



Memorandum

To: Tammy Folkman, Land Use Specialist
Plain City Corporation

From: Brad C. Jensen, P.E.
Wasatch Civil Consulting Engineering

Date: March 8, 2024

Subject: Sunset Estates, Irrigation Easement

I have reviewed the revised plat with regard to the irrigation easement running across the proposed lots. The plat revisions appear to adequately address my concerns.

If you have any questions or require additional information, feel free to contact me.

February 26th, 2024

To: Plain City Corporation Planning Commission

From: Cody Rhees, Cody Rhees Construction, Inc.

RE: SUNSET ESTATES SUBDIVISION APPROVAL

Plain City Planning Commission,

I have submitted an application for the proposed Sunset Estates Subdivision following a plan and presentation consistent with all applicable Plain City Ordinances. I am requesting at this time subdivision approval, consistent with the requirements by ordinance, so we can proceed with the requested plat. I am requesting to be placed on the planning commission agenda scheduled for March 14th, 2024.

This Subdivision is inclusive of two property tax ID#'s (24-053-0050 & 24-053-0051) which are currently zoned consistent with the General Plan of Plain City. The parcel acreage total is 2.56 Acres. We have platted out 4 building lots. The footage for every lot is over the required minimum lot sizes for the current zoning, and we feel that this will be a very nice addition to the city.

As you are aware, there has been much discussion on this subdivision as the City is trying their very hardest to Exact Property from Mr. East, the current owner of the property. My contract with him is to buy the 4 lots, and only the 4 lots.

I would like to outline to you the laws we are bound to in the State of Utah. What your City is requesting is called an Exaction of real property. An Exaction is defined as a required contribution to a governmental entity imposed as a condition of approval for a proposed land development. There are times where a city can require an exaction of property, however they almost always include a utility, and never fit into this category of walkway, or sidewalk.

Utah State Statute has adopted the Nolan/Dolan Test for exactions as per state statutes Title 10 Chapter 9a & Title 17 Chapter 27a. In these two case law studies, it is very clear that the State of Utah has confirmed that a property owner has rights, and to perform an exaction or "taking" of property is not without very inherent rules, and/or just compensation. Utah State Law (10-9a-507)

The Nolan/Dolan Test in this particular case could have nexus where the city is concerned with any sidewalks that could continue southward to 2600 North Street. However, there are 2 problems: 1. It is out of proportion to the extent of the impact that 4 homes on the West side of the street may have, and 2. If the inherent thought of sidewalks was that important to install South, the city would have also made the same argument with the property on the North side of the development, and inherently wanted sidewalks to continue North to 2800 North as well. This is the top indicator that what the city has requested, is an exaction, without nexus.

Next, I would like to bring up several instances where the city departments have 1. Indicated that you should have approved the project, and 2. Where the city understands its position, however the City Planning Commission has not recommended approval of the plat.

Now, let's discuss including the "5th lot" that has come up in several discussions; should we do what several within the city have indicated to do, and "Make it a 5 lot Subdivision?" The "Fifth Lot" would be named on the plat as a remainder parcel, and as per Plain City Code will continue to be "a parcel of land" and included in the "Subdivision" identified as a "remainder parcel for future development" on the plat. This will still be an exaction of property to require improvements to be installed on it. If it is a remainder parcel, or not, and whether it is included in the plat, or not. In both scenarios, it will continue to be an exaction of property.

Furthermore, The Nolan/Dolan Standard applies further due to the fact that the city knowingly has had all the information given to them by: 1. The City Engineer, 2. The City Public works Director, and 3. The City Attorney; yet still has withheld approvals by tableting this application for multiple meetings. By withholding the approval process, the city can be equally held liable due to the fact this does not only apply to situations where land was or was not actually taken away, but where approvals or permits have been denied where a government has impermissibly burdened the property owners right to have their property permitted, or approved, and simply not have the ability to move forward, without just compensation. The Supreme courts in many states have withheld on multiple occasions that simply withholding an application or permit, is the same as a taking, and monetary exactions have been awarded on many cases in favor of the landowner/s.

The best explanations of your knowingly withholding of the application are best defined in the meeting Minutes dated January 11th, 2024 where Chairperson Falkner was discussing meeting with Dan Schuler for help to understand the sidewalks. She had been informed that Dan notified to her that the city does not own the area that the city wanted to require sidewalks in, and that it would need to be deeded to the city because the city does not own this property. It goes on to indicate that Mr. East's home is a separate parcel, and therefore the city cannot make him put his house into the subdivision plat. Further in the minutes Dan again mentions that the house is separate from the subdivision, and they cannot make him do improvements to the property. Commissioner Ortega later questions whether or not the city has a right of way where Jim has his rocks, and has mentioned that Jim would need to move his rocks, and fence to accommodate a sidewalk if there were. The truth of the matter is there is no public property or easement behind the TBC on the West side of this roadway. The remainder of the comments from the meeting minutes, all continue along the path of requiring a sidewalk, and the entire discussion from this point forward with the known facts, is considered a taking of Mr. East's property, as all this property is owned by Mr. East.

