ordinance states that all lots must front on a public street. In many cases a private street created in a planned development does not meet a city street standard.

In the past, the City has received requests to take ownership of private streets. The City has handled these requests in a number of different ways, but has not had guidelines to follow. City Council had requested that a work group be formed to develop a proposed policy for their consideration. The work group consisted of representatives from all applicable divisions in the City. The policy was proposed as an ordinance to the Mayor for his review. The Mayor then requested that it be presented to the Planning Commission prior to moving forward for feedback.

Questions from the Commissioners:

City Land Use Attorney Paul Nielson noted concern regarding City liability.

Commissioner McHugh noted that the city could decline to take ownership of a public street.

Mr. Mills stated that City Attorney Lynn Pace was involved in the writing of the proposed policies.

6:16:53 PM Public Hearing:

Mr. Justin Baer representing Capital Park Home Owners Association spoke *against* the ordinance. He stated that the Capital Park Home Owners Association had an application before the Planning Commission to dedicate the private streets in the PUD. He noted three main objections the HOA has against the ordinance:

1. Property ownership section 14.54.020 subparagraph C provides that the petition must be signed by property owners representing 100% of the total lineal footage of the street.

This would mean that if the street is dedicated to the city, everyone who lives along the frontage of the street would have to sign a petition. The concern is that it would be an alienation of property. Two specific instances could occur. First, was the possibility that someone lives along the street that does not have an ownership interest in the street. If the owners of the street want to dedicate to the City, but yet someone who did not own the property was given an absolute veto right that could potentially prevent the dedication if they live along the street. Second, a situation that specifically pertains to the Capital Park Home Owners Association was that there were several residents of the HOA that do not abut any of the private streets of the subdivision but live along 12th Street. This requirement of 100% of the residents along the street sign the petition, but not the owners who do not, do not get a voice.

Commissioner Fife and Mr. Baer debated street ownership issues.

2. City Standards, Page 2 subparagraph 2 subsections D, third sentence.” provides that there are certain City Standards that the City will not consider waiving or reducing, grade service width, as they relate to health, safety and ability to provide services.”

Mr. Baer believed that this issue should provide flexibility that the City itself should take over dedication. Mr. Baer made the point that within the staff report it states that when the street owners had not been able to afford to make repairs, in some instances the City has taken care of it.

3. Compelling Public interest. Mr. Baer made reference to a letter that is part of the public record.

Mr. David Hirschi representing Capital Park Home Owners Association spoke *against* the ordinance. He explained that the ownership of an HOA and the Covenants, Conditions and Restrictions (CC&Rs) and how the governing body work. He noted that decisions can be made upon vote of a majority of the homeowner, or a supermajority of the homeowners.

Mr. Hirshi wanted to emphasize that flexibility was a good thing while dealing with planning.

6:27:29 PM Close of Public Hearing

Questions from the Commission:

Chairperson De Lay asked what would happen if the City did not want a street.

Mr. Mills replied that the City could deny the dedication. The ordinance does not guarantee that the City will take over a street.

Mr. Mills stated that the City will not take a proactive approach to taking over private streets. The objective of the ordinance is to create a process for when requests to take over a private street came into the City.

Commissioner McHugh asked about the use of the word “compelling” in the ordinance, if it would be used in the case of traffic.

Mr. Mills said that within the ordinance are several review standards. This has been set up so that if the City has to take on the burden of maintaining the street, there needed to be a public benefit.

Commissioner Fife made a point that if the HOA owned the street, the members of the HOA owned the street. It would be the body of the HOA that would determine the vote.

6:30:15 PM Motion

Commissioner Gallegos made a motion in the matter of Proposed Ordinance, Title 14, Chapter 14.54 based on the information from the staff report and public hearing The Commission forwarded a favorable recommendation to the City Council to adopt the ordinance.

Commissioner Wirthlin seconded the motion.

Commissioners Algarin, Dean, Fife, Gallegos, Wirthlin, and McHugh all voted “aye” the motion passed unanimously.

6:33:14 PM

Hampton Inn/Foothill Dental mixed use project—a request by Wade Olsen to develop a mixed use project to include a hotel, dental offices, and retail space on the properties at approximately 1345 and 1355 South Foothill Drive. The property is located in the CB zoning district within Council District 6 represented by J.T. Martin (Staff contact: Casey Stewart at 801.535.6260 or casey.stewart@slcgov.com).

- a. **PLNPCM2010-00236 Conditional Use**- a request for conditional use approval for the proposed hotel use, hotel building height, and hotel building size.
- b. **PLNSUB2009-00383 Planned Development and Conditional Building and Site Design Review** - a request for Planned Development and Conditional Building and Site Design Review approval for the Hampton Inn/Foothill Dental mixed use project. The applicant is requesting the Planning Commission modify the setback requirements for a proposed parking structure located along 2300 East and limitations on a dumpster location. The applicant is also requesting modification to design requirements for transparent glass along 2300 East.