Bountiful City
Administrative Committee Minutes
September 19, 2016

Present: Chairman – Chad Wilkinson; Committee Member – Lloyd Cheney and John Marc Knight; Assistant Planner – Andy Hulka; Recording Secretary – Julie Holmgren

1. **Welcome and Introductions.**

Chairman Wilkinson opened the meeting at 5:00 p.m. and introduced all present.

2. **Consider approval of minutes for September 12, 2016.**

Mr. Cheney made a motion to approve the minutes for September 12, 2016. Mr. Knight seconded the motion.

A	Mr. Wilkinson
A	Mr. Cheney
A	Mr. Knight

Motion passed 3-0.

3. **Consider approval of a Lot Line Adjustment at 1630 South Orchard Drive and 163 East 1650 South, Douglas & Carol Thompson and Daniel & Vivian Dearden, applicants.**

Douglas Thompson and Daniel Dearden, applicants, were present. Attorney Carter Maudsley was also present.

Chad Wilkinson presented a summary of the staff report (the full staff report follows).

Bountiful City Land Use Code Section 14-2-104 authorizes the Administrative Committee as the review Authority for Lot Line Adjustments. Decisions of the Committee may be appealed as set forth in Section 14-2-108

The applicants are applying for a Lot Line Adjustment between their properties at 1630 South Orchard Drive and 163 East 1650 South in Bountiful, Utah. Both properties are located in the R-4 Single-Family Zone. The R-4 zone requires a minimum lot size of 8,000 square feet and a minimum lot width of 70 feet. The purpose of the property line adjustment is to convey approximately .41 acres from the Thompson's property identified as Tax Parcel 03-042-0067 to the Dearden's property identified as Tax Parcel 03-042-0070.

The proposed lot line adjustment plan includes a parcel that the City has found to have been illegally divided in 1977. The first official record of the parcels currently designated as Tax Parcels 03-042-0066 and 67 comes from Warranty Deeds recorded in 1977. The parcels were subsequently conveyed to the current property owners. At the time the parcels were created, the property was located within the R-2 zoning district. Minimum lot dimension standards for the R-2 district at the time were 7,000 square feet with a minimum requirement for 70 feet of

lot width. While Tax Parcel 03-042-0067 is slightly narrower than the 70 feet lot width required by Code, Tax Parcel 03-042-0066 is approximately 6,800 square feet and is approximately 56 feet wide (when measured 30 feet from the front property line as required by the code applicable at the time of the creation of the parcel). The parcels were created without going through the required subdivision approval process and did not meet the minimum standard for the zone at the time of their creation. In addition, the parcel lines bisect an existing garage on the site which violates the setback standards of the Code. For these reasons the parcels are not considered to be legal nonconforming building parcels or lots. The City considers the property to be one parcel for the purpose of the property line adjustment.

In order for the lot line adjustment to be approved, the unauthorized parcels must be combined. Without this combination, the property line adjustment will violate local ordinance which is prohibited by Utah Code section 10-9a-103(53). The applicant may resolve the violation by combining parcels 03-042-0066 and 67 through the property line adjustment process. At this time, the proposal does not include combination of the parcels. Without this combination, the adjustment should not be approved.

Findings

- Tax Parcel 03-042-0066 and 67 were created in 1977 and did not meet the minimum lot standards at the time of their creation.
- Tax Parcel 03-042-0066 does not meet the minimum lot size or width standards of the current zoning ordinance.
- Tax Parcel 03-042-0067 does not meet the minimum lot width standard of the current ordinance.
- Bountiful City does not recognize these parcels as separate legal parcels.
- A parcel line currently bisects an existing accessory structure which violates setback standards.
- State law prohibits lot line adjustments that violate local ordinances or that create new building lots or parcels.
- The proposal effectively "creates" a lot that in not authorized and does not meet the minimum standards of the Code.

Section 14-2-110 states that the land use authority may deny any application or approval if it is found that the subject property, site or entity is in violation of any provision of the City Code. Based on the findings above, Staff recommends denial of the lot line adjustment.

[Hereafter, the parcel described as 03-042-0066 will be referred to as "lot 66" and the parcel described as 03-042-0067 will be referred to as "lot 67."]