I am committed to work accordingly with your city engineer and public work department to get this subdivision approved in a timely fashion. If you have any questions as you are going through this packet, or notice anything else that you see may be a red flag, or hold up, please let me know at your earliest convenience. I am also happy to assist you with any questions you have.

As seen in Chapter 11-3-4 (c), I am asking that the Planning Commission review this application and recommend to approve this submitted plat. I am asking that you please advise me of outstanding items or concerns, or extra things to work on, as we can then proceed with a final plat. I would like to remind you as you look over this plat, that to the best of my knowledge, this plat meets every ordinance outlined in Plain City Code, general plan, and future land use maps, and I am fully expecting that you understand that you are bound to by ordinance to approve this plat, unless you can find evidence that this does not meet your city code. I appreciate your comments and concerns and remind you that you are required to notify me in writing any code violations or needed documents for approval, as well as any outcome from any public meeting. I have asked for this on numerous occasions with no response. I can see no reason to delay this application.

Thank You,

Cody Rhees, President, Cody Rhees Construction Inc., Heritage Craft Homes

February 26th, 2024

To: Plain City Corporation Planning Commission

From: Plain City Irrigation Company

RE: SUNSET ESTATES SUBDIVISION APPROVAL

Plain City Planning Commission,

We are writing this letter today to explain the Privately Owned Water Lateral (Underground Ditch) that runs through the middle of the Proposed Sunset Estates Subdivision, on Jim East's Property.

This ditch is comprised of 18" corrugated reinforced plastic pipe and carries water from the Plain City Irrigation canals to 3 private landowners.

- Jeff East
- Jim East
- John Leonardi

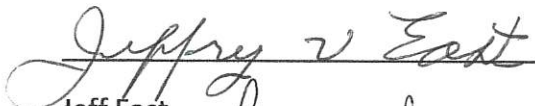
We have had a chance to review the plats and construction plans for the subdivision and feel that there is ample room to service the lateral as noted on the plat, and the verbiage on the plat is sufficient for access and maintenance. We have been in contact with those land owners that utilize this underground ditch. We all agree that the pipe is of adequate size to accommodate the water flow needs for irrigation. We recommend approval consistent with your city attorney, and city engineer recommendations.

Just a side note, we may, at our digression move this ditch to the far west property line inside the boundaries of this subdivision. We will do this at our own expense. There is already an easement on the outer boundaries of the subdivision plat, and we feel confident that this will be acceptable for access and maintenance as well, should we decide to move the ditch.

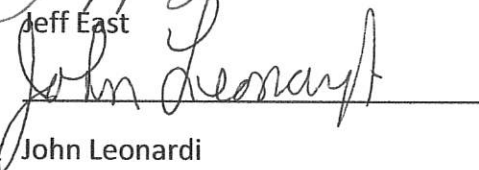
Thank You,



Jim East



Jeff East



John Leonardi

Original
letter

John
Leonardi
Brought this
in. He said
it is state
code

73-1-6. Eminent domain — Purposes.

Any person shall have a right of way across and upon public, private and corporate lands, or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines and areas for setting up pumps and pumping machinery or other means of securing, storing, replacing and conveying water for domestic, culinary, industrial and irrigation purposes or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not unnecessarily to impair the practical use of any other right of way, highway or public or private road, or to injure any public or private property.

History: L. 1919, ch. 67, § 4; R.S. 1933, 100-1-6; L. 1935, ch. 105, § 1; C. 1943, 100-1-6. Easements on state lands for ditches, § 65 A-7-12.

Cross-References. — Eminent domain, Title 78, Chapter 34.

14

73-1-15

WATER AND IRRIGATION

73-1-15. Obstructing canals or other watercourses — Penalties.

Whenever any person, partnership, company or corporation has a right of way of any established type or title for any canal or other watercourse it shall be unlawful for any person, persons or governmental agencies to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agreements may be entered as may be just and proper by governmental agencies. Any person, partnership, company or corporation violating the provisions of this section is guilty of a misdemeanor and is subject to damages and costs.

