WILLARD CITY
Subdivision Land Use Authority (SLUA) – Special Meeting
August 29, 2024 – 3:00 p.m.
Willard City Hall – 80 West 50 South
Willard, Utah 84340

The meeting was a special meeting designated by resolution. Notice of the meeting was provided 24 hours in advance. A copy of the agenda was posted at City Hall and on the State of Utah Public Meeting Notice Website.

The following members were in attendance:

Colt Mund, City Attorney
Madison Brown, City Planner
Zac Burk, Jones & Associates
Van Mund, Fire Chief
Payden Vine, Public Works Director
Chad Braegger, Planning Commission
Michelle Drago, Deputy City Recorder

Excused: Jeremy Kimpton, City Manager, and Chris Breinholt, City Engineer.

Others in attendance: Chris Marx.

CALL TO ORDER

Madison Brown, City Planner, called the meeting to order at 3:02 p.m. The Deputy Recorder recorded a roll call attendance.

2A. CONSIDERATION OF FINAL APPROVAL AND IMPROVEMENT GUARANTEE FOR XRAM SUBDIVISION LOCATED AT APPROXIMATELY 297 WEST 380 NORTH (PARCEL NO. 02-044-0008, 02-046-0010, 02-046-0011, AND 02-046-0012)

Time Stamp – 0:44 – 08/29/2024

Madison Brown, City Planner, stated that she had discovered that Chris Marx had never received final approval of the Xram Subdivision from SLUA. The oversight was likely due to the multiple administrative staffing changes at the beginning of the year. The biggest concern seemed to be the 400 West stub street. A deferral agreement for the 400 West stub improvements was approved by the City Council on August 22nd. The purpose of this meeting was to approve the final subdivision plan and consider an improvement guarantee for the 400 West stub street that would supersede the deferral agreement approved by the City Council. The subdivision could be recorded after receiving final approval because there was a signed escrow agreement.

Ms. Brown stated that although a deferral agreement had been written and approved, Chris Marx preferred to pay for the 400 West stub improvements up front. He didn't want to worry about improvements being required years in the future or leaving something his children would have to worry about.

Zac Burk, Jones & Associates, stated that he had prepared a cost estimate of $42,733.00 for the 400 West stub that did not include the usual 15% contingency. The estimate was based on the remaining right-of-way width of 400 West, the length of edge curb, other road items from the escrow agreement, and traffic control. He highlighted that it was an estimate not a price quote. It was what he would expect the city to pay if it bid the project.

Madison Brown stated that an escrow account had been set up for $58,066.28. Could those funds be used to complete the 400 West stub? Zac Burk said the escrow had to be held through the subdivision's guarantee period. Mr. Marx could wait until the end of the guarantee period, then use those funds for the stub improvements.

Chris Marx said he was concerned that if something happened to him, his children would be held responsible to complete the 400 West stub. The deferral agreement stipulated that he had to install the improvements within 90 days upon notice from Willard or automatically in 15 years. He didn't feel there would be a need to continue 400 West to the south in 15 years. In 15 years, he did not want to randomly put in 106 feet of road for no reason.

Zac Burk stated that the escrow funds needed to remain until the guarantee period was over. At that point, Mr. Marx could use those funds for the stub road, or he could put up the funds for both. The funding was up to Mr. Marx.

Madison Brown asked if the deferral agreement could be kept active until the guarantee period expired. At that point could Chris Marx give Willard the $42,733 for the stub road? Colt Mund felt he could if SLUA felt that was a better solution than a deferral agreement. At the end of the guarantee period, Mr. Marx could make another escrow agreement. Then the deferral agreement could be terminated.

Chad Braegger, Planning Commission, said Chris Marx would essentially roll over the escrow funds.

Van Mund, Fire Chief, said Mr. Marx would get some funds back, because the current escrow was more than the stub road would cost.

Chris Marx liked that option if SLUA agreed. Then his finances wouldn't be stretched thinner. He did feel the estimate prepared by Mr. Burk was high.

Madison Brown felt the only drawback was the possibility of the city requesting that the stub road be constructed in the next year. Right now, the city does not have plans to do that.