At the conclusion of his staff report presentation, Mr. Wilkinson explained that the way the property line was submitted it shows lot 66 as being a separate parcel – separate from the remaining parcel. In order for that to be fixed, those parcels need to be combined. That would be the remedy – with the end result being two parcels instead of three. Mr. Wilkinson reiterated that staff recommends denial of the lot line adjustment based on the findings listed in the staff report and based on the idea that there is a way to resolve the issue and allow the property line adjustment to go forward.

Mr. Hulka inquired regarding the property line which appears to go through Mr. Thompson's garage, and he asked if the garage was in place when the lots were created during the 1970s. Mr. Thompson responded he originally had two metal sheds there and the snow slid off and collapse a door-less cinderblock garage. Since then it has been stuccoed, insulated and rewired – and a shop has been added onto it which Mr. Thompson has offered to take down. Mr. Thompson further noted that based on the lot line resolution he would be willing to take the whole thing down. Mr. Thompson explained he had talked to Mr. Wilkinson earlier in the month regarding purchase of the home to the south in order to widen the property line for the existing home, but he was informed by a surveyor that this would create an illegal lot because of the requirement to measure at a straight angle instead of a long line. Mr. Wilkinson explained the code defines this as the closest point between the two side property lines – it is a straight line (perpendicular) between the two.

Mr. Carter Maudsley, representing the applicants, spoke on their behalf. Mr. Maudsley explained that since the lots were created in 1977 they both existed without opposition from the city and that is what is most upsetting about the denial of the lot line application. There are two parcels, and Mr. Thompson has been paying taxes on both of them. Bountiful City and Davis County consider the large parcel, lot 67, as buildable, but Mr. Thompson cannot do anything on it because Mr. Thompson just happens to own lot 66 as well. Mr. Maudsley questioned that if a different person owned lot 66 whether the recommendation would be the same in that Thompson must sell the front part of the property to correct the illegal lot in the front. Mr. Maudsley speculated that Mr. Thompson might be treated differently by the city because he owns both lots rather than two separate land owners. Mr. Maudsley explained that in 1990, by the recommendation and permission of Bountiful City, when Orchard Drive was undergoing construction the city approached Mr. Thompson and recommended stubbing the lot. Mr. Maudsley stated that Mr. Thompson had had some interest in building a single family residence on the larger lot. Mr. Maudsley said the city suggested that Mr. Thompson run laterals for a future build while Orchard Drive was torn up. Mr. Maudsley stated this went through the Planning & Zoning department, and the city checked off on it and inspected the work. Mr. Maudsley said because of this Mr. Thompson relied on the idea that it was a buildable lot only to find out twenty-six years later that wasn't the case. Mr. Thompson had spent money after being told it was a buildable lot, only to be told it is not. Mr. Maudsley stated he is uncertain as to whether the proposed lot line creates another lot. The way the application was written was to combine that back parcel with Mr. Dearden's existing lot and so there would still only be Dearden's and two Thompson lots – there would not be a new lot and it wouldn't be defined as a subdivision under Utah Code 10-9a-103(53) because the back parcel would not be that new lot. Mr. Maudsley explained those are the points of Thompson's frustration.

Mr. Knight inquired regarding the ultimate goal of the lot line adjustment and asked if Thompson desired to build on the piece to the north.

Mr. Thompson affirmed that was his goal. He stated that in 1990 when Orchard Drive was widened the City Engineer was Jack Balling, and Balling told Thompson the city would bring utilities in and Thompson would need to pay for sewer and gas. Mr. Thompson explained he has documentation of when the sewer and gas were brought in and the contractors who performed the work. Mr. Thompson stated that everything that is permitted has to go through Bountiful City. Mr. Thompson explained he has two separate tax notices