History: L. 1919, ch. 67, § 19; R.S. 1933 & C. 1943, 100-1-16; L. 1965, ch. 156, § 1.

Cross-References. — Crimes relating to waters, § 76-10-201 et seq.

Nuisances, § 76-10-801 et seq.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

NOTES TO DECISIONS

Interference with irrigation ditch.

— Remedies.

A company that sued an adjacent landowner for intentional interference with an irrigation ditch did not waive its claim by agreeing to the

installation of a pipe to replace the ditch, since the adjacent landowner was doing nothing more than attempting to mitigate the harm he had caused. *Morgan v. Quailbrook Condominium Co.*, 704 P.2d 573 (Utah 1985).

APPLICATION FOR A PLAIN CITY SUBDIVISION

Subdivision Name S-Curve Patio Estates Zone C-2 Date Submitted April 1, 2022

Address of Subdivision 2825 W 2575 N Plain City, UT No. of Units or Lots 25

List all Parcel Numbers included in development: 19-036-0075, 19-036-0076, 19-036-0072

Owner Name Westside Investments LC Full Address 5238 W 2150 N, Ogden, UT 84404

Phone # 801-731-7252 Cell # _____ Fax # 801-731-1008

Subdivider's Name Jeff Hales Full Address 5355 W 2150 N, Ogden, UT 84404

Phone # 801-540-9947 Cell # _____ Fax # _____

Name of Intended Escrow Holder Old Republic Title Address 5732 S 1475 E, STE 100, South Ogden, UT 84403

Contact Name Mike Hendry Phone # 801-479-1191 Fax # 801-479-2777

Surveyor's Name Klint Whitney Address 968 Chambers St, Ogden Phone # 801-476-0202

Engineer's Name Tyler Nielsen Address 968 Chambers St, Ogden Phone # 801-476-0202

Have all property taxes, interests and penalties been paid? Yes (no approval given until paid in full.) UCA 10-9a-603(3)

Secondary Water Available? Yes Contact Mountain View Irrigation (Kami Marriott) Phone # 801-731-7252

Secondary Water System in Place? Yes Type Pressurized Phone # 801-731-7252

Culinary Water Available? Yes Type Pressurized System (Bona Vista) Phone # 801-621-0474

Sewer Connection Available? Yes Contact Plain City Type Piped Sewer System

Is Property in a Flood Hazard Area? No Flood Zone Fema Plat Lowest Elevation 4241

Access Road above 4215' Elevation? 4243 Source Engineered Plat

Please describe any agreements, rights-of-way, easements etc, which could affect this site: (Use other side if needed)

There is a storm drain easement and also a fiber optic easement that runs along the east boundary of the property.

Describe history of parcel being subdivided, approximate dates and acreage of past land divisions: (Use other side if needed)

This is a continuation of the S-Curve Subdivision. Phases 1-4 and West Ph 1 were developed from 2016-2018.

The above information is true and accurate to the best of my knowledge.

4-5-22 Date Jeffrey W Hales Signature

Office Use Only

Subdivision Filing Fee: 1,250.00
Subdivision Engineering Fee: 2,625.00
Number of Copies: _____

PC Preliminary Approval Date: _____
PC Final Approval Date: _____
CC Final Approval Date: _____



Memorandum

To: Tammy Folkman, Land Use Specialist
Plain City Corporation

From: Brad C. Jensen, P.E.
Wasatch Civil Consulting Engineering

Date: March 8, 2024

Subject: S-Curve Patio Estates Subdivision, Plan Review

We have reviewed the revised plans for the S-Curve Patio Estates Subdivision. It appears that the comments on our review memorandum dated February 14, 2024 have been adequately addressed. We recommend the development be granted preliminary approval.

If you have any questions or require additional information, feel free to call.



Memorandum

To: Tammy Folkman, Land Use Specialist
Plain City Corporation

From: Brad C. Jensen, P.E. 
Wasatch Civil Consulting Engineering

Date: February 14, 2024

Subject: S-Curve Patio Estates Subdivision, Plan Review

We have reviewed the plans for the S-Curve Patio Estates Subdivision. Following our review, we have the following comments:

1. The plans indicate proposed modifications to the stormwater detention pond. The proposed changes should be shown on the plans including: the new location of the outlet structure, the location of the pond inlets and outlet pipes, inlet structure details, etc.
2. Revised storm drain calculations should be submitted showing that the revised detention pond has adequate capacity for this development as well as other areas that are discharging into it.
3. Final plans must show profiles of the proposed streets and utilities.
4. The construction of proposed improvements in 2600 North Street must be reviewed and approved by UDOT including striping, pavement markings or other required improvements.
6. The plans indicate that the roads through the patio homes are to be private. It is assumed the utilities located in these streets will be owned and operated by Plain City. This should be clarified in a separate agreement.
7. The Plain City Storm Water Discharge Permit require Developers to consider aspects of Low Impact Development (LID) in their developments. A report should be submitted identifying which aspects of LID are being employed or the reasons they are not feasible.
8. Prior to construction, the Developer's Contractor must submit a SWPPP in accordance with the State of Utah Division of Water Quality.
9. Plans do not show sidewalk along 2825 West Street. In accordance with Plain City Subdivision Standards, a 4-foot wide concrete sidewalk should be added to both sides of 2825 West and tied into existing sidewalks located to the south. The pedestrian access ramps on 2600 North must then be modified accordingly.

10. Streetlights should be added in accordance with the attached redlined drawing.
11. A street sign/stop sign should be shown at the intersection of 2575 North and 2825 West Streets
12. Any fire hydrant locations must be reviewed and approved by the Plain City Fire Marshall.
13. Plans should be submitted to Bona Vista Water Improvement District and the secondary water provider for their review and comment. Their comments must be addressed prior to the preconstruction meeting.
14. Plans should include striping on 2825 West where it intersects with 2600 North Street. Unless otherwise required by UDOT, there should be a pedestrian crossing, a minimum of 30-feet double yellow centerline striping, a stop bar, turn lanes and directional arrows.
15. Plain City Standards require detention ponds to be finished with weed matting and crushed rock. This should be completed with this phase.

If you have any questions or require additional information, feel free to call.

GARDNER ENGINEERING

WEST HAVEN, UT 84401 • (801) 476 – 0202 • GARDNERENGINEERING.NET

To: Brad Jensen, PE, Wasatch Civil
From: Jeff Holley, PE, Gardner Engineering
CC: Jeff Hales
Date: March 4, 2024
Re: Comment Response Memo-S Curve Senior

1. The plans indicate proposed modifications to the stormwater detention pond. The proposed changes should be shown on the plans including: the new location of the outlet structure, the location of the pond inlets and outlet pipes, inlet structure details, etc.
 - Added Sh. CE1-04 for detention pond modifications
2. Revised storm drain calculations should be submitted showing that the revised detention pond has adequate capacity for this development as well as other areas that are discharging into it.
 - Revised calculations and exhibit included on Sh. CE1-04
3. Final plans must show profiles of the proposed streets and utilities.
 - Plan and profile sheets included on current plan set
4. The construction of proposed improvements in 2600 North Street must be reviewed and approved by UDOT including striping, pavement markings or other required improvements.
 - Plans have been reviewed and approved by UDOT, striping shown as approved on current plan set
6. The plans indicate that the roads through the patio homes are to be private. It is assumed the utilities located in these streets will be owned and operated by Plain City. This should be clarified in a separate agreement.
 - Owner to sign utility ownership agreement as required
7. The Plain City Storm Water Discharge Permit require Developers to consider aspects of Low Impact Development (LID) in their developments. A report should be submitted identifying which aspects of LID are being employed or the reasons they are not feasible.

- L.I.D. design is infeasible for this site due to high groundwater and poor infiltration. Stormwater quality report included in current submittal.
8. Prior to construction, the Developer's Contractor must submit a SWPPP in accordance with the State of Utah Division of Water Quality.
 - SWPPP/NOI to be provided prior to construction
 9. Plans do not show sidewalk along 2825 West Street. In accordance with Plain City Subdivision Standards, a 4-foot wide concrete sidewalk should be added to both sides of 2825 West and tied into existing sidewalks located to the south. The pedestrian access
 - Sidewalk added where required
 10. ramps on 2600 North must then be modified accordingly.
 - ADA ramps modified as required
 11. Streetlights should be added in accordance with the attached redlined drawing.
 - Streetlights added per redlined drawings
 12. A street sign/stop sign should be shown at the intersection of 2575 North and 2825 West Streets
 - Street/stop sign added at intersection of 2575 and 2825
 13. Any fire hydrant locations must be reviewed and approved by the Plain City Fire Marshall.
 - Fire hydrants placed per Fire Marshall review
 14. Plans should be submitted to Bona Vista Water Improvement District and the secondary water provider for their review and comment. Their comments must be addressed prior to the preconstruction meeting.
 - Revisions have been made per reviews by utility providers
 15. Plans should include striping on 2825 West where it intersects with 2600 North Street. Unless otherwise required by UDOT, there should be a pedestrian crossing, a minimum of 30-foot double yellow centerline striping, a stop bar, turn lanes and directional arrows.
 - Striping added to plan set per UDOT approved design
 16. Plain City Standards require detention ponds to be finished with weed matting and crushed rock. This should be completed with this phase.
 - Note included on SH. CE1-04 indicating pond finishing requirements

Tammy Folkman

From: Jeff Hales <jeffwhales@live.com>
Sent: Tuesday, January 30, 2024 2:09 PM
To: Tammy Folkman
Subject: Re: S Curve Patio Homes

Fire
marshall

Ok, thank you Tammy!