Van Mund asked if the city had a good tracking process to track the deferral agreement and/or escrow so that years down the road it could verify it had received money for the stub road. Madison Brown said she was the tracking process. The funds would probably go into the city's road/streets budget. She wasn't sure the funds could be locked away. Chief Mund just wanted to make sure there would be evidence the improvements had been paid for.

Chris Marx asked if he would receive documentation that he had taken care of the stub road. Madison Brown said he would. Colt Mund felt documentation should be recorded so future landowners would be able to see the city was paid, and that the cost of improvements had been put into escrow.

Chad Braegger asked if the city would sit on the funds even if the stub road was never put in. Zac Burk said it would, which is why he hated deferral agreements. The funds might go into the General Fund in 2024, but the road might not be built until 2050. In the intervening years, the money would be used for a different project. Some cities actually put escrow funds in accounts to try to keep up with inflation. Deferral agreements did not follow the timeline of future costs.

Colt Mund, City Attorney, said that was the reason cities were moving away from deferral agreements. Most would not do agreements beyond 90 days. The deferral agreement with Chris Marx was unique because it had a 15-year sunset provision. The City Council had approved the deferral agreement.

Madison Brown said it sounded like the city wanted to leave the deferral agreement active for a year until the escrow guarantee period ended. Zac Burk stated that the guarantee period started on August 21, 2024. On August 21, 2025, Chris Marx needed to contact him for a final inspection and escrow release if the city had not reached out to him.

Colt Mund stated that in one year, the deferral agreement would have to come back to SLUA for review. SLUA could approve a new escrow agreement that would supersede the deferral agreement. The new escrow agreement would have to be approved by the mayor and city council.

Zac Burk asked if the escrow funds were going into an escrow account. Colt Mund said they should. Ideally escrow funds were held by a bank. The city could reach an agreement where Chris Marx volunteered to pay the city. The city could then use those funds however it wanted, but he had satisfied the city's requirements. The city council would grant final approval, but SLUA would be the decision maker.

Van Mund asked about the possibility of putting the funds into an account or bond that was interest bearing until it was time to construct the improvements. Madison Brown said that option would have to be addressed by the city manager and city treasurer. A member of the city council had asked about that possibility as well.

Colt Mund recommended that the improvement guarantee be tabled until that time, when SLUA could make a recommendation. The agreement had to be approved by the mayor and city council, but SLUA had to determine that the deferral agreement was no longer necessary. He wasn't sure SLUA could recommend what was done with the funds.

Van Mund stated that nothing would be done until the end of the guarantee period in a year. Colt Mund agreed that SLUA could make a recommendation at that point to terminate the deferral agreement in exchange for a new escrow agreement.

Zac Burk asked if the subdivision could be recorded. Colt Mund said it could. Everything had been approved. If Chris Marx wanted to change the deferral agreement next year, he could approach the city.

Chris Marx was concerned something with SLUA could change over the next year. Colt Mund felt the way to avoid that was to make another escrow agreement. However, that would delay the project until a new escrow agreement was written and approved. The cost of the stub road improvements had been agreed up in a deferral agreement. He felt uneasy about proceeding with recording if Mr. Marx wanted to switch the deferral agreement for an escrow agreement that had not been drafted, approved, or signed.

Van Mund said a new escrow agreement would tie up more money. What would change in a year? Chad Braegger felt the improvement cost could change. Van Mund asked if the costs could be locked in. Zac Burk felt costs could be locked in an escrow agreement. Colt Mund said the deferral agreement did not mention costs. Zac Burk said the deferral agreement gave Chris Marx the option to get the project done at a cheaper price. The escrow agreement determined the city's cost, which Mr. Marx could give the city. Then the city could take care of the improvements.

Chris Marx stated that based on his contractor's bids, the stub road would cost about $30,570. Chad Braegger said it would be to Chris Marx's benefit to just put the road in. Mr. Marx disagreed with the need for the stub road and didn't want to put it in. Mr. Braegger said that was Mr. Marx's decision.

Chris Marx asked if the city engineer's cost estimate would change in a year. Zac Burk said it probably wouldn't unless the country went to war, or the price of gas was insane. The way to lock in the cost was a paper trail in the form of an escrow agreement.