and that the property was purchased through two different entities, although they are related. One was recorded in December of 1977, and Mr. Thompson bought the home from the son and land from the father. Mr. Thompson agreed to purchase the home and one was recorded in November, the other was recorded in December. Mr. Thompson reiterated that he has documentation of when the gas was stubbed in, the contractors who performed the work (and who had conversations at the time with Bountiful City). Mr. Thompson stated that concerning the larger lot if he goes by a dimension [which was pointed out on a map] he is about eight inches short of the 70 feet. Mr. Thompson summarized that he purchased two separate pieces of property from two separate owners. A mortgage was taken out for the home and the tax commission didn't say anything. There was a contract signed with the owner of the property, and Mr. Thompson made payments until the owner got older and Thompson borrowed money to pay him off. Mr. Thompson made reference to two separate tax notices and stated that the assessor has contacted Bountiful City because Thompson has been trying to lower the taxes on the ground. Mr. Thompson further stated the assessor has contacted Bountiful City several times and was told it was a buildable lot and to tax it as such. In hindsight, Mr. Thompson stated that he would not have purchased the property and remodeled the house. He stated he has lived up to his end, and Bountiful City told him one thing at one time and now it's different. Mr. Thompson stated he has a developed lot with sewer, gas, Weber water and city water and he would like to put a new home on it keeping all setbacks as required by Bountiful City.

Mr. Knight inquired regarding the frontage on the top portion of the lot. Mr. Wilkinson responded it is about 69 feet and explained that frontage is different from lot width. Mr. Wilkinson explained this does not meet the current standard and did not meet the standard at the time.

Mr. Wilkinson clarified that the engineering and planning departments are two separate departments. He said there is no record of the planning department ever making a determination on the lot. It is not uncommon when a street is being reconstructed for engineering to stub utilities so they don't have to go back at a future date and chop things up. That is a common practice, and no one makes a buildable determination at the time. Engineering works with the property owner so they don't have to go back at a separate time and cut the road. Mr. Wilkinson noted a statement that Jack Balling from Planning & Zoning was contacted, but there was a separate city planner at the time. Jack Balling was the City Engineer. There are two separate entities. Mr. Maudsley inquired if both entities operate under the same code. Mr. Wilkinson affirmed, but said that during construction projects there is not always input on the land use side of things. Mr. Wilkinson said that no determination was made at the time that this was a buildable lot, and the city does not consider this a buildable lot. He reiterated that there is no record of a written determination. There is information from the county, but they are not the city, and although the county taxed it as a buildable lot, this does not mean that the city has made a determination. Mr. Wilkinson reiterated that utility stubs do not always go through Planning & Zoning – a lot of times that's an in-the-field call. Regarding the creation of a new lot, the way it was shown the end result is three where the city considers this to be just two. There's the Dearden's lot and the Thompson's lot – those are the two properties and there's not a third. Mr. Wilkinson summarized that the determination is that this is not a separate legal parcel. The determination is appealable. If the Committee decides to deny the property line adjustment, that is also appealable. This is first time the city has made a formal determination of buildable or not on this issue.

Mr. Thompson explained that he would not have had sewer and gas brought in separately in 1990 if he had not been told that it was a buildable lot. He explained that he was told that he would have to conform to the current standards including proper setbacks and side yards, and the plans would have to be approved. Mr. Thompson said he would not have paid taxes on two separate pieces of property, spent money to have a driveway put in, and have the rest of the utilities brought in had he known the lot was not buildable. Mr. Thompson said he was led to believe it was buildable and that is why he did not combine the property years ago. Mr. Thompson explained the county assessor informed him that if he would combined the property the taxes would be less, but Mr. Thompson said he wanted to build a home there and kept it as two separate pieces of property.

Mr. Wilkinson noted this property has been the focus of discussion for a couple of years, and that a few years ago a couple inquired about the parcel for a home site and were told it was not a buildable lot. The verbal interpretation was given consistently. The lot line was not created through the right channels in 1977. It did not go through a subdivision process back then, and it did not meet the standards at the time. Mr. Wilkinson explained that legal non-conforming means that something was approved under a previous ordinance that met that previous ordinance and subsequent ordinances have created at situation that does not meet current code. This is not the case in this situation. This was created at a time when there was an ordinance, there was a subdivision process, and it did not meet the standards at that time.

Mr. Thompson stated his understanding with the first buyers was that they could build, but they could not build as far back as they wanted to. Mr. Wilkinson stated they were told it was not a standard parcel and not buildable. Mr. Wilkinson noted this is the first time there has been a formal determination.