From: Tammy Folkman <tammyf@plaincityutah.org>
Sent: Monday, January 29, 2024 2:13 PM
To: Jeff Hales <jeffwhales@live.com>
Subject: FW: S Curve Patio Homes

Here is what our Fire Marshall said about hydrants. Thanks

From: brad.jensen01 <brad.jensen01@yahoo.com>
Sent: Monday, January 29, 2024 1:34 PM
To: Tammy Folkman <tammyf@plaincityutah.org>
Subject: RE: S Curve Patio Homes

Hydrants are typically spaced 500 ft apart. I didn't see any plan for hydrants. However if they could put on at the entrance of the development and one on lot 4 and one on lot 9. Thanks

Brad Jensen
Plain city Fire Marshall
801-489-6047

Sent from my Galaxy

----- Original message -----

From: Tammy Folkman <tammyf@plaincityutah.org>
Date: 1/29/24 11:18 AM (GMT-07:00)
To: "Brad Jensen (brad.jensen01@yahoo.com)" <brad.jensen01@yahoo.com>
Subject: S Curve Patio Homes

Can you take a look at this and get back with me on what they might need for fire hydrants.

Thanks
Tammy Folkman
Land Use Specialist
Plain City Corporation
4160 W 2200 N
Plain City, UT 84404



Bona Vista Water Improvement District

2020 West 1300 North, Farr West, Utah 84404

Phone (801) 621-0474 Fax (801) 621-0475

February 26, 2024

To whom it may concern:

RE: AVAILABILITY LETTER : S-Curve Senior

The Bona Vista Water District does have culinary water available for the project located at 2850 West 2600 North in Plain City .

This letter states that the above named project is in the boundaries of the Bona Vista Water Improvement District. The information will be evaluated with our review process when formal application is made by the Developer and fees are paid to the District.

The plan review fee for commercial is \$1,000 plus \$300 per acre and includes running one fire flow model. We consider this fee to be minimal and is only to cover the cost of review by the District and the District Engineer. If additional models are requested, supplementary fees will be required. Only the phase in consideration is guaranteed service and only for a period of one year from the date of the District approval, if not constructed.

Connection fees and fire line fees are based on meter and line size. All water mains, service lines, fire hydrants, etc. must be constructed according to the district's specifications. Those specifications can be found on the district's website: <https://www.bonavistawater.com/construction-standards>.

Proof of secondary water will need to accompany the connection fee for each connection inside the development. Allowable proof of secondary water is a connection receipt from a pressurized secondary water provider or a letter clearly stating that there are 3-acre feet of water available for each acre of undeveloped property (water shares must be in owner's name).

The connection receipt will serve as verification from the district for building permit purposes.

If you have any questions, please feel free to call me. I can be reached at 801-621-0474 ext. 207, Monday through Friday, 9am – 5pm.

Sincerely,

Matt Fox
Assistant Manager

Board of Directors

Michelle Tait, Chairwoman - Harrisville
Jon Beesley, Vice Chairman - Plain City
Ronald Stratford - Unincorporated Area
Scott Van Leeuwen - Marriott/Slaterville
Ken Phippen - Farr West

Management

Blake Carlin, Manager
Matt Fox, Assistant Manager
Marcie Doolan, Administrative Manager

Mt. View Irrigation
5238 W 150 N
Ogden, Utah 84404

3-8-2024

To: Plain City

Re: S-Curve Senior Subdivision

Dear Sirs,

This is to confirm that Mt. View Irrigation has the capacity to serve secondary water to the S-Curve Senior Subdivision. The owner of the subdivision will be required to complete a development agreement with the company which will include providing the applicable water shares sufficient to provide water to the project, completion and approval of the pipelines, service laterals and payment of applicable connection fees. Upon completion of these items, Mt. View Irrigation will deliver pressurized secondary water to the project. Each lot owner will become a shareholder in the company and be bound by its by-laws.

Signed

A handwritten signature in cursive script, appearing to read 'Kami Marriott', with a long horizontal flourish extending to the right.

Kami Marriott
Secretary