Madison Brown asked if it would be possible to create an escrow agreement that had a postponed start date. That would allow Chris Marx to lock in the cost of $42,733.00 Colt Mund said an escrow agreement could be created with a future deposit date but felt it would be problematic logistically. He was concerned the city wouldn't be covered.

Chad Braegger asked about the plans for 500 West. Why was the Council so set on 400 West? Zac Burk said the Council was following the Road Master Plan. Mr. Braegger felt 500 West would be more of a main thoroughfare than 400 West. Zac Burk said there were a lot of unknowns about 500 West. Mr. Braegger felt the funds from Chris Marx should be used for a street that would actually be constructed and usable. He didn't feel Marvin Neff or his children would ever take 400 West to the south. Colt Mund said that if Chris Marx made another escrow agreement, the funds would be locked into place. Then the city council might find a better use for them.

Colt Mund said one option was to table changes to the improvement guarantee. Then Chris Marx could come back in a year. He didn't feel there would be a big change in the composition of the SLUA body, but there wasn't a guarantee the 2025 SLUA body would feel the same way. That would allow Chris Marx to move forward with his project. A second option was to propose terminating the deferral agreement in lieu of a new escrow agreement, which would delay the project until it was written. A third option was an escrow with a delayed funding date. SLUA could make a recommendation to the city council regarding use of the funds. It would be up to the city council to decide what the funds would be used for.

In answer to a question from Van Mund regarding the authority of SLU. He understood the only authority SLUA had was to determine if a project met all the city requirements. Colt Mund and Madison Brown said that SLUA was the city's land use authority on subdivisions. They had been reviewing the city code and learned what authority SLUA had and did not have. SLUA could determine it wanted to see the escrow agreement before it was sent to the city council.

Colt Mund said that if Chris Marx wanted a new escrow agreement, he felt a new escrow should be written, approved, and signed before the subdivision mylar was signed so the city was covered, and everything was wrapped up. That would delay Mr. Marx.

Chris Marx stated that right now he couldn't do anything that delayed him. He preferred to have everything taken care of today, even if it cost him more money. He didn't want the stress of having to worry about the stub road in the future.

Colt Mund felt he could have an escrow agreement ready for the Council to consider on September 12th.

Van Mund asked if SLUA could proceed with the current escrow and deferral agreement. Colt Mund said it could. SLUA could make a finding that the deferral agreement could be terminated when there was an escrow agreement to replace it. Then Chris Marx could move forward.

Chris Marx said that was what he wanted to do.

Michelle Drago moved to grant final approval of Xram Subdivision based on the deferral agreement for the 400 West stub road approved by the City Council on August 22, 2024, and the current escrow agreement. Van Mund seconded the motion. All voted "aye." The motion passed unanimously.

Van Mund moved to move forward with an escrow agreement that would supersede or terminate the deferral agreement for the 400 West stub street in the Xram Subdivision subject to the council's approval. Colt Mund seconded the motion. All voted "aye." The motion passed unanimously.

Colt Mund said he would send an escrow agreement to Chris Marx for his approval. After Chris Marx approved it, he would present the agreement to the city council.

Chris Marx asked if he needed to come back to SLUA. Colt Mund said he did not. When the council approved the new escrow agreement, the process would be finished.

Chad Braegger told Zac Burk there were some punch list items in the Xram Subdivision that needed to be taken care of. The irrigation boxes needed to be cut out so the head gates and handles could be used. The sewer stubs needed to stick up out of the ground three to four feet. He asked where the storm water at the end of the road was going to go. Zac Burk said there was supposed to be a cut to drain the water to the north toward the pond. Mr. Braegger said he couldn't find the valve for the fire hydrant on the north side. It should be found and collared.

2B. CONSIDERATION OF PRELIMINARY APPROVAL AND A RECIPROCAL EASEMENT AGREEMENT FOR THE KAPP SUBDIVISION LOCATED AT APPROXIMATELY 620 NORTH 200 WEST (PARCEL NO. 02-046-0005)

Time Stamp – 40:38 – 08/29/2024

Madison Brown stated that Neldon Kapp was not able to attend the SLUA meeting due to his work schedule as a school bus driver. In August 2023, SLUA approved a concept plan for Mr. Kapp's subdivision subject to his property being rezoned. Mr. Kapp's property was rezoned in September 2023, and the Planning Commission approved his concept plan in October subject to a reciprocal agreement being recorded. The reciprocal agreement was meant to prevent access from being blocked by either property owner. Mr. Kapp had provided the city with a copy of the reciprocal agreement.