Mr. Cheney inquired as to what point in time the flag lot provision was repealed and recollected it was sometime in the early 2000s. Referring to the larger parcel, Mr. Cheney stated there was a period of time where perhaps this could have been a viable flag lot if the other parcel had been properly created and properly subdivided out. Mr. Cheney wondered if there was a chance that a legal flag lot could have been created at that time. Mr. Wilkinson said it was possible because there was a period when flag lots were allowed, but the point is it didn't meet the standards and did not go through the right process.

Mr. Cheney asked regarding the document which created the smaller parcel. Mr. Wilkinson replied that it was a warranty deed. Mr. Cheney asked what the subdivision process was at that time – did an applicant still have to get a preliminary approval, final approval – with approvals from the Planning Commission and City Council. Mr. Wilkinson stated that it required a formal approval from the city at the time, but he was uncertain if it required all the steps currently in place, but there was a formal subdivision process. Mr. Knight asked if this was ever made a subdivision. Mr. Wilkinson said no, it has never been a subdivision and was created by a warranty deed in 1977. Mr. Wilkinson explained that a warranty deed essentially indicates a transfer of ownership; there was no formal subdivision of the property and there were no city approvals; the city was not involved. Mr. Thompson noted this was not something that he created, and stated he has been in the house for almost 39 years. Mr. Knight clarified that Mr. Thompson was not the builder of the house, and Mr. Thompson affirmed.

Mr. Knight inquired as to how the house got built on a non-conforming lot. Mr. Thompson explained the house was built in 1947. Mr. Wilkinson noted the lot lines were created after the house was built. Mr. Knight inquired how the owner got a small lot. Mr. Thompson said they just sold it. Mr. Wilkinson said the lot was created with the warranty deed, and there was no city approval. Mr. Wilkinson said the parties went to the county, gave them the warranty deed to record, and at the time the county would record whatever deed was given to them. Mr. Wilkinson explained that even now the county's role is to let us know about these things, but their obligation is as a recorder and they are not an approval body.

Mr. Thompson stated that things have changed a lot in Bountiful City since he first moved here. Mr. Thompson restated that he signed one contract and one mortgage with two separate individuals, and it was not something that he created or was aware of. He noted that Davis County presented taxes and said pay these taxes and it wasn't until he inquired about building that the issues came up. Mr. Knight noted that was when Thompson started looking at the measurements. Mr. Thompson stated that every time he has a survey done he loses a little more frontage (and money).

Mr. Wilkinson stated that the parcels were created October 31, 1977 and then deeded on November 1, 1977. These were not something that existed for years before Mr. Thompson bought them, they were created for the purpose of selling to Thompsons. Mr. Wilkinson explained that he discovered a document at the county that is essentially a notice of contract document, and there is some type of discrepancy on what exactly had been transferred at the time because there is a notice the Thompsons claimed an interest in the larger of the two and this was recorded December 1, 1977. At some point there was a discrepancy between what the contract document was and what was recorded, and so that was recorded to claim that interest. Mr. Wilkinson stated it is probably safe to say this is not something that existed for years and years, and it was something created for this transaction. He explained the city has done the deed research and looked back on the documents from Davis County and found this was not an old existing lot but was created in 1977 and didn't meet the ordinance at the time.

Mr. Knight asked if they could acquire the property to the north. Mr. Dearden stated there is nothing there to give. Mr. Wilkinson explained the lot to the south had been looked at with a surveyor and if they were to acquire what they need, it would make that lot non-conforming. Mr. Wilkinson recalled that State Code states that cities cannot create a violation by approving a property line adjustment.

Mr. Wilkinson noted the city was excited when Mr. Dearden proposed purchasing the land back because this would allow the sale of part of the property and development of the rear portion of the property while allowing a conforming lot in the front which would resolve both concerns. Mr. Wilkinson pointed out there would be a conforming parcel that meets the current ordinance and the ordinance at the time, and allows the ability to sell off a piece of property, and that makes everything whole and fixes the non-conforming situation. Mr. Knight clarified that no new lots would be created in that scenario. Mr. Wilkinson affirmed.

Mr. Knight asked Mr. Thompson if his plans were to build another house and keep the existing house. Mr. Thompson said that was right. Mr. Thompson explained the new home would be built a little longer than wide and still keep frontage, setbacks and side yards as needed. Mr. Thompson restated an earlier point regarding utilities stubbed in 1990 and what was conveyed at that time. Mr. Thompson explained the first survey was done by Scott

Balling and at the time Mr. Thompson figured he was 6-8 inches short of having a legal lot in the front. Mr. Thompson restated his belief that two separate sellers sold him the ground, and they should remain separate. Mr. Wilkinson stated the city sees only one owner on the record – one family, the Kieffers – and there's one warranty deed. Mr. Thompson responded there is a warranty deed from Alvin and Maxine Kieffer who own the ground, and a one for the house from Max Alvin Kieffer and Lois Kieffer – two separate pieces of property.

Messrs. Wilkinson, Cheney and Hulka reviewed the documents provided by Mr. Thompson. Mr. Wilkinson inquired if there are two separate individuals named Alvin Kieffer. Mr. Thompson stated there are two – a son and his wife owned the home and the senior Kieffer who negotiated the land deal (which was done after the mortgage was done on the home). Mr. Knight asked if the senior Kieffer conveyed the land around the house to his son. Mr. Thompson replied no – that land was conveyed to Thompson, and the son sold the house to Thompson. The son didn't own the land, the dad did. A short discussion ensued and the committee inquired regarding the date the lot was divided up. Mr. Maudsley stated the elder Kieffer created the lot the end of October and then sold it to the Thompsons. Mr. Wilkinson stated that is consistent with a conclusion that it was created for this transaction.

Mr. Knight noted the committee cannot grant permission to build on a non-conforming lot. Mr. Wilkinson stated it is the city's finding that it is not a separate parcel, and the recommendation is that it should not be approved, and it was not created by the proper process at the time. Mr. Knight clarified his understanding that Kieffer created the lot line one day and the next day he sold the property. Mr. Thompson signed the mortgage and later signed the contract for the ground. Mr. Thompson explained that the son said he was uncertain what the dad would do with the land, and Mr. Thompson told the son he would purchase the house if he could also buy the ground to the side and behind it. Mr. Thompson said there was a contract for the ground that he paid on separately.

Mr. Knight inquired regarding the next step for Mr. Thompson. Mr. Wilkinson responded that the committee needs to make a decision. Mr. Knight asked who the applicants appeal to if the committee makes a decision that they cannot create a non-conforming lot. Mr. Wilkinson stated they would appeal to the Administrative Law judge.

Mr. Thompson presented an idea for a lot line adjustment and restated that this property involved two separate deals, taxed separately, bought from two separate owners, developed in 1990, and it was his understanding at the time that Jack Balling, the City Engineer, was part of Planning & Zoning. Mr. Wilkinson stated it looks a little irregular that it was bought from two separate parties, but it was created the day before it was purchased. Mr. Wilkinson further explained that in 1982 the Kieffers recorded a special warranty deed on the larger parcel which apparently had been conveyed in 1977, and so there has been a discrepancy over the years as to who owned what. Mr. Thompson stated that 1992 was probably when he paid it off. Mr. Wilkinson restated that 1982 was the date of the special warranty deed. Mr. Wilkinson went on to state that from the beginning there was a cloud of irregularity over creation of this parcel, and it didn't meet the standards at the time. Mr. Wilkinson stated the city hopes to resolve the issue by combining this to one parcel.

Mr. Cheney requested to review the deeds.

Mr. Wilkinson said the issue can be made right by combining parcels. Mr. Thompson could sell off a portion for the back of the lot and it allows him to have some benefit from the back property and still have a conforming lot.

Mr. Cheney stated that his perusal of the deeds led him to believe this was done in a manner that is clearly without the city's review and approval. Mr. Thompson stated he did not know what was required in 1977, but he knows he has contracts, has paid off both pieces of property and knows what the city told him in 1990. Mr. Thompson stated he has to live with his mistakes and feels the same for Bountiful. Mr. Thompson restated he would not have paid separate property taxes or would not have developed that property at an extra cost had he known it was not a buildable lot. Mr. Thompson stated he had done his research with the county and has a letter where they contacted Bountiful, and he was told it was a buildable lot. Mr. Knight stated that a person can pay taxes on a parcel that is non-buildable – there are several in Bountiful. Mr. Maudsley stated that they are at a reduced tax rate because they are non-buildable.