Zac Burk verified that Mr. Kapp was dividing his property into two lots, and that a family member planned to build a home on the new lot. Ms. Brown said that was correct. Mr. Burk was concerned that the new lot did not comply with Willard's flag lot ordinance. SLUA verified that both lots had the required lot width of 100 feet.

Van Mund felt there should also have been access from Highway 89 along 500 North past Sleeman's and McCormick's. The property owners had provided land for the access, but the city had not required them to remove fences and pave the road. Ms. Brown said that last year SLUA asked Mr. Kapp if he used that access. He said he did not. He used 200 West.

Chad Braegger asked about an agreement for a water main. Van Mund said there was a water main along 500 North. There was a fire hydrant in front of Kapp's home.

Madison Brown said there was a question about whether Neldon Kapp needed to extend the water line to 200 West. Chad Braegger thought the city wanted to extend the water line to create a loop.

Michelle Drago, Deputy Recorder, asked if 200 West would have to be cut to connect the waterline. Chad Braegger didn't feel 200 West would have to be cut. The waterline was extended north along the east side of 200 West for the Barthlome and Harrop homes.

Payden Vine stated that Nelson Kapp did not have to extend the water line to 200 West. He didn't have to have to provide a loop to have water for the new lot.

Chad Braegger asked if Neldon Kapp was willing to give the city an easement to extend the waterline to 200 West. Michelle Drago said that last year Mr. Kapp said he would give the city an easement. Mr. Braegger felt the city needed to make sure it had an easement to extend the waterline.

Chad Braegger asked if an additional hydrant was needed. Chief Mund said the existing hydrant was sufficient.

Colt Mund asked about conveyance of water rights. City ordinances required that water rights be advanced even for a single lot. There was the possibility of a fee-in-lieu of. He asked where the Kapp Subdivision was in the approval process. Ms. Brown said the concept plan had been approved by the Planning Commission.

Van Mund asked if irrigation shares would count toward water rights. Zac Burk said shares did not count. There was a difference between shares and rights, or ownership.

Colt Mund said the code did provide some exceptions the Kapps could pursue, such as asking the city council to reduce the amount of water required. There was also a fee in lieu of.

Van Mund said that Kapp's did have a well.

Madison Brown asked if there were any concerns regarding the reciprocal agreement.

Colt Mund said the agreement did not contain a legal description of the actual easement. There was a survey, but not a description of the easement itself. The agreement did not say the easement was for ingress and egress, nor did it say how long or wide the easement was. The agreement should contain a distinct description of the easement. The agreement also said it could be terminated by either party even if it was recorded. He was not in favor of that language. The agreement needed to be perpetual. It needed to run with the land in perpetuity, and it could not be terminated by either party.

Zac Burk said the easement was not described on the plat. The survey needed to reflect the easement. When the city connected the water line to 200 West, it would need a 20-foot maintenance and access easement that extended past the hydrant.

Madison Brown stated that she would contact Neldon Kapp about the changes needed to the reciprocal agreement and the subdivision plat that included a survey with the description of the easement, and that the easement be dedicated on the plat.

Colt Mund moved to table preliminary consideration of the Kapp Subdivision until changes had been made to the reciprocal agreement and subdivision plat and the water rights had been verified. Payden Vine seconded the motion. All voted "aye." The motion passed unanimously.

2C. CONSIDERATION AND APPROVAL OF AUGUST 1, 2024, MINUTES

Zac Burk moved to approve the August 1, 2024, minutes as written. Van Mund seconded the motion. All voted "aye." The motion passed unanimously.

3. ADJOURN

Michelle Drago moved to adjourn at 3:59 p.m. Zac Burk seconded the motion. All voted "aye." The motion passed unanimously.

Minutes were read individually and approved on: 10/24/24

Madison Brown, City Planner

Michelle Drago, Deputy City Recorder

dc: SLUA 08-029-2024