Mr. Wilkinson referred to the 2014 letter from the county. He highlighted the second paragraph of the letter and noted the language used is very careful. Quoting from that letter, "His notes indicate he spoke to Bountiful City Planning & Zoning office. He was told that there had been no determination by the city that a building permit could not be issued." Mr. Wilkinson clarified that at the time what the city is saying is that we have not made that determination. That doesn't mean we have said yes or no, it just means we have not made a formal determination on that. Because of situations like this we do not make formal determinations unless we have been asked to because sometimes what that results in is that we have a determination that doesn't meet the code and if we go out and do that just based on our own desire to look at all these lots, we could be accused of being arbitrary in our enforcement of code. Mr. Wilkinson said the city waits for those requests, which it did formally receive in this case, and the city has made its determination. Mr. Wilkinson restated that the county was careful in their letter to state that there had not been a determination, and the county said that the property was valued with the assumption that the lot was buildable. Mr. Wilkinson stated he understands the frustration in this case and has had many conversations regarding it.

Mr. Thompson stated he was told there had been no determination by Bountiful City and that a building permit could not be issued for the property, therefore it was taxed at the full value.

Mr. Cheney made a motion for denial of a Lot Line Adjustment at 1630 South Orchard Drive and 163 East 1650 South, Douglas & Carol Thompson and Daniel & Vivian Dearden, applicants. Mr. Knight seconded the motion.

A Mr. Wilkinson
A Mr. Cheney
A Mr. Knight

Motion passed 3-0.

Mr. Knight inquired regarding the applicants' options. Mr. Wilkinson explained the action is appealable to the Administrative Law judge and the appeal needs to be filed within 14 days

from the date of the written decision. There will be a written decision by the date of the next Administrative Committee meeting (September 26, 2016).

Mr. Thompson asked regarding the possibility of selling the back half of the property to Mr. Dearden and just leaving it the way it is right now. Mr. Wilkinson noted that scenario had been proposed and it is not possible. Mr. Wilkinson said it can be combined into one parcel and adjusted so one parcel is Mr. Dearden's and one is Mr. Thompson's – that would be the resolution.

4. **Consider approval of a Conditional Use Permit, in written form, to allow for Solar Panels at 188 East 650 North, Joy Cluff, applicant.**

   Mr. Cheney made a motion for approval of a Conditional Use Permit, in written form, to allow for Solar Panels at 188 East 650 North, Joy Cluff, applicant. Mr. Knight seconded the motion.

   A Mr. Wilkinson
   A Mr. Cheney
   A Mr. Knight

   Motion passed 3-0.

5. **Consider approval of a Conditional Use Permit, in written form, to allow for Solar Panels at 2917 South 450 West, Adam Fisher, applicant.**

   Mr. Knight made a motion for approval of a Conditional Use Permit, in written form, to allow for Solar Panels at 2917 South 450 West, Adam Fisher, applicant. Mr. Cheney seconded the motion.

   A Mr. Wilkinson
   A Mr. Cheney
   A Mr. Knight

   Motion passed 3-0.

6. **Consider approval of a Conditional Use Permit, in written form, to allow for Solar Panels at 25 North 200 West, Donald Bouge (Davis County Recovery), applicant.**

   Mr. Cheney made a motion for approval of a Conditional Use Permit to allow for Solar Panels at 25 North 200 West, Donald Bouge (Davis County Recovery), applicant. Mr. Knight seconded the motion.

   A Mr. Wilkinson
   A Mr. Cheney
   A Mr. Knight

   Motion passed 3-0.

7. **Consider approval of a Conditional Use Permit, in written form, to allow for a Home Occupation Landscaping Business at 3001 South 500 West, Sione Tapa, applicant.**

   Mr. Knight made a motion for approval of a Conditional Use Permit, in written form, to allow for a Home Occupation Landscaping Business at 3001 South 500 West, Sione Tapa, applicant. Mr. Cheney seconded the motion.

   A Mr. Wilkinson
   A Mr. Cheney
   A Mr. Knight

   Motion passed 3-0.

8. **Miscellaneous business and scheduling.**

   Mr. Wilkinson ascertained there were no further items of business. The meeting was adjourned at 5:45 p.m.

Chad Wilkinson, City Planner